

CITY OF SHERWOOD, OREGON
RESOLUTION NO. 95-606

A RESOLUTION AUTHORIZING THE EXECUTION OF THE RESIGNATION AGREEMENT WITH SHERWOOD CITY MANAGER JAMES RAPP, ATTACHED HERETO AS EXHIBIT A, AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City of Sherwood has an employment agreement with James Rapp; and

WHEREAS, the City and James Rapp have negotiated and agreed upon the terms for acceptance of James Rapp's resignation and termination of said employment agreement;

NOW, THEREFORE, IT IS HEREBY RESOLVED:

That the attached agreement is hereby approved, ratified, and executed by the Mayor and City Council this 2nd day of May, 1995, and shall be carried out pursuant to the terms and provisions of said agreement.

Passed and made effective by the City Council this 2nd day of May, 1995.



Walter Hitchcock, Mayor

	Aye	Nay
Aamold	<u>X</u>	___
Boyle	<u>absent</u>	___
Cottle	<u>X</u>	___
Hitchcock	<u>X</u>	___
Kennedy	<u>X</u>	___

ATTEST:



City Recorder

RESIGNATION AND SEVERANCE AGREEMENT

WHEREAS, James Rapp has been employed by the City of Sherwood as City Manager since May 24, 1984; and

WHEREAS, James Rapp, for personal reasons, contemplates resignation from that position; and

WHEREAS, the City Council and James Rapp have discussed the mutual benefits of an agreement specifying the terms and obligations of the parties upon the voluntary tendering and acceptance of such resignation; and

WHEREAS, James Rapp has previously defined in writing his right to call for a public vote of confidence by the entire City Council, and the parties desire and are committed to an honorable, professional, and mutually respectful, non-adverse termination of the employment relationship;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual benefits, promises, and covenants to be performed as hereinafter set forth, the parties agree as follows:

1. Subject to James Rapp voluntarily submitting his resignation to the City Council, and the City Council accepting such resignation, the City agrees it will do the following:

A. The last day of regular City service by James Rapp shall be July 5, 1995.

B. There shall be no modifications to the terms of James Rapp's employment during the period preceding his last regular day of City service, including a 3% cost of living adjustment due all City employees on July 1, 1995.

C. James Rapp shall be paid four months' salary based on his gross annual salary as of his last day of regular service as City Manager. That annual salary, for purposes of computation of the severance payment, shall be \$62,378.00. The severance payment in the amount of \$20,901.45 shall be made in a lump sum on the last day of service.

D. In addition to the severance payment based on annual salary, all of James Rapp's accumulated but unused sick leave as of July 5, 1995, shall be converted to one hour of paid unused vacation for each two hours of accumulated unused sick leave. That converted sick leave shall be paid on James Rapp's last regular day of City service, together with payment of all otherwise accumulated but unused vacation leave as of the last regular day of City service, computed as per usual City procedures upon resignation of any City employee, as per City Personnel Rules Section 6.2.5.

E. The City agrees to continue to pay James Rapp's family medical/dental insurance at the level established as of the last day of regular City service for the four-month period immediately following the last day of service, with premiums paid directly by the City to the carrier, at the end of which four-month period James Rapp may elect to continue coverage and pay the premiums for the continuation of said coverage pursuant to COBRA.

F. In the event the City Council determines that James Rapp leave City service earlier than July 5, 1995, they may do so, but in that event, the payments made pursuant hereto shall be increased, so that in no event will James Rapp receive less than six months compensation and family medical/dental insurance for combined period of regular pre-resignation service and post-resignation severance, in addition to the payment of all accumulated but unused sick and vacation leave as per part D. above.

G. The City shall hold harmless and indemnify James Rapp from any and all claims not covered by or in excess of municipal liability insurance applicable to city officers and employees, arising out of the acts and service of James Rapp as City Manager. ^{and indemnify} The City shall not be obligated to hold James Rapp harmless from any acts that are criminal or arising outside the scope of his duties and responsibilities as City Manager. *WJ
BWH
ju*

H. The City agrees that the funds required to be paid pursuant to this agreement shall be set aside and held by a neutral escrow, commencing on the date of acceptance of James Rapp's resignation, with irrevocable instructions to the escrow to pay same upon James Rapp's last day of regular City service to James Rapp, less sums required to be withheld by law, if any. The City shall pay all costs or fees associated with this escrow.

I. In the event the City's performance of this agreement is challenged, or suit or action is brought by any third party, the City agrees to defend and hold James Rapp harmless from said suit or action, and to the extent that the City may be enjoined or prevented from carrying out this agreement, such non-performance shall be considered a breach of this agreement entitling James Rapp to payment of all sums otherwise that would have been due him hereunder as liquidated damages, his actual damages for non-performance being in the best interest of both the City and James Rapp to absolutely settle and determine all monetary obligations due from the City to James Rapp by reason of the cancellation of his employment agreement with the City.

J. The City Council will not publicly discuss James Rapp's personal reasons for resigning or the background of his resignation, beyond disclosure of the terms of this agreement.

2. Upon the City Council executing this agreement, James Rapp agrees to do the following:

A. James Rapp will submit his voluntary written resignation to be effective July 5, 1995, as his last day of regular City service. The resignation letter will be for personal reasons and content neutral and shall be submitted upon execution of this agreement by the City Council.

B. James Rapp will not publicly discuss those personal reasons or the background for his resignation.

C. James Rapp will accept the payments to be made pursuant to this agreement as a voluntary lump sum settlement in lieu of all sums otherwise due or to become due him pursuant to his employment contract. The payments will be accepted in full satisfaction, settlement, discharge and release of all claims, compensation, salary, and benefits due him pursuant to his employment contract with the City of Sherwood. This agreement shall bind James Rapp, his heirs and personal representatives.

D. James Rapp will continue to perform the services required by the City Manager to the best of his ability until his last day of regular City service, including such counsel and assistance as the City Council may request with respect to planning for obtaining the services of a replacement for the position of City Manager. *ja*
BLK
with resignation, in whole or in part, the duties of City Manager, The City Council may, at its option,

3. This agreement is the entire, final and complete agreement of the parties pertaining to the resignation of James Rapp, and supersedes and replaces all written and oral agreements heretofore made or existing by and between the parties or their representatives, except the existing employment agreement, the terms of which shall continue until the resignation becomes effective on the last day of regular City service, to the extent not specifically modified by this agreement.

4. In the event suit or action is instituted to enforce any of the terms of this agreement, the prevailing party shall be entitled to recover from the other party, such sum as the court may adjudge reasonable as attorneys' fees at trial, or on appeal of such suit or action, in addition to all other sums provided by law.

5. Any amendments to this agreement must be made in writing and signed by all parties hereto.

6. The laws of the State of Oregon shall govern with respect to the validity and interpretation of this agreement.

7. This agreement has been drafted by Derryck H. Dittman of Anderson & Dittman, attorneys, based upon information provided as to the terms negotiated between James Rapp and the City Council. As attorney for the City, Derryck H. Dittman had confidential attorney-client relationship with the City Council and with James Rapp in his capacity as City Manager. Both the City Council and the City Manager acknowledge they have been advised that their respective interests are not the same with respect to the terms and provisions of this agreement, may be conflicting, and that, therefore, separate review by independent legal counsel for each party is recommended. While Derryck H. Dittman has prepared this agreement for use by the parties, as requested by the parties, as attorney for the City of Sherwood, he has advised both James Rapp and the City Council that he cannot represent either with respect to negotiation of terms or representing the interest of either party, and cannot advise either with respect to the terms and provisions of this agreement. He has advised both parties that each should seek separate legal counsel.

City of Sherwood, by its
duly elected City Council

Walter H. Hitchcock
Walter Hitchcock, Mayor

Date: 5-2-95

Jane Aamold
Jane Aamold, Councilperson

Date: 5-2-95

William B. Boyle
William Boyle, Councilperson

Date: 5-5-95

Mark Cottle
Mark Cottle, Councilperson

Date: 5-2-95

Barry Kennedy
Barry Kennedy, Councilperson

Date: 5-2-95

James H. Rapp
James Rapp

Date: 5/2/95