EMPLOYMENT AGREEMENT

This Agreement ("Agreement") is made between Yibin Shen ("Shen"), an individual, and the CITY OF ALAMEDA, CALIFORNIA (the "City"), a California charter city and municipal corporation.

RECITALS

WHEREAS, the City desires to employ the professional services of Shen as City Attorney of Alameda; and,

WHEREAS, Shen agrees to serve as the City Attorney of Alameda in accordance with the City Charter of Alameda; and,

WHEREAS, both the City and Shen wish to set forth in writing the terms and conditions of Shen's employment as City Attorney for Alameda.

NOW, THEREFORE, in consideration of the mutual covenants set forth below, the City and Shen agree as follows:

AGREEMENT

INTRODUCTION AND TERM

1. EMPLOYMENT

The City shall employ Shen in accordance with the terms and conditions set forth below, and Shen accepts the offer of such employment. During the term of this Agreement, the City will pay Shen the compensation provided for in this Agreement.

2. TERM

This Agreement shall commence on May 13, 2019 and continue indefinitely, subject to termination as set forth in Sections 16, 17 and 18 below.

DUTIES AND PROFESSIONAL RESPONSIBILITIES

3. DUTIES

Shen shall serve as the City Attorney for the City of Alameda and shall be vested with the authority granted to the City Attorney in the Alameda City Charter. Shen shall perform such duties as are necessary for him to exercise the authority vested in the City Attorney under the Alameda City Charter. Also, Shen shall perform such duties and undertake such activities as may be assigned from time to time by the City Council, and which are

consistent with the position of City Attorney.

4. HOURS OF WORK

Shen shall be an exempt employee under Fair Labor Standards Act (FLSA). Shen is expected to devote necessary time outside normal office hours to the business of the City. Shen's schedule of work each day and week may vary in response to the requirements of the work to be performed. Shen is expected to be present and available during regular City business hours and in the case of emergencies and spend sufficient hours at Alameda City Hall or other City facilities to perform his duties.

5. OUTSIDE AND OTHER PROFESSIONAL ACTIVITIES

Shen shall devote his professional time and attention to the City's business during the term of this Agreement. The City acknowledges a mutual interest with Shen in having Shen, on occasion, undertake limited outside activities, including serving as an officer or a board member of municipal government organizations, or other related activities, provided that such activities do not distract Shen from the performance of his duties as City Attorney for Alameda.

When consistent with the City's travel policy, the City shall pay for reasonable travel expenses incurred by Shen for official travel associated with the pursuit of Alameda's interests including, but not limited to, such other national, regional, state and local government groups or committees upon which Shen may serve as a member or attend on behalf of the City such as the League of California Cities.

Subject to prior approval of the City Council, Shen may accept limited teaching or other business opportunities provided that such opportunities do not materially interfere with Shen's duties under this Agreement, create a financial or other conflict of interest and are not incompatible with Shen's duties as City Attorney.

Additionally, Shen may provide legal representation, without receiving any compensation, to himself or his family members provided that such representation does not materially interfere with Shen's duties under this Agreement, create a financial or other conflict of interest and is not incompatible with Shen's duties as City Attorney. Shen will notify the City Council in writing requesting approval prior to providing legal representation.

COMPENSATION TO SHEN

6. SALARY

Shen shall receive an annual base compensation of $247,000 beginning May 13, 2019. Salary is to be paid bi-weekly. The City Council shall not decrease Shen's compensation unless and except in the case of an across the board salary or other compensation decrease (including furloughs) applicable to all employees covered by the Executive Management Compensation Plan. Salary is to be paid at the same intervals and in the same manner as other City Department Heads. Beginning the first pay period following

May 13, 2020 and annually thereafter, Shen shall receive the same percentage of salary or wage increase, if any, that has been cumulatively provided to employees in the Executive Management Compensation Plan within the 12 months prior to May 13th of each year.

7. DEFERRED COMPENSATION (MONEY PURCHASE PENSION PLAN)

Shen is eligible to participate in and receive benefits from the deferred compensation plan (voluntary contributions to a money purchase pension plan) to the same extent as other employees in the Executive Management Compensation Plan. Shen must participate in the deferred compensation plan in order to make or receive (if any) the annual deferred compensation plan contributions described in the Executive Management Compensation Plan and any contributions made by Shen to such plan are voluntary and at Shen's sole discretion.

Additionally, beginning May 13, 2019, the City shall provide to Shen $6,000 annually (i.e. from May 13 of each year to May 12 of the following year) in a deferred compensation/supplemental retirement plan, which plan shall be as mutually agreed by the City and Shen.

EVALUATIONS

8. EVALUATIONS

During the first year of Shen's employment, and after completion of approximately six months, Shen and the City Council shall jointly establish objective, verifiable measures of his performance to be completed during the first year and the City Council shall provide Shen with a six month's performance evaluation and thereafter an annual performance evaluation. For each subsequent year during the term of this Agreement, the parties shall endeavor to establish prospective objective, verifiable measures of performance for the ensuing year. Shen shall not have any right to a compensation increase due to a particular rating on a performance evaluation in addition to the salary adjustment discussed in section 6; rather, any decision to increase salary, provide a lump sum payment based on performance or enhance any other element of compensation during the term of this Agreement, or the timing of any such increase or enhancement, shall be in the discretion of the City Council.

RETIREMENT, HEALTH AND OTHER BENEFITS

9. RETIREMENT

Shen will be covered by the City's "miscellaneous" 2% at 55 PERS plan during his employment. Shen will pay both the 7.0% employee contribution for this benefit and an additional 1.868% of the employee's PERSable earnings toward the employer retirement contribution. This 8.868% contribution by Shen shall be in accordance with Section 414(h)(2) of the Internal Revenue Code under which employee contributions shall be tax deferred and not subject to taxation until the time of constructive receipt.

10. VACATION

Shen shall accrue 25 days (200 hours) of paid vacation annually. Vacation shall be accrued bi-weekly. Shen may carry over accrued but unused vacation time from one year to the next; provided, however, he may not accrue a vacation balance higher than 50 days (400 hours). Upon separation from the City, Shen, or in the case of his death Shen's heirs, shall be paid for all unused and accrued vacation time. Accumulated vacation balances shall be paid at Shen's base salary rate at the effective date of his separation from employment with the City.

Notwithstanding the prior paragraph, for the first seven pay periods of Shen's employment, Shen will not accrue paid vacation but, instead, effective May 13, 2019, the City shall provide him with 53.8461 hours of paid vacation. After the first seven pay period as provided in the prior paragraph, Shen will accrue paid vacation as provided in the prior paragraph.

11. OTHER LEAVES

Except as provided in Section 10 above and in the following sentence, Shen shall receive the same paid holidays, floating holidays, funeral leave and sick leave benefits as provided in the Executive Management Compensation Plan. Floating holidays for calendar year 2019 will accrue effective May 13, 2019. Notwithstanding the amount of administrative leave that is provided on an annual basis to other City Department Heads under the Executive Management Compensation Plan, Shen shall receive 8 days of administrative leave annually, and for calendar year 2019 the 8 days of administrative leave shall accrue effective May 13, 2019. Upon separation from the City, Shen, or in the case of his death Shen's heirs, shall be paid for all unused and accrued administrative leave at Shen's base salary rate at the effective date of his separation from employment with the City.

Additionally, upon Shen being summoned to jury duty, Shen shall inform the Council and, if required to serve, may be absent from duty with full pay for that time required to serve.

12. OTHER FRINGE BENEFITS

Shen shall be provided medical coverage, disability benefits, flexible spending accounts, life insurance, retiree health care benefit, vacation sell back, and dental coverage at the same levels and under the same conditions that are provided to other non-safety City Department Heads.

13. TRANSPORTATION ALLOWANCE

Shen shall receive $500 each month as a transportation allowance in exchange for Shen making his personal automobile available for City related business or using public transportation in lieu of using his automobile. Shen will also be entitled to mileage

reimbursement at standard rates for trips of over 100 miles taken on City business when such business trips are consistent with City travel policy.

14. MEMBERSHIP DUES

Unless provided otherwise in the City's adopted budget and subject to review and approval by the Mayor, the City shall pay up to a cap of $2,500 for Shen's State Bar Dues as well as other professional dues necessary to ensure Shen's participation in such programs that enhance both Shen's standing and the City's reputation, including national, regional, state and local associations and organizations.

15. MOVING AND RELOCATION EXPENSES

The first week in June of 2019, the City shall pay Shen $16,000 for expenses associated with moving and relocating Shen from his current residence to the Bay Area, which expenses include packing, moving, storage costs, unpacking and insurance charges. Additionally, the City shall reimburse Shen for mileage costs for moving two personal automobiles from his current residence to Alameda at the current IRS allowable rate of $0.58 per mile.

SEPARATION FROM EMPLOYMENT

16. RESIGNATION/RETIREMENT

Shen shall give the City at least forty five (45) days written notice of the effective date of Shen's resignation or retirement.

17. TERMINATION OF AGREEMENT

The purpose of this Section 17 is to allow the parties to terminate this Agreement as expeditiously and smoothly as possible so that in exchange for the City's providing the severance described in this Section, Shen will release the City from any claims against the City.

The City, through a majority vote of its City Council and in either closed or open session, may terminate this Agreement, at its sole and absolute discretion, with or without cause. The City Council may request Shen's resignation and, if Shen so agrees, the resignation shall be considered a termination of employment without cause. The term "cause" is defined, for the purposes of this Agreement, as set forth in Section 18 below.

If the City terminates this Agreement without cause, Shen shall be paid a severance payment equal only to his then current full salary (Section 6), deferred compensation (Section 7), and medical and dental coverage for a period of six (6) months from Shen's receipt of written notice of termination or his agreement to resign as set forth in the

previous paragraph. The severance payment shall be paid within 30 days of the City's termination without cause. In exchange for the payment of severance, Shen shall release the City from all claims against the City, its officials, employees and agents, and, as part of the consideration for Shen's receiving the severance, Shen shall cooperate with and provide assistance to the City in the transition of his duties to an acting, interim or new City Attorney, the terms of such transition to be mutually agreed upon at the time of the transition.

If the City terminates this Agreement with cause, the City shall have no obligation to continue the employment of Shen or to pay any salary, deferred compensation or medical and dental coverage as provided in the preceding paragraph.

18. CAUSE

For purposes of this Agreement, "cause" shall mean: (1) indictment, conviction or plea of nolo contendere to any felony or other crime involving moral turpitude; (2) material breach of City policy or this Agreement, which breach Shen has not cured, to the extend curable, to the satisfaction of the City Council within sixty (60) days after receiving notice of such breach; (3) fraud, embezzlement, misappropriation of funds or disclosure of confidential information; (4) misconduct or gross negligence that results, or reasonably could be expected to result, in financial damage to the City; (5) failure to cooperate with an official investigation authorized by the City Council or the City Attorney's Office, or initiated by a governmental authority, in either case related to the City, its business, Council members or City employees; or (6) acceptance of employment from another source which is inconsistent with full time employment as Alameda's City Attorney.

MISCELLANEOUS PROVISIONS

19. REIMBURSEMENT

Shen is entitled to reimbursement for all sums necessarily and reasonably incurred and paid by him in the performance of his duties. Shen shall submit a claim form to the City for any such claims in the same form and manner as is required by the City's policy or by custom and practice among other employees in the City's Executive Management Compensation Plan.

Additionally, the City shall reimburse Shen, consistent with the City's travel policy, for the cost of transportation and lodging for Shen and his spouse for travel and lodging for one visit to the City to find housing.

20. BONDS

The City shall pay the full cost of any bonds, fidelity or otherwise, required of Shen under any applicable state or local law or ordinance relative to his performance of his duties as City Attorney.

21. INDEMNIFICATION

City shall defend, hold harmless, and indemnify Shen against any claims, demands, or legal actions, whether specious, frivolous, or otherwise, arising out of an alleged action or omission, direct or indirect, occurring within the scope and during the course of Shen's employment with the City. Shen will cooperate in good faith with the City with respect to the defense of such claims, demands or legal actions.

22. SEVERABILITY

In the event that any term of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the City and Shen, the remainder of this Agreement shall remain in full force and effect unless the term or terms held to be illegal or void are wholly inseparable from the remaining portions of the Agreement. If any part of this Agreement is determined to be illegal or void by a court of competent jurisdiction, the parties shall meet and confer to re-negotiate such illegal or void term(s).

23. PARITY IN CONSTRUING AGREEMENT

Both the City and Shen have had the opportunity to participate in the drafting of this Agreement. Consequently, terms, conditions, or provisions of this Agreement shall not be construed against one party and in favor of the other based upon who actually drafted the Agreement.

24. INTEGRATION CLAUSE

The City and Shen acknowledge that this Agreement constitutes the sole and entire agreement of the parties in this matter and that any modifications may be made only in a writing signed by both the City and Shen. The City and Shen agree that there are no representations, agreements, arrangements or understandings, whether written or oral, between the parties relating to the subject matter of this Agreement which are not fully set forth in this Agreement.

25. NOTICES

Notice pursuant to this Agreement shall be in writing given by (a) personal delivery with acknowledgement of receipt; or (b) by deposit in custody of the United States Postal Service, postage prepaid, and addressed as follows:

To the City: Mayor and City Council
City of Alameda
City Hall
2263 Santa Clara Avenue Alameda, CA 94501

To Shen: Yibin Shen
(address to be provided following relocation)

Signatures on following page

CITY OF ALAMEDA

By: _____
Marilyn Ezzy Ashcraft
Mayor

YIBIN SHEN

_____

Attest:

By: _____
Lara Weisiger
City Clerk

Approved as to form:

By: _____
Michael H. Roush
Interim City Attorney