

EMPLOYMENT AGREEMENT

THIS AGREEMENT is between the City of Milpitas, a municipal corporation (the “City” or “Employer”) and Steven McHarris (“Employee”). It is effective on the latest date next to the signatures on the last page (“the Effective Date”).

This Agreement is entered into on the basis of the following facts, among others:

- A. The City desires to employ the qualified professional services of Employee as City Manager of the City, as provided by the Milpitas Municipal Code.
- B. After serving the City of Milpitas as Deputy City Manager followed by the June 4, 2019 appointment to Interim City Manager for the City of Milpitas, Employee desires to continue employment by the City as its City Manager.
- C. The City Council and Employee desire to establish a reasonable, professional and trustworthy employment relationship, subject to the terms and conditions set forth in this Agreement pertaining to compensation and benefits, performance evaluations, and related matters.

BASED UPON THE FOREGOING, THE CITY AND EMPLOYEE AGREE AS
FOLLOWS:

1. **Employee Appointed.** The City appoints and employs Employee as City Manager, and Employee continues to accept the appointment and employment as of the Effective Date.

2. **Duties of Employee.** Employee shall perform the duties established for the City Manager by State law, the Milpitas Municipal Code, the City Manager job description, the directions of the City Council, or as otherwise provided by law, ordinance, or regulation.

The provisions of the Municipal Code pertaining to the City Manager and the City Manager job

description, as may be amended from time to time, are attached hereto as Exhibit A and are hereby made a part of this Agreement.

(a) Full Energy and Skill. Employee shall faithfully, diligently, and to the best of Employee's abilities, perform all duties that may be required under this Agreement. Employee agrees that Employee has a duty of loyalty and a general fiduciary duty to the City. Employee shall devote the whole of Employee's working time, skill, experience, knowledge, ability, labor, energy, attention, and best effort exclusively to the City's business and affairs. Prior to undertaking any secondary activities for which Employee receives compensation, Employee shall disclose those activities to the Council.

(b) No Conflict. Employee shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, inimical to, or which interferes with the performance of Employee's duties. Further, Employee shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City of Milpitas.

(c) Outside Activities. Consistent with subdivision 2(a) above, the Employee's primary employment is with the City. Any outside activities for which the Employee receives compensation from a third party shall be disclosed, in advance, to the City Council. Employee is expected to take personal leave (i.e., vacation time) for any outside activities of this nature.

3. Hours of Work. The City Manager 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. The City Manager does not have set hours of work as the City Manager is expected to be reasonably available to the City Council with support and coverage by the

Assistant or Deputy City Manager at all times. It is recognized that the City Manager 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 City Manager's schedule of work each day and week shall vary in accordance with the work required to be performed and in accordance with any specific direction provided by the City Council.

4. **Term.** The term of this Agreement shall be from the Effective Date through June 3, 2022 unless terminated earlier by either party in accordance with the provisions set forth in Section 12, or unless extended as authorized by this Section. The City Council shall meet annually on or around each anniversary of the Effective Date to consider an annual extension to the Agreement.

5. **City Council Commitments.** The City Council shall abide by all provisions of the City's Municipal Code regarding the administration of personnel issues, with a copy of the relevant provisions of the City's Municipal Code, as may be amended from time to time, attached hereto as Exhibit A.

6. **Annual Evaluation.** In the first year of the term of this Agreement, the City Council shall conduct an evaluation of Employee's performance within 60 days to establish working relationships, norms, opportunities to be successful, and goals for coming year, then followed on a six-month basis for the first year of agreement. The second six-month evaluation shall be conducted within 60 days of the Employee's anniversary date as the City Manager. Each year thereafter, within 60 days of the Employee's anniversary date as the City Manager, the City Council shall conduct an evaluation of Employee's performance and provide guidance and direction in accordance with the specific criteria developed by the City Council in consultation with a professional facilitator. The facilitator shall be selected by mutual collaboration between the City Council and Employee which collaboration shall also establish a mutually agreed upon

evaluation process. At the time of Employee's annual performance evaluation, Employee may be eligible to receive an increase in Base Salary, as determined by the City Council in its sole discretion. Employee may be eligible for the first increase on Employee's first anniversary date, and then annually dependent on a performance evaluation to precede any consideration of a salary adjustment. Employee is not automatically entitled to any increase, which is subject to the sole discretion of the Council. In addition to an established annual evaluation, the Council has the discretion to provide Employee with an evaluation of performance at other times chosen by the Council.

7. Compensation.

(a) Base Salary. Employee shall receive the annual Base Salary of Three Hundred Thirty Four Thousand Three Hundred Sixty-Seven Dollars and Thirty-Five Cents (\$334,367.35), payable on a pro-rata basis in the same manner as all full time City employees, and subject to all applicable payroll taxes and withholdings.

(b) COLA Adjustments/Compaction. Whenever a cost of living adjustment or other non-merit based salary increase is provided to other miscellaneous unrepresented executive staff, the City Council shall consider whether it is reasonable and appropriate to grant the highest cost of living increase received by any miscellaneous unrepresented employee groups to the Employee's Base Salary to avoid compaction and maintain a buffer of 10% minimum between the Employee's Base Salary and the next highest salary for miscellaneous unrepresented executive staff. No salary adjustment is guaranteed, but is subject to the discretion of the City Council. Employee shall be obligated to inform the Employer whenever a recommended cost of living increase provided to other miscellaneous unrepresented executive staff will cause a potential compaction issue so that the Employer can determine whether a cost of living increase is appropriate for other miscellaneous unrepresented executive staff.

(c) Reduction in Salary or Benefits. If the City reduces the Employee's Base Salary, or any benefit described in Sections 8 to 11 of this Agreement, in a percentage that is greater than the average reduction of all miscellaneous unrepresented executive staff, such action shall constitute a termination of this Agreement without Cause under Section 12 of this Agreement.

8. Regular Benefits and Allowances. Employer agrees to provide and pay the City allowance for vision, dental and comprehensive medical health insurance for Employee and his/her dependents, if any, equal to that which is provided to all other full-time miscellaneous unrepresented executive staff of Employer. The City contribution toward health insurance shall be equal to that which is provided to all other miscellaneous unrepresented executive staff of Employer as specified in the applicable Unrepresented Employee Benefit Handbook ("Benefit Handbook"), dated July 1, 2019, or any amendment thereto or replacement thereof. Similarly, Employee shall receive short term and long term disability insurance coverage while this Agreement is in force, subject to any contributions required of unrepresented miscellaneous unrepresented executive staff.

9. Additional Deferred Compensation. As part of Employee's annual base compensation, City agrees to provide a Section 457 deferred compensation program which will be administered by the International City Management Association – Retirement Corporation (ICMA-RC), and to pay into such program for Manager's benefit monthly, commencing with the Effective Date of this Agreement, five (5) percent of annual base compensation subject to any limitations on annual contributions. In addition, the City shall adopt a qualified 401(a) defined contribution plan offered through ICMA-RC Corporation for the Employee to which the City shall contribute the equivalent of five (5) percent of annual base compensation, distributed

evenly on a monthly basis, commencing with the Effective Date of this Agreement. These contributions shall not be reportable to CalPERS.

10. Retirement Benefits.

(a) Employer agrees to enroll Employee into the California Public Employees Retirement System (“CalPERS”) consistent with other City employees.

11. Additional Benefits and Allowances. In addition to the benefits already

specified in this Agreement, Employee shall receive the same benefits afforded to miscellaneous unrepresented executive staff, including and not limited to:

(a) Vacation; Sick Leave

(i) Vacation. Employee shall accrue and be eligible to use vacation days in accordance with the City’s established vacation policy.

(ii) Sick Leave. Employee shall be entitled to use and accrue sick leave in accordance with established City policy.

(b) Automobile. Employee shall receive a monthly vehicle allowance of five hundred fifty dollars (\$550.00) per month, for automobile trips which shall be equal to that which is provided to all other miscellaneous unrepresented executive staff of Employer as specified in the applicable Unrepresented Employee Benefit Handbook (“Benefit Handbook”), dated July 1, 2019, or any amendment thereto or replacement thereof.

(c) Professional Development. Employer expects the Employee to continue to develop the professional technical and leadership skills and knowledge necessary to serve as City Manager. To that end, Employee is expected to continue membership with the International City Managers Association, American Planning Association/American Institute of Certified Planners, and attend the Harvard Kennedy School State and Local Government 3-week executive leadership summer program upon notification of acceptance by Harvard (but all subject

to the City Council's budget approval). Employee is expected to attend national, state or local regular conferences, trainings and other educational opportunities to continue to hone the skills consistent with the City Manager job description. The City will allow Employee reasonable time away to participate in these professional development opportunities and Employer shall pay for these training opportunities as provided for in this subsection subject to City Council's budget approval.

(d) Executive Coaching. Subject to City Council review and approval, Employee shall obtain a professional executive coach, who can provide professional advice, mentorship, guidance, and training to the Employee within three (3) months of the Effective Date of this Agreement. All costs of the executive coach shall be budgeted and paid by Employer. When seeking approval, Employee shall disclose all costs associated with executive coaching.

12. Termination of Employment.

(a) No Property Interest/Cause Defined. Employee understands and agrees that Employee has no constitutionally-protected property or other interest in Employee's employment as City Manager. Employee understands and agrees that Employee works at the will and pleasure of the City Council, and that Employee may be terminated, or asked to resign, at any time, with or without Cause, by a majority vote of its members. Notice of termination shall be provided to the City Manager in writing. As used in this Agreement, Cause shall only mean any of the following:

(i) Conviction of, or plea of guilty or nolo contendere to, any crime or offense (other than minor traffic violations or similar offenses) which is likely to have a material adverse impact on the City or on the Employee's reputation;

(ii) Proven failure of the Employee to observe or perform any of his duties and obligations, if that failure continues for a period of thirty (30) business days from the date of his receipt of notice from the City Council specifying the acts or omissions deemed to amount to that failure;

(iii) Conviction of any crime involving an “abuse of office or position,” as that term is defined in Government Code Section 53243.4;

(iv) Repeated failure to carry out a directive or directives of the City Council made by the City Council as a body at a Brown Act compliant meeting; and

(v) Any grossly negligent action or inaction by Employee that materially and adversely: (a) impedes or disrupts the operations of City or its organizational units; (b) is detrimental to employees or public safety; or (c) violates the City’s properly-established rules or procedures.

(b) Termination Immediately Before or Following City Council Election. No action by the City Council to terminate Employee, other than for Cause, will be made within ninety (90) days before a City Council election or within six (6) months immediately following a City Council election. Nothing in this subsection alters the “at will” status of Employee’s employment with City.

(c) Notice Required Of Employee. Employee may voluntarily terminate employment at any time by giving not less than sixty (60) days notice.

(d) Severance Pay. If Employee is asked to resign or is terminated without Cause, then Employee shall be eligible to receive a cash payment equivalent to the sum of Employee’s then-current monthly salary multiplied by nine (9) and the cash value, as determined by the City, of Employee’s monthly non-salary COBRA-eligible benefits multiplied by nine (9). Any severance and benefits paid shall be subject to state law requirements codified at Government

Code Section 53260. This cash payment will be made on a pro-rated, monthly basis over the number of months involved, subject to termination of the severance requirement set forth below. Employee shall also be paid for any accrued, but unused, vacation. In the event of termination or resignation from employment or the non-renewal of this Agreement, sick leave upon termination shall be treated in accordance with the Benefit Handbook. Eligibility for such severance payment is expressly conditioned upon Employee's execution of (i) a waiver and release of any and all of Employee's claims against City, and (ii) a covenant not to sue. All normal payroll taxes and withholdings as required by law shall be made with respect to any amounts paid under this section. Employee expressly agrees to provide notice to the City within two (2) business days of accepting employment elsewhere, and the City's obligation to pay any severance benefit to Employee shall terminate upon Employee's acceptance of such alternative employment.

(e) Ineligibility for Severance under Certain Conditions. If the termination of Employee is for Cause (as defined above) or if Employee voluntarily resigns, Employee is not eligible for and will not receive any severance. If Employee is terminated without Cause, then Section 7(d) above shall control.

(f) Communications Upon Termination. In the event the Employer terminates the Employee for any reason or no reason, the Employer and Employee agree to undertake reasonable efforts to issue a joint press release or statement, the content of which is mutually agreeable to the Employer and Employee. The joint press release or statement shall not contain any text or information that is reasonably considered to be disparaging to either party. For purposes of this subdivision only, "party" includes City Council members in office at the time of termination and miscellaneous unrepresented executive employees. If the parties are able to agree on a joint statement, either party may verbally repeat the substance of the joint press release or statement in response to any inquiry.

13. Statutory Requirements. This Agreement shall be deemed to incorporate by reference the provisions of Sections 53243 *et seq.* of the Government Code, as it may be amended or renumbered.

14. Payment of Expenses of Employment. The City shall pay the following usual and customary employment expenses.

(a) The cost of any fidelity or other bonds required by law for the City Manager.

(b) Subject to Section 12 of this Agreement, the cost to defend and indemnify Employee as required by the California Government Claims Act (Government Code §810 *et seq.*), or otherwise. City will determine, in its sole discretion, whether to compromise and settle any such claim or suit against Employee and the amount of any settlement or judgment rendered thereon.

(c) Subject to budget approval, the cost of attending conferences or other events (i.e. retirement dinners, out-of-town meetings, professional memberships and seminars, etc.) necessary for the proper discharge of Employee's duties. The City will not reimburse Employee for any expenses related to membership in service clubs, and will not encourage or require service club membership.

15. Miscellaneous.

(a) Notices. Notices given under this Agreement shall be in writing and shall be:

(i) served personally; or

(ii) sent by facsimile (provided a hard copy is mailed within one (1) business day); or

- (iii) delivered by first-class United States mail, certified, with postage prepaid and a return receipt requested; or
- (iv) Sent by Federal Express, or some equivalent private overnight delivery service.

Notices shall be deemed received at the earlier of actual receipt or three (3) days following deposit in the United States mail, postage prepaid. Notices shall be directed to the addresses shown below, provided that a party may change such party's address for notice by giving written notice to the other party in accordance with this subsection.

CITY:

City of Milpitas
Attn: Mayor
455 E. Calaveras Blvd.
Milpitas, CA 95035

EMPLOYEE:

Steven McHarris

(b) Compliance with Government Code §§53243, 53243.1, & 53243.2.

If Employee is convicted of a crime involving an abuse of the Employee's office or position, all of the following shall apply:

- (i) if Employee is provided with administrative leave pay pending an investigation, Employee shall be required to fully reimburse the City for such amounts paid;
- (ii) if the City pays for the criminal legal defense of Employee (which would be in its sole discretion, as it is not generally required to pay for a criminal defense), Employee shall be required to fully reimburse City such amounts paid; and

(iii) if this Agreement is terminated, any cash settlement related to the termination that Employee may receive from the City shall be fully reimbursed to the City or void if not yet paid to Employee.

(iv) For this subsection, “abuse of office or position” means either (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority, or (2) a crime against public justice, including but not limited to a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

(c) Entire Agreement/Amendment. This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, and signed by the parties and attached hereto.

(d) Attorney's Fees. If any legal action or proceeding is brought to enforce or interpret this Agreement, the prevailing party shall be entitled to recover his or its attorneys’ fees and costs. Nothing in this subsection shall be read to prevent the parties from agreeing to some alternative method of dispute resolution.

(e) Severability. In the event any portion of this Agreement is declared void, such portion shall be severed from this Agreement and the remaining provisions shall remain in effect, unless the result of that severability would be to substantially alter this Agreement or the obligations of the parties, in which case this Agreement shall be immediately terminated.

(f) Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the parties.

(g) Representation by Counsel. The parties acknowledge and agree that they were, or had the opportunity to be, represented individually by legal counsel with respect to the matters that are the subject of this Agreement and that they are fully advised with respect to their respective rights and obligations resulting from signing this Agreement.

(h) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Employee and City agree that venue for any dispute shall be in Santa Clara County, California.

(i) Section Headings. The headings on each of the sections and subsections of this Agreement are for the convenience of the parties only and do not limit or expand the contents of any such section or subsection.

(j) No Assignment. Employee may not assign this Agreement in whole or in part.

Dated: _____

CITY OF MILPITAS

By _____
Mayor

Dated: _____

EMPLOYEE

Employee

Approved as to Form:

City Attorney