



## RESOLUTION 2008-036

### A RESOLUTION APPROVING THE CITY MANAGERS EMPLOYMENT AGREEMENT

**WHEREAS**, Sherwood City Council met in Executive Session on two occasions in January 2008 in accordance with ORS.192.660 (2)(a), Employment of Public Officers; and

**WHEREAS**, The Sherwood City Council adopted new City Manager Evaluation Criteria via Resolution 2008-003 on January 10, 2008; and

**WHEREAS**, The Sherwood City Council at their January 15, 2008 regular meeting announced the appointment of Jim Patterson as City Manager upon the retirement of City Manager Ross Schultz; and

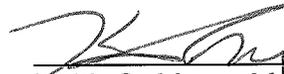
**WHEREAS**, At the January 15, 2008 City Council meeting, Mayor Keith Mays motioned to form a subcommittee comprised of the City Attorney, City Manager Ross Schultz and selected members of the Sherwood City Council to negotiate an Employment Agreement; and

**WHEREAS**, The City Attorney, City Manager Ross Schultz and the City Council subcommittee has reviewed and negotiated the proposed Employment Agreement for the City Manager; and

### NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1: The Sherwood City Council shall enter into an Employment Agreement with Jim Patterson as City Manager according to the terms of the Employment Agreement attached as Exhibit A.

**Duly passed by the City Council this 20th day of May 2008.**

  
\_\_\_\_\_  
Keith S. Mays, Mayor

ATTEST:

  
\_\_\_\_\_  
Sylvia Murphy, City Recorder

**City of Sherwood, Oregon**  
**City Manager Employment Agreement**  
(Effective August 1, 2008)

This Agreement is between the City of Sherwood, Oregon (Employer) and James A. Patterson, (Employee) and is effective August 1, 2008 and after both signatures are affixed.

It is mutually agreed that:

- A. Employer wishes to employ James A. Patterson as City Manager.
- B. The City Council, on behalf of the City as Employer and James A. Patterson, as Employee desire to define the terms and conditions of such employment to protect the interests of both the Employer and Employee.
- C. The City wishes to (1) induce Employee to serve in such position; (2) enhance work productivity by protecting Employee's morale and peace of mind; and (3) provide a fair method of terminating Employee's service in a professional and businesslike manner should that be in the City's interests.

**1. Terms and Conditions of Employment**

Employer and Employee agree Employee is an employee at will and serves solely at the pleasure of the City Council and may be removed with or without cause from his position consistent with the terms of this Agreement. Employee agrees to devote exclusive service to the Employer while in its employ, except as otherwise agreed to pursuant to Section 17 below. Any modification to this Agreement shall be in writing, approved by the City Council and Employee.

The term of this agreement shall be for a period of three calendar years from August 1, 2008 through and including July 31, 2011, subject to the termination provisions contained herein.

**2. Duties**

City Council agrees to employ James A. Patterson as City Manager of Sherwood to perform the functions and duties specified for the position by Section 33 of the City Charter and perform other duties assigned by the Council. The Council acknowledges the principles and laws under a Council/Manager form of government. Council agrees to direct its concerns and requests for action to Employee. The City Manager shall attend all meetings of the Council, regular and executive as provided in the Section 33 of the Charter. City Manager recognizes that the City Council is the policy making body of the City and agrees to respond promptly and equally to any and all members of the Council regarding their concerns.

**3. Compliance with Laws**

In performing the services contemplated by this Agreement, the Employee shall faithfully observe and comply with all federal, state and local laws (including the City Charter and City ordinances) and regulations applicable to the services to be rendered under this Agreement. Except in the case of Employee engaging in gross negligence, failure to comply or an omission in compliance shall be brought to Employee's attention with an opportunity to correct the non-compliance.

#### **4. Hours of Work**

It is recognized that Employee must devote a great deal of time outside the normal office hours to business of the Employer, and to that end Employee will be allowed to take compensatory time off as he deems appropriate during said office hours. In addition, Employee may take up to five (5) days each year as management leave to be used at Employee's discretion. Such leave shall not accrue or be paid for at termination.

#### **5. Compensation**

Employer agrees to pay Employee for Employee's services an annual salary of \$110,000 Cell Phone allowance and Auto Expense allowance, Health allowance to be paid in installments at the same time as other City employees are paid. Employee will receive a 5% adjustment or bonus after a review of Council effective Feb. 1, 2009 should the employee remain employed. Employee will be eligible for an annual performance and compensation review, conducted by City Council in every January thereafter based on prior Council and Employee goal setting workshops, and standards and criteria adopted in compliance with ORS 192.660.

- **Goals and Evaluation**

Employer and Employee agree that City Council and Employee will meet to develop an evaluation system and forms for Employee, and to conduct goal-setting discussions with such goals to be established by March of each year.

- **Bonus**

Employee will be eligible to receive a bonus of up to 20% of base annual salary (at City Council's discretion) based on job performance, including implementation and achievement of goals established by the City Council.

#### **6. Retirement**

Employer and Employee agree to participate and contribute to the Oregon State Public Employees' Retirement System in accordance with City policies applicable to all other management employees. Employee has the option to contribute to the ICMARC retirement plan in accordance with City policies applicable to all other management employees. Employer does not contribute to the ICMARC plan.

## **7. Health and Welfare Benefits**

Employer agrees to make available the same health and welfare benefits made available by Employer to other management employees and to contribute towards the cost of such benefits in the same manner that it contributes to such benefits for other management employees. In the event Employee is required to contribute toward the cost of such benefits, Employee agrees to the deduction of such amounts from his paycheck.

## **8. Vacation**

Employer agrees Employee shall earn twenty (20) days of vacation time in each calendar year and may accrue no more than sixty (60) days at any time. Employee shall be eligible to take accrued vacation time at times he chooses up to the amount accrued at the time vacation is taken, consistent with the operating needs of Employer.

## **9. Life Insurance**

Employer agrees to provide Employee life insurance in the amount of three times his annual salary, with provision for double indemnity in case of accidental death. Premiums for life insurance above \$50,000 are treated as income.

## **10. Disability Insurance**

Employer agrees to contribute full premium payments on Employee's behalf for long-term disability insurance consistent with its policy for other management employees.

## **11. Employee Health**

City agrees to pay Employee for membership costs in an athletic club of Employee's choice up to a maximum of \$65.00.

## **12. Other Benefits**

Employer agrees to provide Employee all current and future benefits provided other management employees as those may be set out in the Employee Manual (unless otherwise specifically addressed in this Agreement) including all City holidays and other fringe benefits. Such benefits are in addition to those set out in other provisions of this Agreement.

## **13. Automobile/Travel**

Employee's duties require Employee have use of an automobile. Employee shall have a valid Oregon driver's license and notify the City of any change in license status (e.g. suspension or revocation). City shall pay Employee five-hundred dollars (\$500) per month (paid monthly) for an automobile allowance to cover the costs of travel within the

metro area. Mileage outside the metro area shall be reimbursed at 50% of the IRS prevailing rate, while on City business. Travel to and from work shall be at the Employee's expense. Employee agrees to be responsible for liability, property damage and comprehensive auto insurance. Employee is responsible for the provision, operation, maintenance, repair and replacement of Employee's own automobile for use while on the job.

#### **14. Professional Development**

- A. Employer hereby agrees to budget for and pay the dues for Employee to belong to relevant professional organizations. Employer hereby agrees to budget for and pay for the travel and subsistence expenses of Employee for professional and official travel, meetings and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official and other functions for Employer, including but not limited to the Annual Conference of the International City Management Association, the state league of municipalities and such other national, regional, state and local governmental groups and committees thereof which Employee serves as a member. It is Council expectation that you will receive The ICMA Credentialed Manager Status at your best possible speed and if it is available you will complete that work prior to the expiration of this contract.
  
- B. Employer agrees to budget and to pay for the travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for professional development and the good of Employer.

#### **15. General Expenses**

Employer recognizes that certain expenses of a non-personal and generally job-related nature are incurred by Employee and agrees to reimburse or to pay said general expenses provided Employer's Finance Director is given adequate proof of said expenditures by way of duly executed expense vouchers, receipts, statements or affidavit(s).

Employee's duties require Employee have use of a cellular phone. Employee is responsible for the provision, operation, maintenance, repair and replacement of Employee's own cell phone for use while on the job. City shall pay the Employee eighty dollars (\$80) per month for as a cellular phone allowance to offset the cost of cell phone related expenses which the parties expect to be attributable to City business.

#### **16. Covenants and Outside Employment**

Employee shall be allowed outside employment with the City Council's approval if not in conflict with the City's needs or interests.

#### **17. Indemnification**

Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission by Employee within the course and scope of Employee's duties. Employer will pay the amount of any defense, settlement, or judgment rendered thereon to the extent not covered and paid by municipal liability insurance coverage carried by the City, arising out of such alleged acts or omissions by Employee.

## **18. Termination and Severance Pay**

- A. This Agreement shall, if not terminated as provided below, be automatically extended for additional periods of one year following the expiration of the three year term unless either party gives written notice to the other not less than ninety (90) days before the expiration of any term. The giving of such notice terminates the agreement at the end of the initial term or extended term in which such notice is given.
- B. Except as limited by the terms of subsection C below, in the event Employee is terminated by the Council during such time Employee is willing and able to perform Employee's duties and then in that event Employer agrees to pay Employee a lump sum cash payment equal to six (6) months aggregate salary. Further, Employer will continue, at its expense, Employee's family, health and welfare and life insurance benefits for up to six (6) month period or until Employee is professionally reemployed, whichever comes first.;
- C. EMPLOYEE's employment with Employer may be terminated in the sole discretion of the Employer and without the obligation to make the lump sum payment noted at B above, upon the occurrence of any of the following events:
  - (1) Employee fails or refuses to comply with the written policies, standards and regulations of the Employer now in existence or are from time to time established; or
  - (2) The Employer has reasonable cause to believe Employee has committed fraud, misappropriated City funds, goods or services to either his own or some other private third party's benefit and/or other similar acts of misconduct.
- D. In the event Employer at any time during the term of this Agreement:
  - (1) Reduces the salary or other financial benefits of Employee in a greater percentage than an applicable across the board reduction for other management employees of Employer, or
  - (2) Refuses, following written notice, to comply with any other provisions benefiting Employee herein, then Employee may at Employee's option, deem to be terminated as of the date of such action, and Employee shall be entitled to the severance provided for herein.
- E. In the event any member(s) of the City Council suggest in any forum or venue, that Employee should be terminated or resign, Employee has the right to request

in writing a formal motion for a 'vote of confidence' from the entire Council while meeting in public session. The entire Council shall be obligated to vote on such the 'vote of confidence' no later than its next regularly scheduled public meeting and except if a vote of no confidence by the Council is based on 18(C)(1) or (2) above, then and in that event, Employee may (at Employee's option) deem himself terminated without cause within the meaning and context of this all severance provisions of this Agreement, at the date of such action, and Employee shall be entitled to severance as provided for herein.

- F. Employee may not be terminated unless under condition 18(c) above during the ninety (90) days following a City Council election. Said ninety (90) days to commence when the newly elected Council member (s) take office.

## 19. Employee Notice

Employee agrees to give the City a minimum of sixty (60) days written notice prior to a voluntary resignation from the position of City Manager to plan and allow for an orderly transition of City business.

## 20. Commencement of Employment

Employee will begin his employment as City Manager with the City of Sherwood effective August 1, 2008.

## 21. General Provisions

- A. **Entire Agreement and Modifications.** This Agreement contains all the agreements of the Parties with respect to any matter covered in this Agreement and no prior agreements shall be effective for any purpose.

No provisions of this Agreement may be amended or modified except by written agreement signed by the parties.

- B. **Full Force and Effect.** Any provision of this Agreement that is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect.
- C. **Successors in Interest.** Subject to the foregoing subsection, the rights and obligations of the parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs and assigns.
- D. **Governing Law.** This Agreement shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Oregon.
- E. **Equal Opportunity to Draft.** The parties have participated in and had an equal opportunity to participate in the drafting of this Agreement, and the Exhibits, if

any, attached. No ambiguity shall be construed against any party upon a claim that party drafted the ambiguous language.

**22. Arbitration**

- A. Any dispute the City Manager arising out of his employment relationship with Employer or which relates to this Employment Agreement (including breach thereof) which cannot be resolved by discussions between Employer and Employee shall be resolved exclusively by arbitration in accordance with the rules of the Arbitration Service of Portland, Inc., in effect at the time the arbitration is initiated. Judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereon. Employee and employer will bear equally the expense of the arbitrator and all other expenses of conducting the arbitration and each party will pay and be responsible for its own expenses for witnesses, depositions and attorneys.
- B. The arbitration must be requested by Employee or Employer by filing a Statement of Claim must be (consistent with the then effective ASP rules) not later than ninety (90) days after conclusion of the discussions noted in A above, or the arbitration shall be barred.

**23. Effective Date**

This Agreement is effective upon execution, and shall remain in effect until termination is initiated by either party in accordance with the terms of this Agreement.

**24. Integration**

This Agreement contains the entire agreement between the parties and supersedes and replaces all prior written or oral discussions.

**25. Severability**

If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement is severable, not affected, and remain in effect.

IT IS SO AGREED.

\_\_\_\_\_  
Keith Mays, Mayor

\_\_\_\_\_  
Jim Patterson, Employee

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_