

## SECOND AMENDED EMPLOYMENT CONTRACT FOR CITY ATTORNEY

This Second Amended Employment Contract is made and entered into this 6<sup>th</sup> day of September, 2017 by and between the CITY OF CUPERTINO, STATE OF CALIFORNIA, a Municipal Corporation, by and through its City Council (EMPLOYER), and Randolph Stevenson Hom (EMPLOYEE).

### RECITALS:

- A. EMPLOYER is a Municipal Corporation of the State of California.
- B. The City Council of the City of Cupertino, in accordance with the provisions of its Municipal Code, desires to employ the services of EMPLOYEE as the City Attorney.
- C. It is the desire of both EMPLOYER and EMPLOYEE to set forth the terms and conditions of said employment.

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

## ARTICLE I TERM OF EMPLOYMENT

### Section 1.01. Term of the Contract:

This Second Amendment amends the original Contract dated October 20, 2015 and amended on November 1, 2016. The Contract will automatically expire on January 4, 2021 unless extended in writing by the parties. On or within 30 days of January 4, 2020, EMPLOYEE shall notify EMPLOYER of the expiration date of January 4, 2021. In the event that EMPLOYER does not intend to extend this Contract beyond expiration, it shall notify EMPLOYEE in writing of its intent not to extend prior to the effective date of expiration. Failure of the EMPLOYER to provide such notice shall not affect the expiration date of January 4, 2021.

Section 1.02. Termination Prior to Expiration: Notwithstanding any provision contained in this Contract to the contrary, EMPLOYEE understands and agrees that he serves at the pleasure of EMPLOYER and may be terminated prior to expiration of this Contract at the will of EMPLOYER, subject only to the severance provisions set forth in Article V of this Contract, and the ordinance provisions as set forth in Section 2.18.110 of the Cupertino Municipal Code. In like manner, nothing in this Contract shall prevent, limit, or otherwise interfere with the right of EMPLOYEE to resign at any time from the position of City Attorney subject only to the notice provisions set forth in Article V of this Contract and the ordinance provisions as set forth in Section 2.18.110 of the Cupertino Municipal Code.

EMPLOYEE further acknowledges that EMPLOYER has made no implied, expressed, or written assurances of continued employment with the City of Cupertino other than as specifically set forth in this Contract.

## ARTICLE II DUTIES AND OBLIGATIONS OF EMPLOYEE

Section 2.01. Duties: EMPLOYER hereby agrees to employ EMPLOYEE as City Attorney of the City of Cupertino to perform the functions and duties as specified in the Municipal Code, California Constitution, and California Statutes, and to perform such other legally permissible and proper duties and functions as EMPLOYER shall from time to time assign to EMPLOYEE which are reasonably related to the position of City Attorney, including, but not limited to:

- (a) Attendance at City Council meetings and other meetings as required;
- (b) Research, preparation and review of ordinances, resolutions, agreements, contracts, leases, written opinions and other documents of legal nature necessary or requested by the City Council;
- (c) Provision of all legal advice on behalf of the City to the City Council, City Manager, and other City officers and employees;
- (d) Representation of the City, members of the City Council and other City officers and employees in litigation as necessary;
- (e) Selection, retention, supervision and monitoring of outside legal counsel as required;
- (f) Commencement and prosecution of criminal actions and civil abatements necessary and appropriate to enforce City's ordinances;

- (g) Monitoring and advising the City Council and City staff regarding legislation and case law affecting the City.

Section 2.02. Devotion to Duties: EMPLOYEE agrees to devote productive time, ability, and attention to the business of EMPLOYER during the term of this Employment Contract. This Contract shall not be interpreted nor intended to prohibit EMPLOYEE from making passive personal investments, conducting private business affairs or providing volunteer or limited legal services if those activities do not interfere with the services required under this Contract.

Section 2.03. Performance Evaluation Procedures: The City Council shall review and evaluate the performance of EMPLOYEE at least annually, or on any other schedule deemed appropriate by the City Council. Said review and evaluation shall be in accordance with specific criteria developed by EMPLOYER after consultation with EMPLOYEE.

### ARTICLE III COMPENSATION

Section 3.01. Compensation: EMPLOYER agrees to pay to EMPLOYEE for services rendered by him pursuant to this Contract a monthly base salary of \$20,511.00 and an additional cash payment of \$789.00 per month for management leave for a total monthly salary plus additional cash of \$21,300.00, effective September 6, 2017, payable in installments at the time as other employees of EMPLOYER are paid. EMPLOYEE's monthly base salary shall be adjusted by any percentage increase provided in the Appointed Employees' Compensation Program, generally, and shall not be decreased unless in a percentage consistent with a decrease applicable to employees covered under the Appointed Employees' Compensation Program, generally. Notwithstanding the above, EMPLOYER and EMPLOYEE agree that there shall be no further salary adjustments or bonuses for 2017. At the time of EMPLOYEE's periodic evaluations,

EMPLOYER may consider an additional compensation package increase including, but not limited to, merit pay or an additional increase in salary or benefits.

Section 3.02. 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.

#### ARTICLE IV EMPLOYEE BENEFITS

Section 4.01. Vacation and Sick Leave: EMPLOYEE shall be credited with 10 days of vacation and 5 days of sick leave as of the commencement of employment. Annual vacation and sick leave shall be accrued and administered in the same manner as vacation and sick leave is administered in the Appointed Employees' Compensation Program of EMPLOYER.

Section 4.02. Benefits: EMPLOYEE shall be entitled to receive benefits provided by EMPLOYER at a level no less than that provided to employees covered under the Appointed Employees' Compensation Program, which presently consist of retirement benefits, family health coverage, life insurance, disability insurance, Cupertino sports club membership, administrative leave, floating holidays and holidays. The benefits so provided are subject to modification during the course of this Contract at the sole and absolute discretion of EMPLOYER at such times and to such extent as EMPLOYER may deem appropriate provided, however, there shall be no reduction in benefits unless EMPLOYER implements the same reduction of benefits to all other employees covered under the Appointed Employees' Compensation Program (except as specified in this Contract). Notwithstanding the above, EMPLOYEE waives the monthly automobile allowance provided under Policy No. 4 of the Appointed Employees' Compensation Program and shall not be entitled to receive this benefit during the term of this Contract.

Section 4.03. Professional Dues and Subscriptions: EMPLOYER agrees to pay for EMPLOYEE's annual membership to the State Bar of California and for professional dues and subscriptions of EMPLOYEE directly related to or beneficial to his duties as City Attorney, provided the City Council has made provisions for such costs in the annual budget.

Section 4.04 Expenses: EMPLOYEE shall be entitled to reimbursement for all reasonable expenses necessarily incurred by him in the performance of his 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 EMPLOYER and consistent with budget allocations adopted by EMPLOYER for that purpose during the term of this Employment Contract.

Section 4.05. Moving and Relocation Expenses: EMPLOYEE shall be reimbursed or EMPLOYER may pay directly for the actual expenses incurred of packing, unpacking, and moving himself, his family, and his personal property from Castro Valley to Cupertino, California, not to exceed a maximum of \$8,000. Moving shall also include any necessary storage and insurance costs. EMPLOYEE must present receipts of actual expenses to the City in order to receive reimbursement.

Section 4.06. Professional Development: EMPLOYER 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 EMPLOYER, including, but not limited to, city attorney associations and such other national, regional, state, and local government groups and committees there of which EMPLOYEE serves as a member, provided the City Council has made provisions for such costs in the annual budget.

EMPLOYER also agrees to pay tuition, travel, and subsistence expenses of EMPLOYEE for courses, institutes, and seminars that are necessary for his professional development and for the good of the City provided the City Council has provided for same in the annual budget.

Section 4.07. Housing Assistance: EMPLOYEE may elect to receive Housing Assistance in accordance with the EMPLOYER'S Housing Assistance Program for Appointed Employees and Department Heads in effect as of the execution date of this Contract, which is subject to approval by the City Council.

#### ARTICLE V TERMINATION AND NOTICE

##### Section 5.01. Termination of Employment and Severance:

- a. Subject to the provisions of Section 2.18.110 of EMPLOYER'S Municipal Code, EMPLOYEE serves at the pleasure of the EMPLOYER and nothing herein shall be taken to prevent, limit or otherwise interfere with the right of EMPLOYER to terminate the services of EMPLOYEE with or without cause; provided, however, EMPLOYER shall take no action to terminate the services of EMPLOYEE within ninety (90) days after an election at which one or more new members are elected to the City Council or where the effective date of termination is less than one year and one day after commencement of the term of this Contract. There is no express or implied promise made to EMPLOYEE for any form of continued employment. This Contract and the EMPLOYER'S Municipal Code Chapter 2.18 are the sole and exclusive bases for an employment relationship between EMPLOYEE and EMPLOYER.

- b. If the EMPLOYEE is terminated by the EMPLOYER prior to expiration of this Contract, while still willing and able to perform the duties of the City Attorney, EMPLOYER agrees to pay EMPLOYEE a single lump sum payment made on the effective date of termination, in an amount equivalent to nine months aggregate salary and aggregate medical insurance benefit allowance if there are nine or more months prior to the expiration date of this contract. If there are less than nine months remaining the term of the contract, then the single lump sum payment made on the effective day of termination shall be in an amount equal to the monthly aggregate salary and aggregate medical benefit of the EMPLOYEE multiplied by the number of months left on the unexpired term of the Contract. If this Contract is not renewed, then EMPLOYER shall either provide EMPLOYEE with nine months prior notice of nonrenewal or shall pay EMPLOYEE a single lump sum payment made on the effective date of termination in an amount equivalent to the difference between nine months aggregate salary and medical insurance benefit allowance computed for the number of months of notice actually given. Any such payments will release EMPLOYER from any further obligations under this Contract. Contemporaneously with the delivery of the severance pay herein above set out, EMPLOYEE agrees to execute and deliver to EMPLOYER a release releasing EMPLOYER of all claims that EMPLOYEE may have against EMPLOYER.
- c. Notwithstanding paragraph (b) above, EMPLOYER shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under the provisions of paragraph (b), if EMPLOYEE is terminated for cause or because of a crime of moral turpitude or a violation of statute or law constituting misconduct in office. Further,



EMPLOYER shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under paragraph (b), in the event EMPLOYEE voluntarily resigns or retires without affirmative action by EMPLOYER to terminate, initiate termination proceedings or request resignation.

- d. Any cash settlement received by the EMPLOYEE under paragraph (b) above, must be fully returned to the CITY if the EMPLOYEE is convicted of a crime involving an abuse of his office or position.

#### ARTICLE VI MISCELLANEOUS

Section 6.01. Form of Notices: Notices pursuant to this Contract shall be in writing given by deposit in the custody of the United States Postal Service, first class postage prepaid, addressed as follows:

- a. The CITY: Mayor and City Council  
  
City of Cupertino  
10300 Torre Avenue  
Cupertino, CA 95014
- b. EMPLOYEE: Randolph Stevenson Hom

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Alternatively, notices required pursuant to this Contract may be personally served in the same manner as is applicable to civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date three days after deposit of such written notice, postage prepaid, with the United States Postal Service.

Section 6.02. Bonding: EMPLOYER shall bear the full cost of any fidelity or other bonds required of EMPLOYEE under any law or ordinance.

Section 6.03. Indemnification: EMPLOYER shall defend, save harmless and indemnify EMPLOYEE against any tort, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of EMPLOYEE's duties as City Attorney. If EMPLOYER compromises or settles any such claim or suit, EMPLOYER shall pay the amount of any settlement, or if the claim results in a judgment against EMPLOYEE, EMPLOYER shall pay any such judgment. This indemnification does not apply to any act, action, or omission arising out of the gross negligence, willful misconduct on the part of EMPLOYEE, or acts EMPLOYEE outside the scope of his duties. Notwithstanding the above, EMPLOYEE must repay the CITY for any paid administrative leave provided to EMPLOYEE pending investigations, or any EMPLOYER paid criminal defenses, if EMPLOYEE is convicted of a crime involving an abuse of his office.

Section 6.04. General Provisions:

- a. The text herein shall constitute the entire Contract between the parties.
- b. This Contract shall be binding upon and insure to the benefit of the heirs at law and executors of EMPLOYEE.
- c. This Contract may only be modified upon the written consent of the EMPLOYER and EMPLOYEE.
- d. In any action to enforce the terms of this Contract, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs and other non-

reimbursable litigation expenses, such as expert witness fees and investigation expenses.

Section 6.05. Severability: If any provision, or any portion thereof, contained in this Contract is held unconstitutional, invalid or unenforceable, the remainder of this Contract shall be deemed severable, shall not be affected, and shall remain in full force and effect.

IN WITNESS WHEREOF, EMPLOYER has caused this Contract to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and EMPLOYEE has signed and executed this Contract, both in duplicate, the day and year first above written.

ATTEST:

CITY OF CUPERTINO:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Renee Sloan Holtzman Sakai on behalf  
of the City

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"EMPLOYEE"