



RESOLUTION 2012-024

A RESOLUTION APPROVING THE TERMS OF AN EMPLOYMENT AGREEMENT BETWEEN JOSEPH GALL AND THE CITY OF SHERWOOD

WHEREAS, the City Council selected Joseph Gall as the City's newest City Manager and authorized the Council President David Grant, Councilor Linda Henderson, Heather Gantz of Waldron and Paul Elsner of the City Attorney's office to draft and negotiate an employment agreement between the City and Mr. Gall; and

WHEREAS, a draft employment agreement has been negotiated and drafted and now requires Council approval;

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

Section 1. The Mayor is authorized to sign, on behalf of the City, an employment agreement between the City of Sherwood and Joseph P. Gall in a form substantially akin to that attached here as Exhibit "A" the final form and terms of which is subject to review by Council President David Grant and Councilor Linda Henderson.

Section 2. This resolution is and shall be effective from and after its passage by the Council.

Duly passed by the City Council this 15th day of May 2012.

David Grant, Council President
on behalf of Keith S. Mays, Mayor

Attest:

Sylvia Murphy, CMC, City Recorder

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT is made and entered into effective the ____ day of May, 2012, by and between the CITY OF SHERWOOD, OREGON (“CITY”), and JOSEPH P. GALL (“EMPLOYEE”).

WITNESSETH:

WHEREAS, CITY recognizes EMPLOYEE, as a Credentialed Member of the International City County Management Association (ICMA), has shown himself to have the education, training and experience necessary to be appointed as Sherwood’s City Manager and EMPLOYEE is willing to accept said appointment; and

WHEREAS, CITY and EMPLOYEE desire a written agreement creating a professional and businesslike relationship serving as the basis for effective communication and to avoid misunderstanding;

NOW THEREFORE, in consideration of the mutual covenants contained herein as well as for the other consideration described, CITY and EMPLOYEE mutually agree:

SECTION I. EMPLOYMENT, DUTIES AND AUTHORITY.

The CITY has agreed to employ JOSEPH P. GALL as City Manager. EMPLOYEE agrees to accept said employment.

The authority of EMPLOYEE, consistent with state law, the Sherwood City Charter and pertinent ordinances shall include, but not be limited to, the following:

- the overall management, administration and direction of City operations;
- the hiring, disciplining and firing of all City employees/agents except Municipal Judge, City Recorder and City Attorney;
- the negotiation, execution and administration of City contracts within budget appropriations pursuant to City policy and ordinance;
- providing policy advice to elected officials;
- maintaining open communications with the community to thereby foster both responsive and courteous public services;
- working toward achieving goals set by the City Council; and
- other duties as the City Council may, from time to time, assign.

The Mayor and the other members of the City Council agree to the principle of noninterference in the administration as necessary for orderly and efficient implementation of Council policy. The Mayor and City Council agree to direct their concerns and communications relating to the City’s administration through the City Manager. EMPLOYEE agrees to respond promptly to all inquiries from the City Council whether made individually or collectively.

SECTION II. TERM.

- A. This Agreement shall commence on June 25, 2012, and, unless terminated consistent with the terms hereof, shall continue for a two (2) year term (i.e., until June 30, 2014). This Agreement may be renewed by the parties for such additional periods as may be agreed upon in writing and approved by Council resolution.
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate services of EMPLOYEE at any time subject only to the provisions set forth in this Agreement.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of EMPLOYEE to resign at any time from his position subject only to the provisions set forth in this Agreement.
- D. EMPLOYEE agrees to remain in the exclusive employ of the CITY during the term of this Agreement.

SECTION III. SALARY, HOURS OF WORK, BENEFITS.

- A. Salary. Commencing June 25, 2012, and for the remainder of the term of this Agreement, the CITY agrees to pay EMPLOYEE One Hundred Fifteen Thousand Five Hundred Sixty Four Dollars and no/00 (\$115,564.00) as a yearly salary to be paid in installments at the same interval as CITY pays its other employees. EMPLOYEE shall also be entitled to receive a Cost of Living Adjustment (COLA) to his salary in the same percentage amount as may be given the CITY's unclassified professional employees. EMPLOYEE'S salary will be reviewed in conjunction with EMPLOYEE's yearly performance evaluation.
- B. Hours of Work. It is recognized EMPLOYEE must devote a great deal of time outside normal office hours to business of the CITY; as such, EMPLOYEE may take up to forty (40) hours as Management Leave per Fiscal Year to be used at EMPLOYEE's discretion during the term of this Agreement. Management Leave may not be accrued from year-to-year and shall have no cash value upon termination or resignation from the CITY's employ.
- C. Vacation. EMPLOYEE shall be entitled to the same vacation benefits as the CITY's other management/professional employees. Notwithstanding the foregoing, EMPLOYEE shall be deemed to have accrued eighty (80) hours of vacation for use during FY 2012-2013, which accrual amount shall have no cash value in the event of EMPLOYEE'S termination or resignation from the CITY's employ during FY 2012-2013 nor will it be carried over beyond said period.
- D. Holiday Benefit. EMPLOYEE shall receive payment for all City observed holidays.

- E. Sick leave. EMPLOYEE shall be entitled to the same sick leave benefits as other management/professional employees of the CITY. Notwithstanding the foregoing, as of June 25, 2012, EMPLOYEE will be deemed to have accrued forty (40) hours of sick leave. Sick leave shall have no cash value.
- F. Motor Vehicle Allowance. EMPLOYEE shall be paid, no sooner than September 15, 2012, a monthly motor vehicle allowance of Four Hundred Dollars (\$400.00) for use of his private vehicle(s) on and for City purposes. EMPLOYEE shall neither be entitled to nor seek reimbursement for mileage for his private vehicle(s) for travel on and for City purposes within a fifty (50) mile radius of the City but may, at his option, seek mileage reimbursement for travel on City business beyond that 50 mile radius.
- G. Cellular Phone Allowance. EMPLOYEE shall be paid the monthly cellular phone allowance (currently Eighty Dollars (\$80.00)) as is paid other CITY management/professional employees.
- H. Relocation Assistance. EMPLOYEE shall receive, within thirty (30) days of relocation of EMPLOYEE's family to Sherwood, a payment of up to Seven Thousand Five Hundred Dollars (\$7500.00) to help offset a portion of the moving costs associated with said relocation. EMPLOYEE shall provide the CITY with evidence of the moving costs to support the reimbursement.
- I. CITY shall pay, on behalf of EMPLOYEE, the premium cost for a term life insurance policy in the amount of Three Hundred Thousand and no/00 Dollars (\$300,000.00).

SECTION IV. TERMINATION AND LIQUIDATED DAMAGES.

- A. At-Will Termination Right. This Agreement may be terminated by either the CITY or EMPLOYEE for any reason whatsoever upon giving thirty (30) calendar days written notice to the other party, except as modified in subsection (G) of this Section.
- B. Employee Termination for Cause. EMPLOYEE's employment with the CITY may be terminated immediately in the sole discretion of the CITY upon the occurrence of any of the following events:
 - a. EMPLOYEE fails or refuses to comply with the written policies, standards and regulations of the CITY that are now in existence or are from time to time established;
 - b. The CITY has substantial evidence 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 acts of misconduct which the City Council believes, in its sole discretion, is or would be detrimental to the CITY and/or its interests; or
 - c. EMPLOYEE fails to perform his duties as City Manager.

C. Employee Not for Cause Termination. In the event EMPLOYEE is involuntarily terminated by CITY before expiration of this Agreement (albeit EMPLOYEE is willing and able to perform his duties as City Manager) for reasons other than those set out in subsection (B) of this Section, then in that event EMPLOYEE shall be entitled to (and CITY agrees to pay EMPLOYEE) liquidated damages consistent with the following schedule:

- anytime during the period between June 25, 2012 to and including December 31, 2012, liquidated damages equal to two (2) months' salary; or
- anytime during the period between January 1, 2013 through and including June 30, 2013, liquidated damages equal to four (4) months' salary; or
- anytime during the period between July 1, 2013 to the end of the Agreement's term, liquidated damages equal to six (6) months' salary.

Payment of the applicable amount of liquidated damages shall be made monthly, each payment being the value of one (1) month's salary or portion thereof to which EMPLOYEE has accrued a right (assuming entitlement thereto consistent with the graduated schedule). The right to said payment shall cease if, during the period of the scheduled payments, EMPLOYEE accepts employment with another employer (including self-employment). EMPLOYEE has an affirmative obligation to notify CITY upon acceptance of other employment. In the event EMPLOYEE fails to notify CITY of his employment, CITY shall have the right (but not the obligation) to seek recovery from EMPLOYEE of any and all amounts improperly received as well as recovery of any cost(s) or fee(s) (including attorney fees) CITY incurs in pursuit thereof.

D. If the CITY unilaterally (i.e., without concurrence of EMPLOYEE) reduces the salary or other financial benefits of EMPLOYEE in greater percentage than an applicable across-the-board reduction for all unclassified employees of the CITY, then EMPLOYEE may deem this Agreement to be involuntarily terminated without cause and he shall thereby be entitled to liquidated damages consistent with subsection (C) of this Section.

E. If EMPLOYEE is terminated by CITY during the six (6) month period immediately following the official seating of one or more newly elected Council members (for reasons other than those set out above in subsection (B) of this Section), notwithstanding EMPLOYEE's willingness and ability to perform his duties, EMPLOYEE may deem himself involuntarily terminated without cause and shall be entitled to liquidated damages consistent with subsection (C) of this Section.

F. Termination (regardless of whether for cause or without cause) or voluntary resignation, (except as limited by the terms of Section III(C) above relative to the non-cash vacation hours described therein) entitles EMPLOYEE to a lump sum payment equivalent to all accrued vacation benefits which payment shall be made within thirty (30) days of the official date of termination or resignation.

G. Notwithstanding the notice provision set out in subsection (A) of this Section, if EMPLOYEE voluntarily resigns his position with the CITY before the expiration of this Agreement, EMPLOYEE shall give the CITY at least sixty (60) calendar days written notice in advance and EMPLOYEE shall be available to serve during this period. The City Council,

however, shall have the discretion to decide whether EMPLOYEE shall continue in his position during the notice period.

SECTION V. RETIREMENT AND HEALTH INSURANCE.

- A. Retirement. CITY agrees to contribute into the Oregon Public Employees Retirement System on EMPLOYEE's behalf an amount at least equal to that same percentage of salary contributed for the CITY's other management/professional employees.
- B. Health Insurance. If EMPLOYEE elects to participate in the CITY'S health insurance programs, CITY agrees to provide coverage and make required premium payments for EMPLOYEE and his dependents for comprehensive medical and dental coverage consistent with City policy for the CITY's other management/professional employees.

SECTION VI. PROFESSIONAL DEVELOPMENT AND EXPENSE.

- A. To the extent funds are available and budgeted by Council, EMPLOYEE may participate, as he deems appropriate, in professional associations, short courses, seminars and conferences including, but not limited to, membership in the International City Management Association (ICMA) and the League of Oregon Cities (LOC). Major expenses such as out of town attendance at meetings requiring lodging and meals shall be reviewed and be approved in advance by the Council.
- B. CITY recognizes that certain expenses may be incurred by EMPLOYEE on behalf of the CITY and agrees to reimburse or pay reasonably necessary expenses upon receipt of appropriate documentation.

SECTION VII. PERFORMANCE REVIEW.

- A. The Mayor and other members of the City Council may periodically identify concerns they may have to EMPLOYEE either by informal discussions with EMPLOYEE or more formally. The City Council shall meet with EMPLOYEE at least once annually during the term of this Agreement, which first meeting shall occur not later than February 15, 2013, and thereafter not later than February 15th of each year for purposes of setting City Council goals and priorities and to evaluate and assess the performance of EMPLOYEE in meeting or progressing towards the goals adopted by the City Council and to examine EMPLOYEE's exercise of authority granted or otherwise identified in Section I of this Agreement. The evaluation of EMPLOYEE shall be in closed Executive Session but conducted consistent with Oregon's Public Meetings Law.
- B. In the event the CITY determines performance of EMPLOYEE is unsatisfactory or needs improvement in any area, the CITY (through the City Council) shall cause there to be produced a written description of the concern(s) which shall be in reasonable detail or with

specific examples and be objective and positive in nature and delivered to EMPLOYEE in a timely fashion.

SECTION VIII. GENERAL PROVISIONS.

- A. Professional Liability. The CITY agrees to defend, hold harmless and indemnify EMPLOYEE from any and all demands, claims, suits, actions and legal proceedings brought against EMPLOYEE in his individual capacity or in his official capacity as agent and employee of the CITY, consistent with the terms of the Oregon Tort Claims Act (ORS 30.260 to 30.300).
- B. Nothing shall restrict the ability of the CITY and EMPLOYEE to amend or adjust the terms of this Agreement at any time. However, no amendment or adjustment shall be valid unless in writing and signed by an authorized representative of the CITY and by EMPLOYEE. EMPLOYEE reserves the right to discuss the terms of this Agreement with the City Council as a whole in either closed Executive Session or open Regular Session as state law allows and as EMPLOYEE deems appropriate.
- C. Severability. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable and shall not be affected and shall remain in full force and effect.
- D. The rights and duties of CITY and EMPLOYEE shall survive termination of this Agreement.
- E. Arbitration. In the event the parties have a dispute concerning the terms of this Agreement, the terms and conditions of the employment relationship or the violation of any federal, state or local law relating to the employment relationship and they have not otherwise resolved the matter through any attempted mediation, conciliation or other voluntary dispute resolution process they choose to use prior to the initiation of arbitration, then the dispute shall be resolved by binding arbitration in accordance with the then effective arbitration rules of (and by filing a claim with) Arbitration Service of Portland, Inc., and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. Each party shall bear equally the expense of the arbitrator and all other expenses of conducting the arbitration. Each party shall bear its own expenses for witnesses, depositions and attorneys, if deemed necessary.

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F. Integration. This Agreement contains the entire Agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the same subject.

IN WITNESS WHEREOF the CITY OF SHERWOOD, OREGON, has caused this Agreement to be signed and executed by its Mayor, Keith Mays, and JOSEPH P. GALL has signed and executed this Agreement, both in duplicate, the day and year noted below each signature.

Keith Mays
Mayor

Joseph P. Gall
EMPLOYEE

Dated: _____, 2012

Dated: _____, 2012

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