

CITY OF CUPERTINO

INTERIM CITY MANAGER EMPLOYMENT AGREEMENT WITH AMY CHAN

This Interim City Manager Employment Agreement (the "*Agreement*") is made and entered into as of July 5, 2018, (the "*Commencement Date*") by and between the City of CUPERTINO, a municipal corporation (the "*City*"), and AMY CHAN (the "*Employee*").

IN CONSIDERATION of the mutual covenants and conditions set forth below, the City and the Employee agree as follows:

Section 1. Recitals

A. The City Council of the City desire to employ the Employee as Interim City Manager, and the Employee desires to be employed as Interim City Manager, pursuant to and in accordance with Chapter 2.28 of "The Cupertino Municipal Code," as amended (the "*City Code*").

B. The Employee and the City have agreed that it is appropriate to document the terms and conditions of the Employee's employment by the City.

Section 2. Employment as Interim City Manager

A. Employment. The City hereby agrees to employ the Employee as the Interim City Manager beginning on the Commencement Date, as defined in Section 3 of this Agreement, and the Employee accepts such employment and agrees to perform the functions and duties set forth in this Agreement and provided in the City Code, including without limitation those general duties provided in Chapter 2.28.040 of the City Code, and to perform such other legally permissible and proper duties and functions as the City Council may assign from time to time. This is a fulltime position.

B. Employment is At-Will. Subject to the notice requirement in Section 9 of this Agreement, the Employee is employed at the will of the City Council, and nothing in this Agreement shall create any property right or any other right to the continuation of her employment with the City. No act of the City Council, any City Council member, any City employee, or any legal representative or other agent of the City shall create any such property right or any such other right unless specifically ratified in writing by the City Council.

Section 3. Term

The Employee's term of employment ("*Term*") shall be for a maximum period of 6 months, commencing on July 5, 2018 ("*Commencement Date*") and terminating on January 9, 2019, unless employment is terminated earlier pursuant to Section 9 of this Agreement.

The Employee is a retiree under the CalPERS system. Pursuant to the Gov't Code 21221(h), Employee is restricted to 960 hours per CalPERS fiscal year, unless extended. Employee agrees to not exceed the maximum hours of employment with a contracting agency pursuant to 21221(h) per CalPERS fiscal year.

Section 4. Sole Employment as Interim City Manager

The Employee must work diligently, utilizing her best efforts in the performance of her duties. She must devote her entire business time, attention, and energies to the performance of her duties. She may not actively engage (in contrast to passive engagement) in any income- or profit-generating activities without the prior written consent of the City Council.

Section 5. Compensation; Benefits

A. Base Salary. The City will pay the Employee \$136.21 per hour as base salary.

B. Employee Benefit Programs. As a retiree, the Employee is not eligible to participate in the employee benefit plans and programs provided by the City to other City department heads, including health and life insurance benefit programs, pursuant to the Unrepresented Employees Compensation Policy.

C. Vacation and Sick Days. As a CalPERS retired annuitant, the Employee is not entitled to paid vacation days or sick days pursuant to the terms of the Unrepresented Employees Compensation Policy; however, for the term of this agreement the Employee shall be provided with a one-time allowance of one week (40 hours) of vacation time to be used during the six month employment period.

D. Taxes. All payments made, or benefits provided, to the Employee pursuant to this Section 5 are subject to the usual and appropriate payroll, personnel, and benefits policies of the City as well as the requirements of any applicable federal, state, or local laws, including appropriate tax withholdings. Nothing in this Agreement may be deemed or interpreted as requiring the City to pay, directly or by way of reimbursement to the Employee, any federal or state income tax liability that the Employee may incur as a result of this Agreement or any of the transactions, benefits, or payments contemplated in

this Agreement. The Employee shall comply with all applicable Internal Revenue Service and California Department of Revenue requirements and regulations concerning the transactions, benefits, or payments contemplated in this Agreement.

Section 6. General Business Expenses; Electronic Equipment

A. General Expenses. The City will reimburse the Employee for reasonable miscellaneous expenses properly incurred in the course of performing the duties of her position. The Employee shall timely submit all receipts and other supporting documentation requested by the City.

B. Communications Equipment. The City will provide the Employee with a combined cellular telephone and e-mail device, and an ipad device for the Employee's use in the performance of the duties of her position. This equipment remains the property of the City.

Section 7. Confidentiality

The Employee acknowledges that the Employee has had and will have access to confidential information ("*Confidential Information*") of, about, and belonging to, the City. Confidential Information does not include public documents or information that would otherwise constitute Confidential Information but that has become public. The Employee covenants and warrants that, both during and after the Employee's term of employment, the Employee will not directly or indirectly use, divulge, furnish, or make accessible Confidential Information to any person, firm, or corporation other than persons, firms, or corporations employed and/or retained by the City in a fiduciary capacity without the prior express written authorization of the City, but instead the Employee will keep all Confidential Information strictly and absolutely confidential except as otherwise provided in this Agreement or as required by the California Public Records Act., Govt. Code §§ 6250 - 6276.48.

Section 8. Property of the City

All business plans, financial data, reports, memoranda, correspondence, and all other documents pertaining to the current or prospective business of the City are and will at all times remain the property of the City.

Section 9. Termination

A. Basis for Termination. Notwithstanding anything to the contrary contained elsewhere in this Agreement, this Agreement shall terminate upon the occurrence of any of the following events: (a) the

Employee's death; (b) the Employee's resignation; or (c) termination of the employment of the Employee by the City Council for any reason, or for no reason, at any time.

B. Notice of Termination. The City shall provide the Employee with not less than thirty (30) days advance written notice of the City's intent to terminate the employment of the Employee pursuant to this Agreement; provided, however, that not less than twenty four (24) hours advance written notice need be provided by the City in the event the Employee has been convicted of fraud, misappropriation, or embezzlement involving property of the City, or of a felony offense or other criminal act, or has engaged in conduct that causes, or may cause, substantial harm to the reputation of the City.

E. Resignation. In the event that the Employee desires to voluntarily resign the position of Interim City Manager, she must provide the City with not less than thirty (30) days advance written notice, unless the Employee and the City Council agree otherwise in writing.

Section 10. Indemnification

The City will defend, hold harmless, and indemnify the Employee against and for all losses sustained by the Employee in direct consequences of the discharge of the Interim City Manager's duties on the City's behalf for the period of employment. Such a duty shall not extend to any judgment for damages arising out of any willful wrongdoing. This indemnification shall extend beyond termination of employment and the otherwise expiration of this agreement to provide protection for any such acts undertaken were committed in the Employee's capacity as Interim City Manager. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies that the Employee may have under the law.

Section 11. Notices

Notice pursuant to this Agreement must be given by depositing **in** the custody of the United States Postal Service, postage prepaid, addressed as follows:

If to the City:

Mayor
Copy to: Executive Assistant to the City Manager
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014

If to the Employee: Amy Chan
938 Laurel Glen Drive
Palo Alto, CA 94304

Alternatively, notice required pursuant to this Agreement may be served personally. Notice will be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 12. General Provisions

A. Entire Agreement. This Agreement constitutes the sole and entire agreement between the City and the Employee relating to the employment of the Employee by the City. This Agreement supersedes all prior or contemporaneous agreements, understandings, and representations, oral and written, with respect to the employment of the Employee by the City.

B. Amendments. The parties may amend any provision of this Agreement in writing signed by both parties. Any such amendments will be deemed to be a part of this Agreement.

C. Binding Effect. This Agreement is binding on the City and the Employee as well as their heirs, assigns, executors, personal representatives, and successors in interest.

D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not effect the validity of any other provision. If any provision of this Agreement is held to be invalid, then the remaining provisions will be deemed to remain in full force and effect.

E. No Waiver. Any failure in the exercise of either party to enforce any provision of this Agreement shall not prejudice the party's right to demand strict performance or enforcement of any future performance required under this Agreement.

F. Assignment. This Agreement with respect to the Employee is personal in nature and the Employee will not assign this Agreement or any of the Employee's rights or obligations under this Agreement without the written consent of the City.

G. Governing Law. The execution, validity, construction, interpretation, performance, and enforcement of this Agreement is governed by the internal laws, but not the conflict of laws rules, of the State of

California. Nothing in this Agreement is intended to abrogate the Employee's rights and obligations under California law.

H. Acknowledgements. The parties mutually acknowledge that they have entered into this Agreement voluntarily and have had an opportunity to have this Agreement reviewed by counsel of their choosing.

CITY OF CUPERTINO

By: _____
Darcy Paul, Mayor Date

Attest:

By: _____
Grace Schmidt, City Clerk Date

EMPLOYEE

Amy Chan Date

Approved as to form:

Randolph Hom, City Attorney Date