

**EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF SAN MARCOS, TEXAS AND SAMIUEL J. AGUIRRE FOR
THE POSITION OF CITY ATTORNEY**

AGREEMENT made and entered into this 21st day of March, 2023, by and between the City of San Marcos, Texas, a municipal corporation, hereinafter called "City," and Samuel J. Aguirre, hereinafter called "Employee," both of whom understand as follows:

WHEREAS, City desires to employ the services of Employee as City Attorney, as provided by Sec. 4.04 of the City Charter; and

WHEREAS, it is the desire of the City's governing body, hereinafter called "City Council," to provide for the compensation and other terms and conditions of Employee's employment; and

WHEREAS, Employee desires to accept employment by the City on the terms indicated;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

Section 1: Duties

The City hereby agrees to employ Employee, and Employee hereby accepts employment, as City Attorney, to perform the functions and duties specified in said Sec. 4.04 of the City Charter and applicable provisions of the City Code and to perform other legally permissible and proper duties and functions as the City Council shall from time-to-time assign.

Section 2: Residency

The employee shall establish his principal physical residence in the city, within 90 days after appointment, and shall have his principal physical residence in the city continuously thereafter while holding office.

Section 3: Term

- A. The term of this Agreement shall be one (1) year, commencing on or before April 17, 2023, unless sooner terminated as provided herein.
- B. Upon expiration of the term specified in the preceding paragraph, this Agreement shall automatically renew itself for successive one-year periods, unless either party shall give written notice to the other at least thirty (30) days prior to the terminal date of this Agreement or of any succeeding year, that this Agreement will not be renewed.

Section 4: Best Efforts

Employee agrees to devote his best efforts, energies, and skill to the discharge of the duties and responsibilities attributable to his position, and to this end, he will devote his full time and attention exclusively to the business and affairs of the City. Employee agrees that he may not derive any personal advantage or gain, either directly or indirectly, with respect to any business transaction in which the City engages, and that he will promptly disclose in writing to the City Council all facts that are material to any such potential profit or gain.

Section 5: Salary

All compensation shall be payable in installments at the same time as other employees of the City unless otherwise noted. The City agrees to pay Employee for his services rendered pursuant hereto:

- A. An initial base salary of \$210,000 per year

- B. A car allowance consistent with City policy at the ACM Tier.
- C. A phone allowance as provided city employees (phone and data) or provide a city cell phone.
- D. Additional compensation equal to four percent (4%) of Employee's base salary will be paid to a deferred compensation plan on the Employee's behalf on a pay period basis.
- E. The City will also provide a onetime payment of \$25,000 for relocation. The employee's contributions for FICA, Medicare and TMRS contribution for this onetime payment shall be paid by the City.
- F. The City will provide the Employee with any across the board or cost of living increase granted to all other employees in the same amount and awarded on the same effective date awarded to all employees.
- G. The City Council may increase the salary of the Employee from time to time, at its discretion.

Section 6: Performance Evaluation

- A. The City Council shall review and evaluate the performance of the Employee at such times as are determined appropriate by the City Council. Such review and evaluation shall be in accordance with specific criteria developed jointly by the City and Employee, and in accordance to the provisions of Section 2.021 of the San Marcos City Code. Said criteria may be added to or deleted from as the City Council may from time to time determine, in consultation with the Employee. Further, the Mayor of the City of San Marcos shall provide the employee with a summary written statement of the findings of the City Council and provide an adequate opportunity for the Employee to discuss his evaluation with the City Council
- B. The City Council shall define such goals and performance objectives that they determine necessary for the proper operation of the City and the attainment of the City Council's policy objectives.
- C. Merit consideration will be provided once each year or more often if the City Council so indicates. Such salary increases, if given, will be based upon satisfactory or better performance during each year of employment.

Section 7: Vacation, Sick, Longevity and Military Leave

- A. Employee shall accrue and have credited to his personal account, vacation, and sick leave at the same rate as general employees of the City based on total service time with the City. In recognition of the amount of time that the employee will devote to the job coupled with prior employment at the City, the City Council agrees to allow the Employee to use vacation or sick leave immediately upon hire.
- B. Employee shall be entitled to military leave pursuant to Federal or State law and City policies.
- C. In addition to the leave identified in Section 7(A) above, Employee shall have vacation, sick leave and floating holidays forfeited upon separation from prior employment with the City reinstated for use immediately after commencement of his employment
- D. For the purpose of leave accrual and longevity pay, service time will include all prior and current employment with the City.

Section 8: Employee Benefits

The City shall provide for Employee's participation in the City of San Marcos retirement plan through the Texas Municipal Retirement System in a manner consistent with all other employees of the City. The City agrees to provide employee benefits for medical, dental, life insurance, vision, and disability in accordance with normal City policy for general employees unless otherwise provided in this document.

Section 9: Outside Activities

Employee shall not spend more than 10 hours per week in teaching, consulting or other non-City connected business without the prior approval of the City Council.

Section 10: Dues and Subscriptions

The City agrees to budget and to pay for professional dues and subscriptions of Employee necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth, and advancement, and for the good of the City.

Section 11: Professional Development

- A. The City agrees to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue professional development of Employee and to adequately pursue necessary or official functions for the City, including but not limited to the Texas Municipal League and such other national, regional, state, and local government groups and committees of which the Employee serves as a member. Participation in said professional development activities shall be considered a part of the Employee's work-related duties and Employee shall not be required to use accrued leave for such participation.
- B. The City also agrees to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for his professional development and for the good of the City.

Section 12: Indemnification

The City shall provide for indemnification and defense of the Employee in accordance with the provisions found in the San Marcos City Code, Section 2.374. The City shall bear the full cost of any fidelity or other bonds or other insurance required of the Employee under law or ordinance by virtue of this employment.

Section 13: Termination

- A. Termination without Cause: The City may terminate this Agreement at any time without cause. For the purpose of this agreement, termination shall occur when:
 - 1. The majority of the governing body votes to terminate the Employee at a duly authorized public meeting.
 - 2. The City reduces the base salary, compensation, or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads.
- B. Termination for Cause: The City may terminate the Employee for cause. Such termination shall require the majority vote of the City Council and shall be preceded by notice to Employee. For purposes of this Agreement, "cause" shall include, without limitation, the following:
 - 1. Misconduct in connection with the performance of any of Employee's duties, including, without limitation, misappropriation of funds or property of the City, securing or attempting to secure any personal profit or commercial advantage in connection with any transaction entered into by the City, any falsification or misrepresentation of fact, or any violation of law or regulation to which the City is subject.
 - 2. Conviction of a felony offense, or of a misdemeanor involving moral turpitude, whether committed within or outside the scope of Employee's employment hereunder.

- C. Notice to the Employee of proposed termination: Employee shall be given written notice of the

Council's intent to terminate Employee and the date of a hearing to be conducted in an executive session of the Council at least ten (10) calendar days prior to such hearing and termination Employee shall be given the opportunity to present evidence at the hearing in response to such proposed termination. Employee's failure to appear at such hearing does not prohibit the Council from taking action to terminate Employee. Employee shall have the option to request a public hearing.

- D. Resignation by Employee. In the event Employee voluntarily resigns his position with the City during the term of this Agreement, then Employee shall give the City 30 days' notice in advance, unless the parties agree otherwise in writing.

Section 14: Severance

A. Termination without cause:

- 1. The City will pay Employee a lump sum cash payment for all salary, earned unused vacation (the same as general employees), earned unused sick leave (up to 45 days), and other benefits that were earned but unused as of the last day of active employment (the same as general employees).
- 2. The City will pay the Employee a lump sum cash payment equal to twelve (12) months' salary. This payment is contingent upon a waiver and release of all claims against the City in a form acceptable to the City.

B. Termination for cause: The City will pay Employee a lump sum cash payment for all salary, earned unused vacation* (the same as general employees), earned unused sick leave (up to 45 days), and other benefits that were earned but unused as of the last day of active employment (the same as general employees).

C. Resignation by Employee. The City will pay Employee a lump sum cash payment for all salary, earned unused vacation (the same as general employees), earned unused sick leave (up to 45 days), and other benefits that were earned but unused as of the last day of active employment (the same as general employees).

D. The Employee's earned sick and vacation leave forfeited at separation from prior employment (November 23, 2022) shall be reinstated.

E. Vacation leave payout:

- 1. Payout at separation from employment will be calculated based on total years of service with City.
- 2. The payout for unused vacation will be reduced by the 240 hours previously paid.

Section 15: Notices

Notices pursuant to this agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

(1) CITY: Mayor
City of San Marcos
630 East Hopkins
San Marcos, Texas 78666

(2) EMPLOYEE: Samuel J. Aguirre
Legal Department, City of San Marcos
630 East Hopkins
San Marcos, Texas 78666

Alternatively, notices required pursuant to this Agreement may be personally delivered. Notice shall be deemed given as of the date of personal delivery.

Section 16: Arbitration

Any and all disputes arising out of or relating to this Agreement, or the Employee's employment with the City or the termination thereof, shall be resolved solely by arbitration in San Marcos, Texas under the then existing rules of the American Arbitration Association for employment dispute resolution. Judgment upon the award rendered may be entered in any court of competent jurisdiction. The cost of such arbitration shall be borne equally by the parties. Arbitration shall be in accordance with the Federal Arbitration Act ("FAA") or, *if* the FAA is found to be inapplicable, then in accordance with the Texas General Arbitration Act.

Section 17: General Provisions

- A. This agreement replaces and supersedes all prior agreements between parties, whether written or oral. The text herein shall constitute the entire agreement between the parties with respect to the subject matter hereof.
- B. This Agreement shall be binding upon and inure to the benefit of heirs at law and executors of Employee.
- C. If any provision or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

IN WITNESS WHEREOF, the City Council of San Marcos, Texas, has authorized the City's Mayor to execute this Agreement, and the same has been duly attested to by its City Clerk, and signed by the Employee, in duplicate, the day and year first written above.

CITY OF SAN MARCOS, TEXAS

Jane Hughson, Mayor

ATTEST:

Elizabeth Trevino, City Clerk

EMPLOYEE:

Samuel J. Aguirre