



City Council Meeting - Final

June 20, 2023
7:00 PM

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- B. AGR2023-026** Approval of the At-Will Employment Agreement for the City Clerk, Heather K. Peacon Corn, with the term of this Agreement commencing July 1, 2023 and shall continue until the Council decides to terminate employment, or upon employee's resignation and authorize the Mayor to sign and execute all related documents.



City of Smyrna

Issue Sheet

A Max Bacon
City Hall
2800 King Street
Smyrna, GA 30080

File Number: AGR2023-026

Agenda Date: 6/20/2023

In Control: City Council

File Type: Agreement

Agenda Section:

Formal Business

Agenda Number: B.

Department: Administration

Agenda Title:

Approval of the At-Will Employment Agreement for the City Clerk, Heather K. Peacon Corn, with the term of this Agreement commencing July 1, 2023 and shall continue until the Council decides to terminate employment, or upon employee's resignation and authorize the Mayor to sign and execute all related documents.

Citywide

ISSUE AND BACKGROUND:

The Council of the City of Smyrna (Council) desires to employ the services of Employee as the City Clerk (Position) for the City as authorized in Article III, Division 1, Sec. 18 of the Charter of the City of Smyrna, Ga. (Charter) and desires to appoint Employee at the first meeting of the new election year for Mayor and Council (every four years as per election schedule).

It is also their desire to secure and retain the services of Employee and to provide inducement for Employee to remain in such employment, to provide certain benefits, establish certain terms and conditions of Employee's employment on an at-will basis, and set the working conditions of Employee.

The term of this Agreement commences as set forth above and shall continue until the Council decides to terminate employment, or upon employee's resignation. All previous employment agreements between the City and Employee, including amendments thereto are null and void.

Employee desires to accept the terms and conditions set forth in this Agreement and has brought forth this Agreement as a result of the vulnerability of the position and a recent unfounded Ethics complaint filed against her, the City Attorney and the City Administrator, both of whom operate under contract with the City.

The City Administrator has reviewed the contract and agrees to the terms and the City attorney has reviewed as to form.

RECOMMENDATION / REQUESTED ACTION:

Approval of the At-Will Employment Agreement for the City Clerk, Heather K. Peacon Corn, with the term of this Agreement commencing July 1, 2023 and shall continue until the Council decides to terminate employment, or upon employee's resignation and authorize the Mayor to sign and execute all related documents.



AT-WILL EMPLOYMENT AGREEMENT

THIS AT-WILL EMPLOYMENT AGREEMENT (Agreement) is made and effective as of July 1, 2023, between the CITY OF SMYRNA, State of Georgia, a municipal corporation (City), by and through the Council of the City of Smyrna (Council) and Heather K. Peacon-Corn (Employee), both of whom agree as follows:

RECITALS

- A. The Council of the City of Smyrna (Council) desires to employ the services of Employee as the City Clerk (Position) for the City as authorized in Article III, Division 1, Sec. 18 of the Charter of the City of Smyrna, Ga. (Charter) and desires to appoint Employee at the first meeting of the new election year for Mayor and Council (every four years as per election schedule).
- B. It is the desire of the Council to secure and retain the services of Employee and to provide inducement for Employee to remain in such employment.
- C. It is also the desire of the Council to provide certain benefits, establish certain terms and conditions of Employee's employment on an at-will basis, and set the working conditions of Employee.
- D. The term of this Agreement commences as set forth above and shall continue until the Council decides to terminate employment, or upon employee's resignation. All previous employment agreements between the City and Employee, including amendments thereto are null and void.
- E. Employee desires to accept the terms and conditions set forth in this Agreement.

THEREFORE, in consideration of the above recitals and the mutual promises, covenants, and conditions in this Agreement, the parties agree as follows:

SECTION 1. AT-WILL EMPLOYMENT STATUS

- A. Employee's employment with the City is employment at the sole will, discretion, and pleasure of the Council. The Council may remove Employee at any time, with or without cause. Nothing in this Agreement or in any other document shall limit the right of the Employee or the Council to terminate the at-will employment relationship. Should the Employee elect to resign or retire, Employee shall provide the Council with 21 days written notice. No elected official, supervisor, employee, or agent of the City has any authority to enter into an agreement with Employee for employment for any specified period or to make an agreement for employment other than at-will. The parties agree the above Recitals are true.

B. Employee's employment status with the City shall remain at-will as defined by Georgia Law regardless of the length of the employment or any representation of continued employment by any agent or employee of the City.

C. Employee's start date was January 5, 2020 and this contract shall be effective July 1, 2023.

SECTION 2. DUTIES

A. Employee shall professionally perform the functions and duties of the Position specified in the Charter, Smyrna Municipal Code, other ordinances, and resolutions of the City, and perform other legally permissible and proper duties and functions as the Council shall assign, including appointment, training, evaluation, suspension, or removal of subordinate employees.

B. Employee agrees to abide by the City rules, policies, practices, and procedures in the performance of Employee's duties.

C. Employee shall work a regular schedule to include but not limited to a minimum of 40 hours per week, to include after hour meetings, and to be eligible for the City's Alternate Work Schedule as found in EMP 9-0 of the City's Personnel and Policies.

SECTION 3. SALARY AND BENEFITS

A. The Council of the City of Smyrna has adopted a Salary Grades Schedule, which provides a salary range for the Position as listed and adopted on the Full Time Salary Grades (April 1, 2022). As of July 1, 2023 the grade for the Position is listed at MNMT – 1 with a salary range of \$83, 751.00 – \$129,814.00. The salary set forth herein is within the range provided in the Full Time Salary Grade Schedule.

B. In consideration for Employee's performance of the duties of the position under this Agreement, the City shall pay Employee an annual base salary of \$106,782.00, payable in installments as other employees of the City are paid, and in accordance with applicable laws, rules, and other regulations.

C. The City shall pay Annual Leave at a Tier 2 rate (6 – 14 Years) of 4.62 / 120 accrual hours (Bi-Weekly / Annually) as per the 2023 Smyrna Benefits Guide to reflect the employees' total years of service with the City.

D. The City shall provide Employee use of a City issued laptop computer and cell phone, for business use.

E. The City shall pay Employee a monthly vehicle allowance of \$400.00. All costs of operation of the vehicle for Employee, including but not limited to fuel, maintenance and insurance shall be borne by Employee.

F. Employee may participate in the City's deferred compensation plan through voluntary payroll deductions.

G. Except as may be specifically set forth in this Agreement, all provisions of the Smyrna Municipal Code, the City of Smyrna Policies and Procedures Manual, resolutions and official policies of the City relating to annual leave, vacation, sick leave, holidays, health insurance, long term disability insurance, retirement, and other fringe benefits generally applicable to Non-Represented Management Confidential Employees of the City shall also apply to Employee when and as Employee becomes eligible for them. The City reserves the right to modify, suspend or discontinue all the benefits in this Agreement at any time without notice to or recourse by Employee if such action is taken with respect to all Non-Represented Management Confidential Employees in the City (I.E. City-wide employee application). Nothing in this agreement shall be construed as requiring the City to establish or continue any plans in the discharge of its obligations under this agreement.

G. Employee shall generally be entitled to annual performance evaluations and review of compensation beginning July 1, 2023; however, failure to evaluate Employee on an annual basis shall not be considered a breach of this Agreement. Employee shall be responsible to bring the evaluation request before Council and seek guidance and feedback from Council concerning Employee's performance.

H. Employee shall be entitled to annual cost of living increases as approved by the Council as of July 1, 2023.

SECTION 4. TERMINATION AND SEVERANCE PAY

A. Employee's employment shall be subject to the absolute and sole discretion of the Council. Employee may be removed from the Position and employment terminated at the will of the Council at any time for any reason whatsoever as provided in Section 1 of this Agreement.

B. In the event the Council terminates Employee's employment with the City, Employee shall be paid severance pay in an amount equal to six months of base salary at time of termination. In addition, all health and welfare benefits shall continue for six months, and the City shall pay the employer's contribution to maintain all health and welfare benefits for those six months. Severance pay shall not be utilized for purposes of retirement credit and no additional benefits (e.g., annual leave, administrative leave) will accrue or be owed during the six month severance period, except as otherwise stated herein. This paragraph shall not be interrupted to allow Employee to obtain dual payment of base salary or other benefits during any time.

C. This Agreement shall terminate immediately, and the City shall not be obligated to make any severance payment upon the occurrence of any one of the following:

- (1) Upon death of the Employee;

(2) Upon determination that Employee is unable to perform the essential functions of the position with or without a reasonable accommodation, due to a diagnosed mental illness, diagnosed physical illness or diagnosed disability lasting a period of 7 months or longer;

(3) In the event the Employee is terminated because of a serious misconduct or malfeasance, which the Council determines is related to the effective performance of Employee's official duties, including but not limited to criminal conviction in office or position;

(4) In the event the Employee is convicted of a felony or felonies, including Employee's guilty plea or no-contest plea (i.e. *nolo contendere plea*) to any felony charge; or

(5) Upon Employee's resignation or retirement of employment.

D. Employee agrees and acknowledges that if this Agreement is terminated, any cash settlement related to the termination Employee may receive from the City shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of Employee's office or position.

SECTION 5. CONFIDENTIAL INFORMATION

A. Employee acknowledges that during Employee's employment with the City, Employee will become privy to information about the City, which the City deems private, confidential, or proprietary. Employee agrees to treat all such information in strict confidence and will not disclose any Confidential Information Employee may obtain or have access to.

B. The term "Confidential Information" shall mean all documents, materials, and information (whether oral or written) which is revealed to Employee directly or indirectly and whether specifically designated as "Confidential" or which ought to reasonably be regarded as confidential under or in connection with the employment of Employee.

C. Employee further agrees the Confidential Information will not be used by Employee in a way that is detrimental to or to the disadvantage of the City. Employee further acknowledges the disclosure of Confidential Information may be harmful to the City and agrees to hold such Confidential Information in the strictest of confidence and not to disclose the same or release it to any other party, except as authorized by the Council to employees of the City or other individuals having a need to know as part of their official duties of the City.

D. In the event Employee becomes legally compelled (by deposition, interrogatory, public request for documents, order, subpoena, civil investigative demand, or similar process issued by a court or competent jurisdiction) to disclose any of the Confidential Information, prompt written notice of any such requirement shall be provided to the Council so the Council may seek a protective order or other appropriate remedy and/or waive in writing compliance with the terms of the Agreement. If such protective order or other remedy is not obtained, and irrespective of whether compliance with the provisions hereof is waived. Employee agrees only that portion of the Confidential Information shall be disclosed and reasonable efforts shall be

made to obtain assurance that confidential treatment will be accorded such Confidential information.

SECTION 6. PROFESSIONAL DEVELOPMENT

A. The City shall budget and pay for Employee's attendance at three professional conferences per year to maintain accreditation as a Certified Municipal Clerk, obtain Master Municipal Clerk and Records Manager. Attendance at additional professional conferences, classes to meetings may be approved in advance by the City Administrator and subject to budgetary constraints.

B. The City shall pay for the travel and subsistence expenses of Employee for official travel, meetings, short courses, institutes, seminars, and occasions reasonably necessary to continue the professional development of the Employee and to reasonably pursue necessary official and other functions of the City, subject to budgetary constraints.

SECTION 7. ARBITRATION OF DISPUTE

A. In the event of any dispute involving any provision of this Agreement, or any dispute regarding Employee's employment with the City or termination from the City (with the exception of Workers Comp claims, unemployment insurance, and any matter within the original jurisdiction of the Georgia Department of Labor, and those claims established by the Georgia Fair Employment Practices Act and the Labor Code of Georgia, Chapter I), including but not limited to , a claim of constructive discharge, retaliation, wrongful termination, discrimination, ethic complaint or harassment, Employee and the City agree to submit any such dispute to non-binding arbitration, pursuant to the provisions of the Georgia Code Title 9, Chapter 11 – Civil Practice Act.

B. Employee shall have the opportunity to seek all relief that would otherwise be available in law or equity.

C. The arbitration provision shall not relieve Employee of Employee's obligation to timely pursue an administrative or governmental tort claim within the jurisdiction of any administrative or public agency (e.g., the Georgia Fair Employment Practices Act of 1978, the U.S. Equal Employment Opportunity Commission, the City of Smyrna, etc.) before asserting any such claim against the City.

D. If Employee and the City are unable to agree on the selection of a neutral arbitrator, the City at its discretion and cost, shall obtain a list of at least three arbitrators from the Georgia Office of Dispute Resolution or American Arbitration Association. Employee (first) and then the City, will alternately strike names from the list until only one name remains; the remaining person shall be the arbitrator. Arbitration proceedings shall be held in Cobb County, Georgia at

a location mutually convenient to Employee and the City, but not outside of Cobb County unless mutually agreed to by Employee and the City.

E. Employee and the City agree that each party shall be entitled to pursue discovery, including written discovery and depositions, which is sufficient to adequately arbitrate their claims. However, absent consent from the arbitrator for good cause shown, discovery initiated by each party shall not exceed three depositions, twenty-five interrogatories, twenty-five requests for production and twenty-five requests for admissions, save and except requests to authenticate any document. The arbitrator shall hear and resolve any discovery disputes between the parties and is empowered to award discovery sanctions pursuant to the Georgia Code Title 9, Chapter 11 – Civil Practice Act.

F. Following a hearing conducted by the arbitrator, in a manner mutually agreed to by the parties or as determined by the arbitrator, the arbitrator shall issue a written opinion and award, if applicable, which shall be signed and dated. The arbitrator shall be permitted to award only those remedies in law or equity which are requested by the parties and which the arbitrator determines to be supported by credible, relevant evidence.

G. The arbitrator's opinion will be subject to judicial enforcement or review pursuant to Georgia Code Title 9, Chapter 11 – Civil Practice Act.

H. Except as provided by statute, Employee and the City shall each bear their own costs incurred for legal representation as part of any such arbitration. The City shall bear all reasonable costs of the arbitrator, court reporter, if any, and any related costs of arbitration, except to the extent that Employee would have been required to pay such costs (e.g., filing fees, court reporting fees at deposition and at trial, or discovery sanctions) if said claim were to be litigated in a court of law.

I. Employee and the City hereby agree that this Section shall survive the termination of Employee's employment and shall survive the termination and/or expiration of this Agreement.

J. The failure or delay of the City at any time or times to require performance of, or to exercise any of its power, rights, or remedies with respect to any term or provision of this Agreement or any other aspect of Employee's conduct or employment in no manner (except as otherwise expressly provided herein) shall affect the City's right at a later time to enforce any such term or provision.

SECTION 8. NOTICES

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, first class mail postage pre-paid, addressed as follows:

If to the City: Mayor / City Council City of Smyrna, GA
2800 King Street
Smyrna, Georgia 30080

If to Employee: Ms. Heather K. Peacon-Corn
225 Main Street
Unit 2054
Hiram, Georgia 30141

Alternatively, any notice required pursuant to this Agreement may be personally served in the manner as applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the United States mail.

SECTION 9. INDEMNIFICATION

The City shall defend, save harmless, and indemnify Employee against any tort, professional liability claims or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties. The City will compromise and settle any such claim or suit and the amount of any settlement or judgment rendered thereon. Said indemnification shall extend beyond termination or employment, and the otherwise expiration of this Agreement, to provide full and complete protection to Employee as described herein, for any acts undertaken or committed in Employee's Position, regardless of whether the notice of filing of a lawsuit for such tort, claim, demand, or other legal action occurs during or following Employee's employment with the City.

SECTION 10. GENERAL PROVISIONS

- A. This Agreement shall constitute the entire Agreement between the parties as to the subject matter herein and supersedes all other prior agreements, representations, arrangements, or understandings, oral or written.
- B. This Agreement may not be altered, amended, modified, or otherwise changed, except by a writing signed by the duly authorized representatives of the parties to this Agreement.
- C. This Agreement is for the personal services of Employee, and Employee may not assign any of rights, powers, duties, or obligations under this Agreement.
- D. The City reserves the right to revise, modify, delete, or add to all policies, procedures, work rules, benefits, and the personnel manual or in any other document, except for the policy of at-will employment. However, any such changes will be in writing and will be approved by the City.
- E. If any provision or other portion of this Agreement is held unconstitutional, invalid, or unenforceable the remainder of this Agreement or portion hereof shall be deemed severable,

shall not be affected by the unconstitutional, invalid, or unenforceable provision or portion, and shall remain in full force and effect.

F. Personal and subject matter jurisdiction and venue for any controversy or claim arising out of or relating to this Agreement shall be in the Georgia Superior Court in and for the County of Cobb, Georgia.

G. The rights and obligations of the parties and all interpretations in performance of this Agreement shall be governed, construed, and enforced in all respects by the laws of the State of Georgia.

H. Employee agrees and represents that prior to entering into this Agreement, Employee has had reasonable time and opportunity to consult with an attorney or representative of Employee's choice concerning all terms and conditions of this Agreement. Employee also represents, Employee has carefully read and fully understands the meaning, intent, and consequences of this Agreement, and that Employee is competent to execute this Agreement, and freely and voluntarily enters into this Agreement without duress.

I. Employee further acknowledges that provisions of this Agreement may result in certain tax consequences. Employee represents and warrants that Employee has had the opportunity to independently seek any needed expert advice in this regard, and that Employee shall bear full and complete responsibility for all tax consequences hereunder.

IN WITNESS WHEREOF, the City of Smyrna has caused this Agreement to be signed and executed in its behalf by the Council, and Employee has signed and executed this Agreement on June 20, 2023 to be effective July 1, 2023.

CITY OF SMYRNA

EMPLOYEE

By: _____
DEREK NORTON, Mayor

By: _____

ATTEST:

CITY SEAL:

JILL G. HEAD, Deputy City Clerk

APPROVED TO AS FORM:

SCOTT A. COCHRAN
City Attorney

By: _____

