

EMPLOYMENT AGREEMENT FOR CITY MANAGER

This Employment Agreement (the "Agreement") is made and entered into this ____ day of April, 2019, by and between the CITY OF CUPERTINO, STATE OF CALIFORNIA, A Municipal Corporation, by and through its City Council ("EMPLOYER"), and Deborah L. Feng ("EMPLOYEE" and, together with EMPLOYER, the "PARTIES").

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 City Manager.
- C. EMPLOYEE desires to accept employment as Cupertino City Manager.
- D. 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 1: TERM OF EMPLOYMENT

Section 1.01. Term of the Contract:

This Contract begins on June 3, 2019, and will automatically expire on June 3, 2022 unless extended in writing by the parties. In the event that EMPLOYEE does not intend to extend this Contract beyond the expiration, it shall notify EMPLOYER in writing of her intent not to extend at least 30 days prior to the expiration date. 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 expiration date. Failure of EMPLOYER to provide such notice shall not affect the expiration date of June 3, 2022. EMPLOYEE and EMPLOYER may agree to extend this Agreement by amending this Agreement in writing.

Section 1.02. Termination Prior to Expiration. Notwithstanding any provision contained in this Contract to the contrary, EMPLOYEE understands and agrees that she serves at the pleasure of EMPLOYER and may be terminated prior to expiration of this Contract at the will of

the EMPLOYER, subject only to the severance provisions set forth in Article V of this Contract, and the ordinance provisions as set forth in Section 2.28.090 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 Manager subject only to the notice provisions set forth in Article V of this Contract and the ordinance provisions as set forth in Section 2.28.090 of the Cupertino Municipal Code.

EMPLOYEE further acknowledges that EMPLOYER has made no limited 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 Manager 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 Manager, including but not limited to:

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 their 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 the preceding 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;

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.

Section 2.02. Hours of Work.

A. EMPLOYEE is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position.

B. It is recognized that EMPLOYEE must devote a great deal of time to the business of the City outside of the City's customary office hours, and to that end the EMPLOYEE's schedule of work each day and week shall vary in accordance with the work required to be performed. EMPLOYEE shall spend sufficient hours on site to perform the City Manager's duties. However, it is expected that, subject to the need to attend off-site meetings or events, EMPLOYEE will be on-site Monday through Friday without an option for an alternative work schedule that includes a regularly scheduled weekday off, unless she is on an approved leave.

C. EMPLOYEE shall not engage in any outside employment without the express prior consent of the City Council.

Section 2.03. Performance Evaluation Procedures.

A. The City Council shall review and evaluate the performance of the EMPLOYEE at least annually, or on any 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. Such criteria may be added to or deleted as EMPLOYER may from time to time determine. During EMPLOYEE'S first year of employment, the City Council shall review and evaluate her performance approximately six (6) months following the date on which her employment commences.

ARTICLE III COMPENSATION

Section 3.01 Compensation.

A. EMPLOYER agrees to pay to EMPLOYEE for services rendered by her pursuant to this Contract an annual base salary of \$239,000 as set forth in the Appointed Employees' Compensation Program, payable in installments at the time as other employees of EMPLOYER are paid.

B. 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. During her first year of employment, EMPLOYER will deposit a total of five thousand dollars (\$5,000) into EMPLOYEE's deferred compensation account by depositing five hundred dollars (\$500) each month for the first ten (10) months of employment.

ARTICLE IV EMPLOYEE BENEFITS

Section 4.01. Automobile Allowance. During the term of this Employment contract, EMPLOYEE, to the extent necessary to perform her duties shall use her own personal vehicle. EMPLOYER, in consideration thereof, shall provide EMPLOYEE an automobile allowance of five hundred dollars (\$500) per month. EMPLOYEE shall be responsible for the payment of all operating expenses of the vehicle, including, but not limited to, gasoline, oil, service and repair, and if necessary, the replacement of her automobile. EMPLOYEE shall procure and maintain, at her expense, a comprehensive automobile liability policy on the vehicle being used by her, in an amount that is acceptable to the EMPLOYER. During the course of this Employment Contract, EMPLOYEE shall provide EMPLOYER with written documentation that said insurance policy is in full force and effect.

Section 4.02. Vacation and Sick Leave. Annual vacation shall be accrued at the rate of three (3) weeks per year during the first two years of this Agreement and shall be administered in the same manner as vacation leave is administered in the Administrative Rules and Regulations of the Personnel Code. This accrual rate shall increase effective June 3, 2021 to four (4) weeks per year. Sick leave shall be accrued and administered in the same manner as sick leave is administered in the Administrative Rules and Regulations of the Personnel Code.

Section 4.03. Administrative Leave. EMPLOYEE shall be entitled to receive eighty (80) hours of Administrative Leave per fiscal year, subject to the terms of the Appointed Employee's

Compensation Program. This benefit shall be prorated for FY2018-19 to reflect EMPLOYEE's start date.

Section 4.04. Benefits. EMPLOYEE shall be entitled to receive benefits as provided for under the Appointed Employees' Compensation Program, 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. 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).

Section 4.05. Professional Dues and Subscriptions. EMPLOYER 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") and the California City Management Foundation ("CCMF"), provided the City Council has made provisions for such costs in the annual budget.

Section 4.06. 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 EMPLOYER and consistent with budget allocations adopted by EMPLOYER for that purpose during the term of this Employment Contract.

Section 4.07 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 manager associations and other such national, regional, state, local government groups and committees

thereof 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 her professional development and of the good of the City provided the City Council has provided for same in the annual budget.

Section 4.08. 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 SEPARATION FROM CITY SERVICE AND NOTICE

Section 5.01. Termination of Employment By City and Severance:

A. The City Manager is an at-will employee serving at the pleasure of the City Council as provided in Government Code Section 36506 and Section 2.28 of the EMPLOYER's Municipal Code. Subject to these authorities, 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, without cause, within ninety (90) days after an election at which one or more new members are elected to the City Council. 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 2.28 are the sole and exclusive bases for an employment relationship between EMPLOYEE and EMPLOYER. Notice of termination shall be provided to the EMPLOYEE in writing.

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 Manager, EMPLOYER agrees to pay EMPLOYEE a single lump sum payment made on the effective date of termination, in an amount equivalent to three (3) months aggregate salary and aggregate medical insurance benefit allowance, if there are three (3) or more months prior to the expiration date of this contract. Any such payment will release EMPLOYER from any further obligations under this Agreement. 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 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 (i) EMPLOYEE voluntarily resigns or retires without affirmative action by EMPLOYER to terminate, initiate termination proceedings, or request resignation or (ii) either EMPLOYER or EMPLOYEE determine not to renew this Agreement as set forth in section 1.01. In the circumstances outlined in this paragraph (C), EMPLOYEE shall only be entitled to the compensation accrued up until date of separation from the City, payments required by paragraph (D) below, and such other termination benefits and payments as may be required by law.

D. Payments for Unused Leave Balances:

i. Upon separation from City service, EMPLOYEE shall be paid for all unused, accrued vacation balances, and/or EMPLOYEE may apply the leave time to service credit for retirement purposes if permitted by PERS. Accumulated vacation leave balances shall be paid at EMPLOYEE's monthly salary rate at the effective date of separation.

ii. In the event EMPLOYEE dies while employed by the City under this Agreement, EMPLOYEE's beneficiaries or those entitled to EMPLOYEE's estate, shall be entitled to EMPLOYEE's earned salary, and any in-lieu payments for accrued benefits, including compensation for the value of all accrued leave balances.

E. All payments required under this subsection 5.01 are subject to and shall be interpreted to comply with the limitations set forth in Government Code Section 53260 regarding maximum severance pay.

F. Notwithstanding any other provision of this Agreement to the contrary, pursuant to California Government Code Section 53243.2, if this Agreement is terminated, any cash

settlement related to the involuntary termination that the City Manager may receive from the City shall be fully reimbursed to the City if the City Manager is convicted of a crime involving an abuse of her office or position. The City Council may withhold payment of severance pay pending final disposition of any criminal charges.

Section 5.02. Resignation or Retirement. EMPLOYEE may resign at any time and agrees to give the City at least 30 days' advance written notice of the effective date of EMPLOYEE's resignation, unless the Parties otherwise agree in writing. If EMPLOYEE retires from full time public service with the City, EMPLOYEE may provide six months' advance notice. The City Manager's actual retirement date will be mutually established.

ARTICLE VI MISCELLANEOUS

Section 6.01. Form of Notices. Notices pursuant to this Agreement shall be in writing given by deposit in the custody of the United State 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:

Deborah L. Feng


Alternatively, notices required pursuant to this Agreement 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. Amendments. This Agreement may be amended at any time by mutual agreement of EMPLOYER and EMPLOYEE. Any amendments are to be negotiated, put in writing, and adopted by EMPLOYER.

Section 6.03. Bonding. EMPLOYER shall bear the full cost of any fidelity or other bonds required of EMPLOYEE under any law or ordinance.

Section 6.04 Indemnification. Except as otherwise provided by law, and provided that EMPLOYEE complies with the provisions of Sections 825 and 825.6 of the California Government Code, as now existing or hereafter amended, 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 Manager. EMPLOYER may conduct such defense reserving the rights of EMPLOYER not to pay the judgment, compromise, or settlement until it is established that the injury arose out of an act or omission occurring within the scope of EMPLOYEE's employment as an employee of City. 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 by EMPLOYEE outside the scope of her duties. Nothing in this Agreement authorizes or obligates EMPLOYER to pay that part of any claim or judgment that is for punitive or exemplary damages.

If EMPLOYEE is convicted of a crime involving an abuse of her office or position, as defined in Government Code Section 53234.4, then EMPLOYEE shall fully reimburse the City for any paid leave salary paid by the City to EMPLOYEE pending any investigation, funds provided to EMPLOYEE for her legal criminal defense, and/or any severance pay or cash settlement paid to EMPLOYEE related to her termination by the City. Said reimbursements are required if such payments are made, even if the payments were made by the City in the absence for any contractual requirement to do so

Section 6.05 Conflict of Interest

A. EMPLOYEE shall not engage in any business or transaction or shall have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper

discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal, as distinguished from financial, interest includes an interest arising from blood or marriage relationships or close business, personal, or political associations. This section shall not serve to prohibit independent acts or other forms of enterprise during those hours not covered by active City employment, providing such acts do not constitute a conflict of interest as defined herein.

B. EMPLOYEE shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to EMPLOYEE's City employment

C. EMPLOYEE is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position.

Section 6.06 General Provisions.

A. The text herein shall constitute the entire Agreement between the Parties, and no representations have been made or relied upon except as set forth herein.

B. This Contract shall be binding upon and inure to the benefit of the heirs at law and executors of EMPLOYEE.

C. If there is any conflict between this Agreement and the Appointed Employee's Compensation Program, or any other resolution fixing compensation and benefits for employees covered by that Compensation Program, this Agreement shall control to the extent allowed under State law.

D. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

E. This Agreement may only be modified upon the written consent of the EMPLOYER and EMPLOYEE.

F. In any action to enforce the terms of this Agreement 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.

F. This Agreement shall be construed in accordance with the laws of the State of

California and the Parties agree that venue shall be in Santa Clara County, California.

Section 6.07 Severability. If any provision thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be deemed severable, shall not be affected, and shall remain in full force and effect.

Section 6.08. Waiver. Waiver by either Party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

Section 6.09. Ambiguity. The Parties acknowledge that this is a negotiated Agreement, that they have the opportunity to have this Agreement reviewed by legal counsel, and that the terms and conditions of this Agreement are not to be construed against any Party on the basis of such Party's draftsmanship thereof.

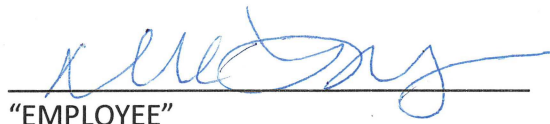
IN WITNESS WHEREOF, EMPLOYER has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and EMPLOYEE has signed and executed this Contract, both in duplicate, the day and year first above written.

ATTEST:

CITY OF CUPERTINO

Date: 4.8.19

Date: _____


"EMPLOYEE"

Mayor

City Clerk

APPROVED AS TO FORM:

City Attorney

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