



## RESOLUTION 2015-063

### APPROVING AN EMPLOYMENT AGREEMENT FOR THE CITY ATTORNEY

**WHEREAS**, the City Council selected Joshua P. Soper as the City's City Attorney and authorized Councilor Linda Henderson, Councilor Renee Brouse and designated City staff to draft and negotiate an employment agreement between the City and Mr. Soper; 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 Joshua P. Soper as shown in the attached Exhibit "A"

**Section 2.** This resolution shall be effective upon its approval and adoption.

**Duly passed by the City Council this 28<sup>th</sup> day of July 2015.**

  
Krisanna Clark, Mayor

Attest:

  
Sylvia Murphy, MMC, City Recorder

## **Employment Agreement City Attorney City of Sherwood**

This Agreement, made and entered into this August 10<sup>th</sup>, 2015, by and between the City of Sherwood Oregon, a municipal corporation, acting by and through its City Council (hereinafter called "Employer" or "City") and Joshua P. Soper (hereinafter called "Employee"), both of whom understand and agree as follows:

"Start Date" shall be August 10<sup>th</sup>, 2015.

### **Section 1: Licensure**

Employee warrants and agrees that Employee is licensed to practice law in Oregon without limitation. Employee must maintain Employee's license to practice law in Oregon in good standing throughout the term of this Agreement as a condition of employment. Should the Employee no longer be authorized to practice law in Oregon, this Agreement will terminate immediately for good cause.

### **Section 2: Term**

The term of this Agreement shall be for an initial period of three [3] years from August 10<sup>th</sup>, 2015 to August 10<sup>th</sup>, 2018. In the event this Agreement is not renewed, all compensation, benefits and requirements of this Agreement shall remain in effect until the expiration date unless Employee voluntarily resigns. Except as otherwise provided herein, Employee shall have no further rights of employment, compensation or benefits after the expiration date.

### **Section 3: Duties**

- A. City agrees to employ Employee as City Attorney to serve as the chief legal counsel of the City government and perform the duties specified in the City charter, code and the City Attorney job description, and to perform other legally permissible and proper duties and functions of the position as assigned by the City Council. Employee shall attend all City Council meetings unless otherwise excused by the Mayor or Council.
- B. It shall be the duty of the Employee to employ on behalf of the City all other employees of the "Office of City Attorney" consistent with the policies of the governing body and the ordinances and charter of the City, including but not limited to the funds allocated in the adopted City budget.
- C. It shall also be the duty of the Employee to direct, assign, reassign, evaluate, and terminate, as appropriate, employees of the "Office of City Attorney" consistent with City policies, ordinances, and charter, as well as state and federal law.
- D. All duties assigned to Employee by the City Council shall be appropriate to and consistent with the professional role and responsibility of the Employee.

## **Section 4: Compensation**

- A. Base Salary: City agrees to pay Employee an annual base salary of \$100,000 payable in installments at the same time that the other executive management employees of the City are paid.
- B. This Agreement shall be automatically amended to reflect any salary adjustments that are provided or required by the City's compensation policies to include all salary adjustments on the same basis as applied to other executive management employees of the City as appropriate. Employee shall also receive a Cost of Living Adjustment (COLA) to his salary in the same percentage amount, at the same time, and on the same terms as given to other executive management employees of the City.
- C. Employee shall be eligible for additional increases to compensation dependent upon the results of the performance evaluation conducted under the provisions of Section 19 of this Agreement. Increased compensation can be in the form of a salary increase and/or performance incentive and/or an increase in benefits as agreed to by Employee and City.
- D. Except as specifically modified by this Agreement, Employee shall be entitled to the same current and future benefits provided to other exempt employees of the City, including paid time off for all City observed holidays.

## **Section 5: Health, Disability and Life Insurance Benefits**

- A. If the 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 equal to that which is provided to other executive management employees of the City. In no case shall the City provide health insurance that is considered a "Cadillac Health Plan" as defined by the Affordable Health Care Act. City shall provide insurance to a domestic partner only as required by State or Federal law.
- B. City agrees to provide for short term and long term disability coverage for the Employee on the same basis as it provides to other executive management employees of the City.
- C. City shall provide term life insurance to the Employee on the same basis as it provides to other executive management employees of the City. Employee can name the beneficiary of the life insurance policy.

## **Section 6: Vacation, Sick, and Military Leave**

- A. Upon commencing employment, Employee shall accrue sick leave and paid time off (PTO) leave, as provided or made available to other executive management employees of the City, under the same rules and provisions applicable to other exempt employees of the City.
- B. Employee is entitled to accrue all unused leave to the same extent as other executive management employees. Upon the expiration of this Agreement or in the event that

Employee is terminated either voluntarily or involuntarily, Employee shall be compensated for all accrued PTO and all paid holidays in the current pay period. Employee shall not be compensated for any accrued sick leave.

- C. The Employee shall be entitled to military reserve leave time pursuant to federal, state law and city policy.

## **Section 7: Retirement**

City agrees to enroll the Employee into the State of Oregon Public Retirement System (PERS) and to make all the appropriate contributions on the Employee's behalf on the same basis as it provides to other executive management employees of the City.

## **Section 8. General Business Expenses**

- A. To the extent that funds are available and budgeted by Council, City agrees to pay for professional dues and subscriptions of the Employee reasonably required by law or necessary for full participation in relevant national, regional, state and local associations and professional organizations. City further agrees to pay for reasonable expenses associated with participation at the functions of such organizations.
- B. To the extent that funds are available and budgeted by Council, Employer agrees to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for City. Said expenses will be reimbursed consistent with City policy for the City's other executive management employees.
- C. To the extent that funds are available and budgeted by Council, City agrees to pay for learning programs, travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and maintenance of the Employee's required Continuing Legal Education (CLE) obligations and for the good of the City.
- D. Recognizing the importance of constant communication and maximum productivity, City shall provide Employee a cellular phone stipend (currently Eighty Dollars (\$80.00)) on the same basis as is paid to other executive management employees of the City.
- E. Equipment. City shall provide the Employee with all equipment customary and necessary for performance of his or her employment, including computer and internet service, at the sole cost and expense of the City. Employee may use the equipment only as provided by Employer's applicable policies.

## **Section 9. Termination and Expiration**

- A. Notwithstanding any other term of this Agreement, this Agreement may be terminated either by City or the Employee for any reason whatsoever upon giving not less than thirty (30) days written notice to the other party. Termination by the City may occur only

if a majority of the City Council votes to terminate the Employee at a properly posted and duly authorized meeting of the Council.

- B. Resignation. Nothing in this Agreement shall prevent, limit or interfere with the right of Employee to resign at any time. In the event Employee desires to resign employment, Employee shall give written notice to the Employer at least thirty (30) days prior to separation. The Employer shall have no obligation to pay Employee any further compensation after the expiration of the notice period. Failure to give the required thirty day notice constitutes a waiver and forfeiture of pay for all accrued PTO leave and other leave. Notwithstanding any other terms of this Agreement, if Employee terminates the Agreement within the first two years of the Agreement, he will reimburse the City for costs paid to Employee related to relocation pursuant to Section 14 of this Agreement.
- C. Employee shall be eligible for severance payments set forth in Section 10 if City's termination of this Agreement constitutes an involuntary termination. For the purpose of this Agreement, involuntary termination shall occur when:
  - 1. The Employer, citizens or legislature acts to amend any provisions of the enabling legislation pertaining to the role, powers, duties, authority, or responsibilities of the Employee's position that substantially changes the form of government or the duties of the Employee, in which case the Employee shall have the right to declare that such amendments constitute an involuntary termination.
  - 2. The Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads. Such action shall constitute a breach of this Agreement and will be regarded as an involuntary termination. In those situations where a breach of contract can be cured, a breach of contract must be declared by Employee in order to provide a thirty (30) day cure period for City. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 17. Involuntary termination shall not occur if City cures the breach within this thirty (30) day period.
  - 3. A majority of the Council votes to terminate this Agreement for any reason other than for "good cause" as set forth below.
- D. City may terminate this Agreement with "good cause" at any time without the required thirty (30) day notice as set forth in Section A above.
- E. For purposes of this Agreement the term "good cause" is defined as follows:
  - 1. Failure to fulfill the Employee's duties as required in this Agreement;
  - 2. Incompetence in the performance of the Employee's duties as documented by evaluations, supplemental memoranda, or other written communication from the City; provided, however, the terms and conditions of this paragraph shall not justify

good cause unless the City has provided Employee a reasonable opportunity to remediate any incompetency;

3. Insubordination or failure to comply with lawful written City directives, unless compliance with such directives would violate the law or ethical rules applicable to the Employee;
  4. Neglect of duties;
  5. Drunkenness or excessive use of alcoholic beverages;
  6. Illegal use of drugs, hallucinogens, or other substances regulated by state or federal law;
  7. Conviction of a felony involving moral turpitude;
  8. Disability, not otherwise protected by law, that impairs performance of the required duties of the City;
  9. Knowingly falsifying records or documents related to City activities;
  10. Knowingly misrepresenting material facts to the City Council or other City officials in the conduct of the City's business;
  11. Any willful, knowing, grossly negligent, or negligent misapplication or misuse, direct or indirect, by Employee of public or other funds or other property, real, personal, or mixed, owned by or entrusted to the City, any agency or corporation thereof, or the Employee in the Employee's official capacity; or
  12. Loss of license to practice law.
- F. In the event of allegations relating to Section 9(E)(1-12) above, Employee shall be provided a minimum five (5) business days' written notice and an opportunity to respond within that period before the City makes a final determination to terminate this Agreement with good cause. This requirement shall in no way limit the City's: (1) discretion in making such final determination, (2) ability to make a preliminary determination to move forward with or otherwise engage in discussions about a termination of this Agreement for good cause; or (3) ability to place Employee on paid administrative leave during this five (5) business day time period.
- G. Incapacitation. In the event Employee is incapacitated or otherwise medically unable to perform his duties as City Attorney, upon exhaustion of paid earned leave and other allowed time permitted by Oregon and federal law, the City Council may, in its discretion, either suspend this Agreement until Employee is able to return to work or terminate the Agreement. In the event of termination due to incapacity under this section of this Agreement, severance shall not apply and Employee's entitlements in

accordance with OFLA, FMLA, disability insurance, unemployment benefits and social security shall be exclusive.

- H. Expiration of the term of this Agreement is neither an involuntary termination nor a resignation. Upon expiration of the term, the Employee is entitled to those benefits that have vested under this Agreement, the City's personnel policies, state or federal law and any other benefits that are specifically stated herein.

## **Section 10. Severance**

- A. During the first six (6) months of this Agreement beginning at the "Start Date" City shall provide a severance payment equal to all amounts then due and owing to the Employee, plus two (2) month's salary at the then current rate of pay, less customary payroll deductions. This severance shall be paid in a continuation of salary on the existing biweekly basis.
- B. During the period of time between six (6) months and eighteen (18) months of this Agreement from the "Start Date" City shall provide a severance payment equal to all amounts then due and owing to the Employee, plus four (4) month's salary at the then current rate of pay, less customary payroll deductions. This severance shall be paid in a continuation of salary on the existing biweekly basis.
- C. After eighteen (18) months of this Agreement from the "Start Date" City shall provide a severance payment equal to all amounts then due and owing to the Employee, plus six (6) month's salary at the then current rate of pay, less customary payroll deductions. This severance shall be paid in a continuation of salary on the existing biweekly basis.
- D. The right to any severance payment under Sections 10 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 the City upon acceptance of other employment.
- E. If the Employee is terminated for good cause, then the Employer is not obligated to pay severance under this section but may be required to recognize and pay benefits that have vested and to which Employee is entitled under the Employer's personnel policies, state law or federal law.

## **Section 11. At Will Employment**

The employment relationship between the City and Employee is employment "at will", and the only rights Employee has are those set out in this Agreement.

## **Section 12. Hours of Work**

Employee acknowledges the proper performance of the duties of the Employee will require the Employee to generally observe normal business hours and will also often require the performance of necessary services outside of normal business hours. The Employee agrees to devote such additional time as is necessary for the full and proper performance of the Employee's duties and that the compensation herein provided includes compensation

for the performance of all such services. However, the Employer intends that reasonable time off be permitted the Employee, such as is customary for other City executive management employees, so long as the time off does not interfere with the normal conduct of the office of the Employee.

The Employee may take up to forty (40) hours as paid Administrative Leave per calendar year to be used at Employee's discretion during the term of this Agreement. Administrative Leave may not be accrued from year to year and shall have no cash value upon termination or resignation from the City's employment.

The Employee will devote full time and effort to the performance of the Employee's duties, and shall remain in the exclusive employ of the Employer during the term of this Agreement; provided that, with the prior consent of the City Council, the Employee may accept temporary, outside professional employment which will not in any way interfere with the performance of, or the Employee's availability for the performance of, the Employee's duties hereunder.

The term "outside professional employment" means professional services excepting "the practice of law" provided to third parties for which the Employee is compensated and which are performed on the Employee's time off. The City encourages the Employee to accept invitations to speaking engagements, writing or other opportunities to communicate with the community, subject to the rules regarding confidentiality and attorney client privilege to make use of and share data and information with relevant persons and groups, and encourages the Employee to participate in pertinent seminars, groups, associations and organizations, as well as in informational meetings with those individuals whose particular skills, expertise, or backgrounds would serve to improve the capacity of the Employee to perform the Employee's duties.

### **Section 13. Ethical Commitments**

Employee shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fundraising activities for individuals seeking or holding elected office in the City, nor seek or accept any personal enrichment or profit derived from confidential information, or holding office, or misuse of public time. City shall support Employee in keeping these commitments by refraining from any order, direction or request that would require Employee to undertake any of the aforementioned activities. Specifically, neither the City Council nor any individual member thereof shall request Employee to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fund-raising activity for individuals seeking or holding elected office, nor to handle any matter involving personnel on a basis other than fairness, impartiality and merit.

### **Section 14: Moving and Relocation Expenses**

In connection with any relocation of the Employee and the Employee's family the City shall reimburse Employee for necessary and reasonable expenses incurred in moving and relocating the Employee's family and belongings up to \$5,000. Reasonable expenses will include temporary housing associated with the relocation. The Employee shall document all moving and relocation expenses with receipts, cancelled checks or credit card statements,



and the City shall reimburse the Employee for all such documented expenses within thirty (30) days of the Employer's receipt of such documentation.

### **Section 15: Indemnification**

City agrees to defend, hold harmless and indemnify Employee from any and all demands, claims, suits, actions and legal proceedings brought against Employee by a third party in his individual capacity, or in his official capacity as agent and employee of City, consistent with the terms of the Oregon Tort Claims Act (ORS 30.260 to 30.300).

### **Section 16: Bonding**

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

### **Section 17: Notices**

Notice pursuant to this Agreement may be given by personal service, by email, by nationally recognized courier, or by depositing in the custody of the United States Postal Service, postage prepaid, and addressed as follows:

(a) CITY: City of Sherwood

22560 SW Pine Street

Sherwood, OR 97140

(b) EMPLOYEE: Joshua P. Soper

705 Johnson Ave.

Coos Bay, OR 97420

Notice shall be deemed given as of the date of personal service or email, as of the date of delivery by courier, or as the date five days after the date of deposit in the custody of the United States Postal Service. Either party may modify its notification address(es) at any time by written notice to the other party.

### **Section 18: General Provisions**

- A. **Merger.** This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to vary any of the terms contained in this Agreement.
- B. **Amendments.** The Employer and Employee by mutual written agreement may amend this Agreement. Such amendments shall be incorporated into and made a part of this Agreement. No amendment or adjustment shall be valid unless in writing and signed by both City and Employee and approved by the City Council by Resolution. 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. **Assignment.** This Agreement may not be assigned by either party without the written consent of the other party.

- D. **Severability.** If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect and shall, upon agreement by the parties, be deemed stricken from the Agreement without affecting the binding force of the remainder.
- E. **No Third-Party Beneficiaries.** This Agreement confers no benefits or imposes any duties on anyone other than City and Employee.
- F. **Headings.** The headings used in this Agreement are solely for convenience of reference, are not part of this Agreement, and are not to be considered in construing or interpreting this Agreement.
- G. In negotiating and drafting the terms of this Agreement, Employee is representing himself only and not the legal or other interests of City. Employee has provided no advice to City regarding the legal effect of this Agreement.

## **Section 19. Performance Evaluation**

- A. Employer shall annually review the performance of the Employee prior to November of each year, beginning in 2016, using a process as determined by the City Council.
- B. Unless the Employee expressly requests otherwise in writing, the evaluation of the Employee shall at all times be conducted in executive session of the governing body (if authorized by law) and shall be considered confidential to the extent permitted by law. Nothing herein shall prohibit the City or Employee from sharing the content of the Employee's evaluation with their respective legal counsel.

## **Section 20 Dispute Resolution**

- A. **Mediation.** Should any dispute arise between the parties regarding the terms of this Agreement, the employment relationship created thereby or the terms of any Exhibit or work or services covered thereby, it is agreed that such dispute will be submitted to a mediator prior to arbitration. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon unless both parties agree otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to respond within ten (10) days, or if the parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Washington County Circuit Court upon request of either party.
- B. **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 the mediation process set out in subsection (A) above) then the dispute shall be resolved by arbitration in accordance with the then effective arbitration rules of (and by filing a claim with) the 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.

IN WITNESS WHEREOF, the CITY OF SHERWOOD, OREGON has caused this Agreement to be signed and executed by its Mayor and Joshua P. Soper has signed and executed this Agreement, both in duplicate, the day and year first written above.

Employer:  
City of Sherwood

Employee:

By: \_\_\_\_\_  
Mayor Krisanna Clark

Signature: \_\_\_\_\_  
Joshua P. Soper

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_