

**EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF SAN CARLOS AND GREGORY
J. RUBENS**

This Employment Agreement ("Agreement") is entered into by the City of San Carlos, a municipal corporation (hereinafter "City" or "Employer"), and Gregory J. Rubens, ("Employee"). City and Employee may be collectively referred to herein as the "Parties."

Recitals

A. The City Council ("Council") and Employee entered into an agreement effective on December 16, 2008, whereby the Council retained the services of Employee in the position of City Attorney (the "Original Agreement"), which Agreement has been in continuous force and effect since that date; and

B. The Original Agreement provided for City Attorney Services to the City and allowed Employee to be employed by an outside law firm and provide legal services to other clients not in conflict with services provided to the City. The Original Agreement was amended from time to time to provide for the adjustment of the salary of Employee and to add or clarify certain specified benefits. Council desires to continue to employ Employee in the position of City Attorney, to increase the time the City Attorney is available to provide services, to establish that the City Attorney will be employed exclusively by the City, with limited exceptions and to provide for updated terms and conditions of employment for Employee; and

C. Employee desires to continue to provide uninterrupted services as the City Attorney for the City of San Carlos under the terms and conditions set forth herein; and

D. Employee is willing to work for the City on an "in-house" basis and remains qualified to provide such services to the City.

**Terms of
Agreement**

In consideration of the mutual covenants contained herein, the Parties agree as follows:

1. Appointment

The Council agrees to continue to employ Employee as City Attorney to perform the functions and duties of City Attorney specified by state law and as may be articulated in the San Carlos Municipal Code, and to perform duties and functions as the Council may from time to time reasonably assign. This appointment and employment hereunder are "at-will" and may be terminated by the Council as provided in Section 4. Nothing in this Agreement prevents, limits or otherwise interferes with the right of either party to terminate the services of Employee at any time, except as provided in Section 4. Employee's appointment and employment herein are continuous from his initial appointment and employment under the Original Employment Agreement.

2. Duties and Restrictions

Employee agrees to devote Employee's best efforts, attention, and skills to performance of the duties of the position of City Attorney. Employee may not engage, without the express prior written consent of the City Council, in any other business duties or pursuits whatsoever or, directly or indirectly, render any services of a business, commercial or professional nature to any other person or organization, whether for compensation or otherwise, that might cause a conflict of interest with the Employer or that might otherwise interfere with the business or operations of the City or the satisfactory performance of Employee's duties.

3. Term

This Agreement is effective as of July 31, 2023 ("Effective Date"), unless an earlier date is mutually agreed upon by Employee and the City Manager, will govern the terms and conditions of Employee's employment as of that date, and will remain in force and effect until terminated under Section 4.

4. Termination and Severance Pay

Notwithstanding anything in this Agreement to the contrary, the term of this Agreement may be terminated as follows by a 3/5 vote of the full Council:

A. *Voluntary Resignation.* Employee may voluntarily resign from employment with the City. If Employee voluntarily resigns or retires from employment with the City, Employee is requested to give the City 60 days advance written notice, unless the parties agree otherwise. At the City's option, Employee may be requested to work or requested not to report to work during the notice period. In either instance, Employee will receive Employee's regular compensation during the 60-day notice period. If City and Employee mutually agree to a shorter notice period, Employee will only be entitled to compensation during that mutually agreed upon amended notice period.

B. *Termination by City.* The City may terminate Employee in accordance with the following:

1. *With Cause.* This Agreement may be terminated by Council for cause or misconduct by Employee. Written notice must be provided to Employee at least 30 days before the termination date setting forth the grounds for termination. If requested by the Employee within 10 days of receipt of the notice, Council will hold a meeting to consider the termination. The meeting will occur within 20 days of the request or at such time as is mutually agreed upon by the Parties. If Employee requests, Council will hold a public session as provided in Government Code Section 54957(b). At the meeting, Council may determine whether or not Employee should be terminated. Employee is not entitled to severance pay if Council determines to terminate Employee for cause. For purposes of this Agreement, "cause or misconduct" means:

- Willful breach or habitual neglect of duty of any City policy or procedure or any term of this Agreement;
- The commission any material act of dishonesty, fraud, misrepresentation or any other act of moral turpitude;
- Gross carelessness or misconduct;
- Conviction of any felony, or conviction of any misdemeanor arising out of Employee's duties under this agreement and involving a willful or intentional violation of law;
- Misappropriation of public funds, or misuse or destruction of City property;
- Acts or conduct that may present an immediate danger to the public health and safety;
- Insubordination, which means the willful refusal to obey lawful direction of the Council;
- Violation of City harassment or discrimination policies;
- Abuse of office or position; or,
- Absence without leave or death.

2. *Without Cause.* The Parties agree that circumstances may arise under which Council may wish to terminate this Agreement without reference to specific issues or failure to perform on the part of Employee. If Council terminates Employee without reference to specific cause or misconduct (as defined in Section 4.B.1 above), or if Council restructures the office of the City Attorney as a part-time or a contract position, then Council will provide Employee with notice of such decision and Employee will be entitled to severance pay equal to twelve (12) months' salary calculated at Employee's base salary in effect at the time notice is given, payable in a lump sum as of Employee's separation date. In addition, the City will pay COBRA benefits (medical, dental, vision) on a reimbursement basis for Employee and family for twelve (12) months, or until Employee secures alternate employment, whichever comes first. The Parties agree that any termination under this provision will not be initiated: (a) during the 90-day period succeeding any municipal election held in the City at which a member of the City Council is elected; or (b) during the 90 day period succeeding the appointment of any member to the City Council. Nothing in this provision prohibits the placement of Employee on paid administrative leave during any period during which termination without cause is prohibited by this provision. In addition, nothing in this provision prohibits Employee from resigning from employment with the City at any time. Payment of any severance will be made in accordance with Government Code Section 53260 and is contingent on Employee signing a full general release of all claims to include a mutual non-disparagement clause.

C. *Pay Upon Termination.* Upon termination of employment for any reason, Employee will be paid for services rendered through the date of termination, including payment for all accumulated and unused vacation leave at employee's base

hourly rate of pay (determined by dividing employee's annual salary by 2,080 hours) as required by law.

5. Abuse of Office

A. In the event City places Employee on paid leave pending an investigation, Employee must fully reimburse such pay to the City if Employee is subsequently convicted of a crime involving an abuse of his office or position.

B. In the event City funds all or part of a legal criminal defense for Employee, Employee must full reimburse such funds to the City if Employee is subsequently convicted of a crime involving an abuse.

C. In the event this Agreement is terminated and Employee receives a cash payment related to the termination, Employee must fully reimburse those funds to the City if Employee is subsequently convicted of a crime involving an abuse of Employee's office or position.

D. For purposes of this Section, "abuse of office or position" is defined in Government Code Section 53243.4.

6. Disability

If Employee is medically unable, with or without reasonable accommodation, to perform the essential functions of the position, City may terminate this Agreement subject to the severance pay requirements of Section 4.B.2 above.

7. Salary

A. City agrees to compensate Employee for services rendered in the position of City Attorney at an annual salary of \$300,000.00 effective as of the first day of the first full pay period beginning on or after Employee's first day of employment. The salary paid to Employee will be paid in installments on the City's normal paydays, in accordance with the City's normal pay practices, and will be subject to customary withholding for taxes and other required or authorized deductions.

B. The Parties agree to conduct an annual salary review concurrently with the annual performance evaluation set forth in Section 14. The annual salary review will include consideration of those benefits provided to Employee under this Agreement. The City Council may, but is not required to, consider or approve merit increases or other compensation enhancements in conjunction with the annual salary review, and may consider cost of living adjustments greater than the adjustments offered to the Management Group.

C. Employee will be eligible for the same cost of living and benefit

increases offered to the Management Group in each year that such increases are provided. Except as provided herein, merit and cost of living increases in salary, performance bonuses, or other compensation adjustments will be determined by the City Council in its sole discretion as part of Employee's annual performance evaluation.

8. Pension, Health and Welfare Benefits

Unless modified by this Agreement, City will provide Employee the same benefit programs, including medical, dental, life insurance, disability plans and post-employment benefits, on the same terms as offered to the City's current Management Group employees hired by the City before January 1, 2009. City acknowledges that Employee has previously vested in the right to post-retirement medical benefits under City policies after having completed 10 years of service to the City.

9. Vacation and Administrative Leaves

Employee will be entitled to accrue vacation leave at the rate offered to the Management Group with service of 14-16 years, which is currently 21 days per year. The Parties agree that as of the Effective Date of this Agreement, Employee shall have ten (10) days of vacation leave, five (5) days of administrative leave, and one (1) floating holiday in his leave banks, and that he will thereafter accrue leaves in accordance with those offered to the Management Group.

10. Life Insurance

The City will provide Employee with term life insurance in the amount of \$400,000. Employee understands a portion of this benefit is taxable and that he is responsible for remitting any tax owed.

11. Deferred Compensation

A. The City will provide Employee with access to a qualified deferred compensation plan under Internal Revenue Code Section 457, into which Employee may deposit funds from base salary at Employee's discretion and as allowed by law. The City agrees to make monthly payments of \$1,150 into the deferred compensation plan. The contributions will not be deemed to increase Employee's base salary for any purpose.

B. The City will provide an Internal Revenue Code Section 401(a) plan into which employee may elect to make contributions in accordance with the plan. The City will make no contributions to Employee's account.

12. Management Benefits

A. *Automobile Allowance.* City will pay Employee a monthly automobile allowance of \$665, which shall increase annually per the applicable cost of living not to exceed \$25 per month, subject to applicable withholdings. This automobile allowance is intended to

fully compensate Employee for the use of Employee's personal vehicle in performing City business.

B. *Electronic Devices.* The City agrees to provide Employee with a laptop and other necessary peripheral devices.

C. *Dues and Subscriptions.* The City agrees to budget for 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 that are necessary and desirable for Employee's continued professional participation, growth and advancement, and for the good of the City.

D. *Professional Development.*

1. The City will budget and pay for the costs associated with maintaining Employee's membership in the State Bar and complying with mandatory continuing legal education requirements.

2. Except as provided herein, the City will budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meeting, and other occasions to continue the professional development of Employee, and to adequately pursue necessary official functions for the City, including but not limited to the Cal Cities City Attorney Department meetings and conferences, and such other national, regional, state and local governmental groups and committees (including community and civic organizations) thereof which Employee serves as a member, and 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. Employee understands and agrees these professional development expenses are subject to budget constraints and that the Council retains discretion to limit expenditures under this paragraph.

13. Work Hours

The position of City Attorney is an exempt employee position. Employee is expected to work the hours necessary to fulfill the obligations of the City Attorney position. As the chief legal officer of the City, the City Attorney is expected to be available at all times and is generally expected to be physically present in the workplace during normal business hours on most days.

In recognition of the position's demands, the Council wishes to provide Employee with the flexibility to determine Employee's own work schedule so long as Employee fulfills all work-related obligations. The Parties agree that Employee may therefore set Employee's own regular work schedule provided that this schedule averages at least 8 hours per regular workday (including leave taken) over a two-week period.

14. Performance Evaluation

A. City and Employee acknowledge that periodic performance evaluations are an important means by which City and Employee may ensure effective communications regarding expectations and performance. Toward this end, the Council may review and discuss Employee's performance and set performance goals for Employee on an annual basis in or around February of each calendar year. Employee acknowledges and accepts the fact that Council has the right to schedule an evaluation session more frequently than once a year.

B. Employee or Council may request and schedule the annual performance evaluation as appropriate under Council agenda procedures or as otherwise directed by the Council.

15. Bonds

City will pay the full cost of any fidelity or other bonds required of Employee by law or ordinance.

16. Indemnification

City will defend, hold harmless, and indemnify Employee against any claim, demand, judgment or action of any type or kind arising out of an act or omission occurring within the course and scope of his employment to the extent required by Government Code Sections 825 and 995. In its sole discretion, the City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered therefrom.

17. Notices

Notices to Employee must be served (1) to Employee personally, or (2) by deposit in the custody of the United States Postal Service, postage prepaid, to Employee's home address on file with the City. Notice is deemed given as of the date of personal service, delivery or deposit, respectively.

Notices to the City must be (1) delivered to the City Clerk personally, (2) delivered to the City Clerk's Office during normal business hours, or (3) deposited in the custody of the United States Postal Service, postage prepaid, address to the City Clerk.

18. Non-Disclosure of Confidential Information

Employee must not, during the term of this Agreement, or any time thereafter, impart to anyone any confidential information which Employee may acquire in the performance of his duties as city attorney under this Agreement, except as permitted by the City or under compulsion of law.

19. General Provisions

A. *Construction.* "Herein" and other similar compounds of the word "here" mean this entire instrument and not any particular provision. Section headings and numbers

have been inserted for convenience of reference only and are of no legal effect. In the event of any conflict between any headings or numbers and the text of this Agreement, the text controls.

B. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which is considered an original, and all of which taken together are considered one and the same instrument.

C. *Waiver.* Waiver by either party of any term or condition of this Agreement or any breach is not a waiver of any other term or condition or breach of the Agreement.

D. *Execution and Applicable Law.* This Agreement has been executed in California and is to be governed in accordance with the laws of the State of California in every respect. The Parties agree that venue for any action arising out of this Agreement will be a court of competent jurisdiction siting in or with jurisdiction over actions arising in San Mateo County.

E. *Amendment.* This Agreement may not be amended or modified except by a written instrument executed by the parties.

F. *Entire Agreement.* This Agreement contains all of the terms agreed upon by the City and Employee with respect to the subject matter of this Agreement and supersedes all prior agreements, arrangements and communications between the Parties concerning such subject matter, whether oral or written, including but not limited to information published in the job announcement and other recruiting documents pertaining to compensation and benefits of the city manager position.

G. *Mediation.* Neither party may file any legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The Parties will pay the costs of the mediator, if any, equally. If a mediated settlement is reached, neither party will be deemed the prevailing party for purposes of the settlement and each party will bear its own legal costs.

H. *Attorney's Fees.* In the event of litigation, reasonable attorney's fees shall be awarded to the prevailing party.

I. *Successors.* This agreement is binding upon and inure to the benefit of the heirs at law and executors of Employee.

J. *Severance of Provisions.* 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, is considered severable, not affected, and remains in full force and effect.

IN WITNESS WHEREOF, the City and Employee do hereby agree to the full performance of the terms set forth herein.

City of San Carlos

Employee

Adam Rak July 14, 2023
Adam Rak, Mayor

Greg Rubens July 15, 2023
Gregory J. Rubens

**CITY OF SAN CARLOS
CITY ATTORNEY**

MONTHLY BASE SALARY RATE

Effective 07/31/2023

| Classification | Monthly Base Salary |
|-----------------------|----------------------------|
| City Attorney | \$26,250.00 |