FOURTH AMENDED EMPLOYMENT CONTRACT FOR CITY MANAGER

This Amended Employment Contract is made and entered into this 1st day of November, 2016, by and between the CITY OF CUPERTINO, STATE OF CALIFORNIA, A Municipal Corporation, by and through its City Council (EMPLOYER), and David Brandt (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 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 originally began on September 10, 2012, and will automatically expire on September 9, 2020 unless extended in writing by the parties. On or within 30 days of September 9, 2019, EMPLOYEE shall notify EMPLOYER of the expiration date of September 9, 2020. 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 of September 9, 2020.

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 2.28.090 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 his 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;

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 he 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 his 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 him from time to time by ordinance, resolution or other action of the City Council.

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 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 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.

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 $22,232.12 as set forth in the Appointed Employees' Compensation Program, payable in installments at the time as other employees of EMPLOYER are paid. Per the Appointed Employees' Compensation Program, effective the first full pay period in July 2017, a 0.75% salary increase will be added to the salary range of each classification in the unit. 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 2016. 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. Automobile Allowance. During the term of this Employment contract, EMPLOYEE, to the extent necessary to perform his duties shall use his own personal vehicle. EMPLOYER, in consideration thereof, shall provide EMPLOYEE an automobile allowance in accordance with the Appointed Employees' Compensation Program. 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 his automobile. EMPLOYEE shall procure and maintain, at his expense, a comprehensive automobile liability policy on the vehicle being used by him, 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. 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 4.03. 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).

Section 4.04 Professional Dues and Subscriptions. EMPLOYER agrees to pay for professional dues and subscriptions of EMPLOYEE directly related to his duties as City

Manager, provided the City Council has made provisions for such costs in the annual budget.

Section 4.05 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 4.06 Moving and Relocation Expenses. EMPLOYER will pay EMPLOYEE the amount of $20,000 intended to be used for relocation, housing and house hunting expenses in EMPLOYEE's discretion.

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 his 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 TERMINATION AND NOTICE

Section 5.01. Termination of Employment and Severance:

A. Subject to the provisions of Section 2.28 of EMPLOYER's municipal Code, EMPLOYEE serves at the pleasure of 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, 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.

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 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 numbers 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 payment 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 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 payment to the EMPLOYEE pursuant to this subsection 5.01 shall be fully reimbursed to the EMPLOYER 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 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:

David Brandt

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 Manager. 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 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 Clerk 1-4-17

CITY OF CUPERTINO

Mayor

APPROVED AS TO FORM:

Renee Sloan Holtzman Sakai on behalf of the City

"EMPLOYEE"