

EMPLOYMENT AGREEMENT FOR CITY ATTORNEY

This Employment Agreement (the “Agreement”) is made and entered into this 27th day of July, 2021, by and between the CITY OF CUPERTINO, STATE OF CALIFORNIA, A Municipal Corporation, by and through its City Council (“EMPLOYER”), and Christopher D. Jensen (“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 Attorney.
- C. EMPLOYEE desires to accept employment as Cupertino City Attorney.
- 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 I: TERM OF EMPLOYMENT

Section 1.01. Term of the Contract:

This Contract begins on July 27, 2021, and will automatically expire on July 27, 2026, unless extended in writing by the Parties. This Contract shall automatically renew on a year-to-year basis, for a maximum of two additional years (24 months) as provided herein unless the EMPLOYER gives EMPLOYEE notice of non-renewal. Unless such notice of non-renewal is timely given, this Contract shall automatically renew for an additional year. If notice of non-renewal is given, the City Council may at any time choose to relieve EMPLOYEE of his duties.

On or within 30 days of the expiration date (or any successor expiration date thereof), EMPLOYEE shall notify EMPLOYER of 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 effective date of expiration. Failure of EMPLOYER to provide such notice shall not affect the expiration date.

Nothing in this Contract shall prevent, limit or otherwise interfere with (a) EMPLOYEE’s at-will status; (b) the right of City to terminate the services of EMPLOYEE as provided herein; and (c) the right of EMPLOYEE to resign from his position as provided herein.

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 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 2.18.110 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 limited expressed, or written assurances of continued employment with the City of Cupertino other than as specifically set forth in this Contract.

In the event EMPLOYEE becomes mentally or physically incapable of performing the City Attorney's essential functions and duties with reasonable accommodation and it reasonably appears such incapacity will last for more than six (6) months, the City Council may, subject to state and federal law, terminate EMPLOYEE. If the City Council does elect to terminate EMPLOYEE due to incapacity, EMPLOYEE shall not receive severance benefits provided in Section 5.01 below.

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. Advising the City Council and all City officers in all matters pertaining to their offices;
- B. Furnishing legal services at all meetings of the City Council, except when excused or disabled, and give advice or opinions on the legality of all matters under consideration by the City Council or by any of the boards, commissions, committees or officers;
- C. Preparing and/or approving all ordinances, resolutions, agreements, contracts, and other legal instruments as shall be required for the proper conduct of the business of the City and approve the form of all contracts, agreements, and bonds given to the City;
- D. Providing the necessary legal services required in connection with the acquisition of land or easements on behalf of the City;
- E. Subject to the general direction of the City Council, prosecuting and defending the City, and all boards, officers and employees in their official capacities, all civil proceedings before judicial and quasi-judicial tribunals. The City Attorney shall not compromise, settle or dismiss any action for or against

the City without permission of the City Council, nor shall the City Attorney commence any civil action without the permission of the City Council.

F. Prosecuting all violations of City ordinance; provided, however, that the City Attorney is not required to prosecute any misdemeanor or infraction within the City arising out of a violation of State law.

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 Attorney'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 Attorney'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 he is on an approved leave; provided, however, that nothing herein shall be construed to limit EMPLOYEE's ability to work from off-site locations in compliance with applicable City policies to the extent that such off-site work does not interfere with the performance of EMPLOYEE's duties as set forth in Section 2.01.

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. During EMPLOYEE'S first year of employment, the City Council shall review and evaluate his performance approximately six (6) months following the date on which his employment commences. This six (6) month review shall be for purposes of a performance review only and shall not include any compensation or benefits adjustments.

ARTICLE III COMPENSATION

Section 3.01 Compensation.

A. EMPLOYER agrees to pay to EMPLOYEE for services rendered by him pursuant to this Contract an annual base salary of \$255,000, payable in installments at the time as other employees of EMPLOYER are paid.

B. Except as provided for in Section 2.03(A), 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. Should the City Council, upon

completion of its annual review of EMPLOYEE's performance pursuant to this Contract, determine that EMPLOYEE has met City's performance expectations, the City Council shall may consider an increase in EMPLOYEE compensation, in the exercise of its sole and unfettered discretion. EMPLOYEE understands and agrees that he has no entitlement to an increase in compensation.

Section 3.02 Deferred Compensation.

Subject to the applicable IRS maximum limitations that may be in effect at the time of said payment, the City shall make monthly deposits of one thousand six hundred and twenty-five dollars (\$1,625) into EMPLOYEE's deferred compensation account, for a total of nineteen thousand and five hundred dollars (\$19,500) annually.

ARTICLE IV EMPLOYEE BENEFITS

Section 4.01. Vacation and Sick Leave. Subject to the terms of the Appointed Employees' Compensation Program, annual vacation and sick leave shall be accrued and administered in the same manner as sick leave is administered for appointed employees.

Section 4.02. Administrative Leave. EMPLOYEE shall be entitled to receive eighty (80) hours of Administrative Leave per fiscal year, subject to the terms of the Appointed Employees' Compensation Program.

Section 4.03. 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, family 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 or as otherwise waived or declined by EMPLOYEE).

Section 4.04. 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 4.05. Expenses. Subject to the terms of the Appointed Employees' Compensation Program, 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 4.06 Professional Development. Subject to the terms of the Appointed Employees' Compensation Program, 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 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.

Subject to the terms of the Appointed Employees' Compensation Program, 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 of 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 SEPARATION FROM CITY SERVICE AND NOTICE

Section 5.01. Termination of Employment By City and Severance:

A. The City Attorney is an at-will employee serving at the pleasure of the City Council as provided in Government Code Section 36506 and Chapter 2.18 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, and EMPLOYEE shall serve at the will and sole pleasure of the City Council; 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 2.18 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 Attorney, 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. As a condition precedent to EMPLOYER'S willingness to provide said severance payment, EMPLOYEE agrees to execute and deliver to EMPLOYER a release releasing EMPLOYER of all claims that EMPLOYEE may have against EMPLOYER and contemporaneously provide said release to EMPLOYER at the time of the severance payment is made to EMPLOYEE in a form mutually acceptable to the Parties.

Any severance payment shall exclude all other benefits, such as retirement, health, vision, and dental benefits. In addition, vacation and sick leave accrual shall immediately cease upon the date of City's notification to EMPLOYEE that his employment will be terminated. The severance pay shall be computed from the effective date of EMPLOYEE's termination. The intent of these provisions is to comply with Government Code section 53260.

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 (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. Notwithstanding the use of "cause" herein, nothing herein contained shall be deemed to create or establish a property right or a right to continuing employment in the position of employment of EMPLOYEE or affect City's right to terminate the employment of EMPLOYEE with or without cause in accordance with this Agreement.

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 Attorney may receive from the City shall be fully reimbursed to the City if the City Attorney is convicted of a crime involving an abuse of his 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 Attorney'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:

Christopher D. Jensen
(Address on file with City)

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 Attorney. 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 or willful misconduct on the part of EMPLOYEE, or acts by EMPLOYEE outside the scope of his 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.

Section 6.05 Compliance with AB 1344:

Notwithstanding any other provision of this Agreement, EMPLOYER and EMPLOYEE agree to fully comply with the Government Code sections that are part of AB 1344, as it became effective on January 1, 2012 ("AB 1344"), and to fully comply with other applicable law as it exists as of the date of execution of this Agreement, and as the Agreement may be amended from time to time thereafter. In that regard, the following Government Code sections are hereby incorporated into the terms of this Agreement:

- o §53243. Reimbursement of paid leave salary required upon conviction of crime involving office or position,
- o §53243.1. Reimbursement of legal criminal defense upon conviction of crime involving office or position,
- o §53243.2. Reimbursement of cash settlement upon conviction of crime involving office or position,
- o §53243.3. Reimbursement of non-contractual payments upon conviction or crime involving office or position and
- o §53243.4. Abuse of office or position defined.

EMPLOYEE has reviewed, is familiar with, and agrees to comply fully with each of those provisions if any are ever applicable to EMPLOYEE.

If EMPLOYEE is convicted of a crime involving an abuse of his 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 his legal criminal defense, and/or any severance pay or cash settlement paid to EMPLOYEE related to his 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

In addition, pursuant to Government Code Section 3511.2, and notwithstanding any other provisions of this Agreement, EMPLOYER is prohibited through this Agreement or any amendment thereto or in any other way to provide an automatic renewal of this Agreement that provides for an automatic compensation increase in excess of a cost-of-living adjustment or a maximum cash settlement in excess of certain limits established by Government Code Section 3511.2. Government Code Section 3511.2 is hereby incorporated into this Agreement.

Section 6.06 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.

D. EMPLOYEE shall not engage in any outside employment without the express prior consent of the City Council. This includes, but is not limited to, the practice of law or giving of legal advice for compensation without the express written approval of a majority of the City Council, which may be withheld in the City Council's unfettered discretion.

Section 6.07 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 Employees' Compensation Program, or any other resolution fixing compensation and benefits for employees covered by that Compensation Program, this Agreement shall control.

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 6.08 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 6.09 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 6.10 Ambiguity. The Parties acknowledge that this is a negotiated Agreement, that they have had the opportunity to have this Agreement reviewed by their respective 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.

Section 6.11 Approval of City Council. The Parties agree that this agreement will not take effect unless and until it is approved by a majority of the members of the City Council as part of its open session agenda.

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: _____

Date: 7/3/2021

Christopher Jensen
"EMPLOYEE"

[Signature]
Mayor

Krista Aguirre
City Clerk

APPROVED AS TO FORM:

Heather M. Minner
City Attorney









Employment Agreement for City Attorney

Final Audit Report

2021-06-16

Created:	2021-06-15
By:	Araceli Alejandre (aracelia@cupertino.org)
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