

CITY OF CUPERTINO
INTERIM CITY MANAGER EMPLOYMENT AGREEMENT
WITH GREG LARSON

This Interim City Manager Employment Agreement (the "*Agreement*") is made and entered into as of June 15, 2021 by and between the City of CUPERTINO, a municipal corporation (the "*City*"), and Greg Larson (the "*Employee*").

RECITALS

WHEREAS, Government Code Sections 21221(h) and 7522.56 permit retired annuitants under the California Public Employees' Retirement System ("CalPERS") to be employed without reinstatement from retirement upon appointment by a governing body to fill a vacant position on an interim basis during the recruitment to permanently fill the vacant position;

WHEREAS, the City's City Manager recently announced her resignation, such that the position will soon be vacant;

WHEREAS, the City has hired or is hiring an executive search firm to begin conducting an open recruitment to permanently fill the position of City Manager, which recruitment is currently ongoing;

WHEREAS, the City anticipates that the City Manager position will be filled with a permanent replacement within six (6) months after the effective date of this Agreement;

WHEREAS, as a CalPERS retired annuitant under Government Code Section 21221(h), Employee possesses extensive experience as a City Manager and possesses the specialized skill set to perform the required duties of Interim City Manager and desires to perform the duties of, and assume responsibility for, the position of Interim City Manager and acknowledges that such employment is at-will and of a limited duration for a definite period of time, as described below;

WHEREAS, since retirement, Employee has not previously served as the Interim City Manager for the City of Cupertino;

WHEREAS, the City desires to hire Employee as an at-will, limited duration employee for the position of Interim City Manager, which is a position that requires specialized skills, for a definite period of time, effective as of the date of this Agreement;

WHEREAS, pursuant to Cupertino Municipal Code Section 2.28.010, "the City Manager shall be appointed by the City Council on the basis of his or her experience, administrative and executive ability. He or she shall hold office at and during the pleasure of the City Council;" and

WHEREAS, the Parties wish to establish the terms and conditions of Employee's services to the City, as described in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, City and Employee hereby agree as follows:

AGREEMENT

Section 1. 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 Section 2.28.040 of the Cupertino Municipal 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 full-time position subject to the hours limitations of State law.

(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 his 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 2. Work Hours

The Employee acknowledges proper performance of the duties of Interim City Manager will generally require Employee to observe normal weekday business hours as well as work occasional time outside of normal office hours. The Employee shall work under the direction of the City Council. Subject to the Term as stated in Section 3 of this Agreement, the Employee shall work the number of hours each week as directed and authorized by the City Council subject to the hours limitations of State law

Section 3. Term

The Employee's term of employment ("*Term*") shall be for a maximum period of 6 months, commencing on July 14, 2021 ("*Commencement Date*") and terminating on January 14, 2022, unless employment is terminated earlier pursuant to Section 9 of this Agreement. In accordance with state law and the requirements of the California Public Employees' Retirement Law, the Employee may not be reappointed to the position of Interim City Manager following the expiration of this Agreement, nor may this Agreement be modified to extend the term of the Agreement.

The Employee is a retiree under the CalPERS system. Pursuant to the Government Code Section 21221(h), Employee is restricted to 960 hours per CalPERS fiscal year. Employee agrees to not exceed the maximum hours of total employment with the City of Cupertino or other contracting agencies pursuant to 21221(h) per CalPERS fiscal year.

Section 4. Sole Employment as Interim City Manager

The Employee must work diligently, utilizing his best efforts in the performance of his

duties. He must devote his entire business time, attention, and energies to the performance of his duties. He 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. The City Council hereby acknowledges and consents to the Employee's prior commitments to direct the Santa Clara County Local Government Leadership Academy and to facilitate Council appointee performance evaluations for the cities of Saratoga and Redwood City.

Section 5. Compensation; Benefits

(a) Base Salary.

The City will pay the Employee \$132.21 per hour (\$22,916.67 per month) as base salary up to 40 hours per week or the total hours allowed by State law.

(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 Appointed 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.

(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 his 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 his 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 data, studies, reports and other documents prepared and/or reviewed by the Employee while performing his duties during the Term of this Agreement shall be furnished to, and become the property of the City, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information and other materials either created by, or provided to, the Employee in connection with the performance of this Agreement shall be held confidential by the Employee to the extent permitted by applicable law. Such materials, without the prior written consent of the City Council, shall not be used by the Employee for any purpose other than the performance of his duties. Nor shall such materials be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by law..

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.

(c) Resignation.

In the event that the Employee desires to voluntarily resign the position of Interim City Manager, he 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: Greg Larson
Address on file with Human Resources

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 affect 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.

(i) Effect of Agreement on Employee's CalPERS Retirement Benefits.

The City makes no representation on the impact, if any, this Agreement shall or may have upon the Employee's CalPERS retirement benefits, status, duties and/or obligations. Employee acknowledges that in entering into this Agreement, he has not relied upon any such representations (none of which being in existence) in assessing the CalPERS-related impact of his employment. Therefore, the Employee releases the City from any and all CalPERS-related claims or liabilities that may arise in connection with his employment pursuant to this Agreement.

(j) Independent Legal Advice.

The City and the Employee represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this

Agreement, or has at least had the opportunity to do so, that each has carefully reviewed this entire Agreement, that each and every term thereof is understood, and that the terms of this Agreement are contractual and not a mere recital. This Agreement shall not be construed against the Party or its representatives who drafted it or who drafted any portion thereof.

(k) Government Code §§ 53243 - 53243.4.

Government Code §§ 53243 - 53243.4 sought to provide greater transparency in local government and institute certain limitations on compensation paid to local government executives. Those statutes also require that contracts between local agencies and their employees include provisions requiring an employee who is convicted of a crime involving an abuse of his/her office or position to provide reimbursement to the local agency. Those statutes are incorporated herein by reference. Accordingly, the Parties agree it is their mutual intent to fully comply with the cited Government Code sections and all other applicable law as it exists as of the date of execution of this Agreement and as such laws may be amended from time to time thereafter. Specifically, the following Government Code sections are called out and hereby incorporated by this Agreement:

§53243. Reimbursement of paid leave salary required upon conviction of crime involving office or position.

§53243.1. Reimbursement of legal criminal defense upon conviction of crime involving office or position.

§53243.2. Reimbursement of cash settlement upon conviction of crime involving office or position.

§53243.3. Reimbursement of noncontractual payments upon conviction or crime involving office or position.

§53243.4. "Abuse of office or position" defined.

Employee represents he has reviewed, is familiar with and agrees to comply fully with each of these provisions if any of these provisions are applicable to Employee.

[signatures on following page]

IN WITNESS WHEREOF, the City of Cupertino has caused this Agreement to be signed and executed on its behalf by the Mayor, City Attorney, and duly attested to by the City Clerk, and the Employee has signed and executed this Agreement.

CITY OF CUPERTINO

By: Darcy Paul, Mayor

Date

Attest:

By: Kirsten Squarcia, City Clerk

Date

Employee

Date

Approved as to form:

Heather Minner, City Attorney

Date