



## RESOLUTION 2024-029

### APPROVING AN EMPLOYMENT AGREEMENT WITH SEBASTIAN TAPIA TO SERVE AS INTERIM CITY ATTORNEY

**WHEREAS**, City Attorney Ryan Adams has been called to active military service; and

**WHEREAS**, the City requires an interim City Attorney to fill the role of City Attorney; and

**WHEREAS**, after a thorough evaluation process, Sebastian Tapia was determined to be the top candidate for the position; and

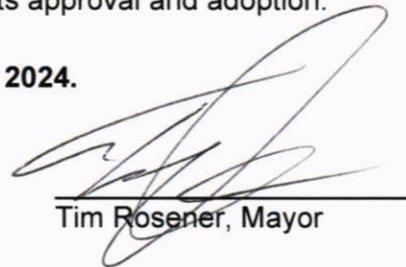
**WHEREAS**, the City has prepared a proposed Employment Agreement to hire Sebastian Tapia as interim City Attorney for the City of Sherwood during the City Attorney's period of military service, which requires Council approval.

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

**Section 1.** The Mayor is hereby authorized to sign an Employment Agreement with Sebastian Tapia in a form substantially similar to the attached Exhibit 1.

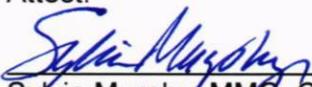
**Section 2.** This Resolution shall be effective upon its approval and adoption.

**Duly passed by the City Council this 7<sup>th</sup> day of May 2024.**



\_\_\_\_\_  
Tim Rosener, Mayor

Attest:



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

## **EMPLOYMENT AGREEMENT (Interim City Attorney)**

This Employment Agreement is made and entered into effective May 13, 2024, by and between the City of Sherwood, Oregon (“City”) and Sebastian Tapia (“Attorney”).

### **RECITALS**

WHEREAS, the Sherwood City Attorney (“City Attorney”) has been called to military service necessitating the need for an interim City Attorney for the term of his absence; and

WHEREAS, City desires to employ Attorney as the Interim City Attorney of the City of Sherwood and Attorney is willing to accept said appointment; and

WHEREAS, City and Attorney desire a written agreement to establish and set the terms and conditions of the employment of Attorney as the Interim City Attorney;

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

### **1. DUTIES**

City agrees to employ Attorney as Interim City Attorney, to perform the functions and duties described in Section 35 of the Sherwood City Charter, Sherwood Municipal Code, and state law, and as the City Council shall, from time to time, assign to the Interim City Attorney consistent with the professional role and responsibility of the Interim City Attorney. The Attorney agrees that, during the term of this Agreement, the legal work of the City is his highest professional priority, and no other work, pro bono or otherwise, shall interfere with the completion of legal work for the City.

### **2. HOURS AND PLACE OF WORK**

It is recognized that Attorney must devote a great deal of time to work outside of normal office hours to the business of the City and, to that end, Attorney will be allowed to make reasonable adjustments as he shall deem appropriate during normal office hours. Any extended reasonable adjustments shall be subject to consultation with the City Manager and Mayor. Attorney’s primary place of work shall be at Sherwood City Hall, however, Attorney shall be allowed to work remotely at reasonable times and when circumstances so require.

### **3. ORGANIZATIONAL STRUCTURE**

Attorney shall be an at will employee of the City Council of Sherwood in accordance with Section 35 of the Sherwood City Charter. Notwithstanding the foregoing, prior to the City Attorney’s departure for military service, and upon the City Attorney’s return from military service, Attorney shall be an employee of the City Attorney’s office and shall report to the City Attorney.

### **4. TERM**

The term of this Agreement shall commence on May 13, 2024 (the “Effective Date”) and, unless earlier terminated consistent with the terms hereof, continue until September 13, 2025.

## 5. COMPENSATION

### A. Salary

Commencing on the Effective Date, the City agrees to pay Attorney One-Hundred and Fifty-Five Thousand dollars (\$155,000.00) as a yearly base salary, to be paid in installments at the same interval as City pays its other employees who are not subject to a collective bargaining agreement (“Unrepresented Employees”). Attorney shall also be entitled to receive a Cost of Living Adjustment (COLA) to his salary in the same percentage amount and on the same schedule as may be provided to the City's Unrepresented Employees.

### B. Retirement

City agrees to contribute into the Oregon Public Employees Retirement System on Attorney's behalf an amount equal to the same percentage of salary contributed for the City's Unrepresented Employees.

### C. Cellular Phone

The City shall provide a cellular phone to Attorney for use for City business, consistent with applicable City policies.

### D. Taxes

All compensation described in this Agreement shall be subject to withholding of income taxes and shall be subject to employment taxes required with respect to compensation paid by the City to an employee.

### E. Reward Programs

Attorney shall be issued a purchase card by the City and shall use that card, to the extent practicable, to make necessary purchases on behalf of the City. When it is not practicable to use the purchase card, Attorney may use a personal credit card to make purchases on behalf of the City and may seek reimbursement from the City. As part of his compensation package, Attorney may keep any points or rewards accrued while using his personal credit card.

## 6. LEAVE BENEFITS

### A. Management Leave

It is understood by the parties that the Attorney is exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) and that the position of City Attorney may frequently require irregular hours and far in excess of a standard 40-hour work week to accomplish the duties of the position. It is also understood that paid time off is essential to employee well-being and that the City expects the Attorney to take substantial time away from work. In lieu of the Paid Time Off (PTO) and Administrative leave provisions applicable to other Unrepresented Employees, the Attorney shall be permitted to take paid management leave of reasonable duration and frequency, as City business permits, without a fixed maximum or accrual rate. Management leave may be used for any purpose which would be a permitted use of PTO or Administrative leave under the City's policies. Management leave has no cash value upon separation from employment.

### B. Sick Leave

Attorney shall be entitled to the same sick leave benefits as Unrepresented Employees.

C. Holidays

Attorney shall be subject to the policies regarding City observed holidays that are applicable to Unrepresented Employees.

**7. INSURANCE AND OTHER BENEFITS**

A. Health Insurance

Attorney may, at his discretion, choose to utilize insurance benefits provided to other Unrepresented Employees.

B. Life Insurance

City shall pay, on behalf of Attorney, the premium cost for a term life insurance policy in the amount of three hundred thousand dollars (\$300,000.00).

C. Other Benefits

Except as otherwise provided in this Agreement, Attorney shall receive all other employee benefits provided by the City to Unrepresented Employees.

**8. PROFESSIONAL DUES AND DEVELOPMENT**

To the extent funds are available and budgeted by the City Council, Attorney may participate, as he deems appropriate, in professional associations, short courses, seminars, conferences, and other similar professional development opportunities. Expenses will be reimbursed consistent with City policy applicable to the City's Unrepresented Employees.

A. The City agrees to budget and to pay for the professional dues of the City Attorney for membership in the Oregon State Bar and sections of government law and land use, the City Attorney's Association, the International Municipal Law Officer's Association, and other national, regional, state, and local government groups and committees thereof on which employee may serve as a member and/or have been approved by the City.

B. The City agrees to maintain the necessary legal library as agreed upon by Attorney and the City.

**9. TERMINATION**

Attorney is an at-will employee and shall serve at the pleasure of the City Council. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Council to terminate the services of Attorney at any time, for any reason whatsoever, with or without cause, prior to expiration of this Agreement, subject only to the provisions set forth in this Section. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Attorney to resign at any time from his position prior to expiration of this Agreement, subject only to the provisions set forth in this Section.

A. Termination for Cause

If Attorney is terminated prior to the expiration of this Agreement for cause, City shall have no obligation with respect to the severance pay described in this Section. For the purposes of this Agreement, "cause" is defined to include any of the following:

- i. Attorney fails or refuses to comply with the laws and written policies and regulations of the City that are now in existence or are from time to time established.
- ii. Attorney fails to perform his duties as Interim City Attorney or abandons his

- position as Interim City Attorney.
- iii. Attorney has his Oregon State Bar license suspended or terminated.
  - iv. The City has substantial evidence to believe Attorney has committed fraud, breach of fiduciary responsibilities, dishonesty, or gross negligence; misappropriated City funds, goods, or services to either his own or some other private third party's benefit; or committed other acts of misconduct which the City Council believes, in its sole discretion, is or would be detrimental to the City or its interests.

**B. Termination Without Cause**

If City terminates Attorney without cause prior to the expiration of this Agreement, and the Attorney is then willing and able to perform all of the duties of the Interim City Attorney under this Agreement, the City shall pay a cash severance payment to Attorney equal to six (6) months' of the Attorney's monthly base salary, the calculation of which shall not include any added benefits or allowances (such as a vehicle allowance). The severance payment shall be calculated using the monthly salary in effect at the time of the termination, minus any state or federal withholdings, and shall be paid in six (6) monthly increments commencing no later than fifteen (15) calendar days after the effective date of termination. The right to said payment shall cease if, during the period of the scheduled payments, Attorney accepts employment with another employer (including self-employment). Attorney has an affirmative obligation to notify City upon acceptance of other employment. In the event Attorney fails to notify City of his employment, City shall have the right (but not the obligation) to seek recovery from Attorney 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. Termination without cause, as used in this Section, means the Attorney's discharge or dismissal by the City, for any reason other than the reasons specified in Subsection 8(A) above, and shall also include discharge or dismissal by the 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 8(A) of this Section, notwithstanding Attorney's willingness and ability to perform his duties.

**C. Voluntary Resignation**

In the event the Attorney voluntarily resigns prior to the expiration of this Agreement, the Attorney shall give the City written notice thereof a minimum of forty-five (45) days in advance, unless the parties mutually agree otherwise. In the event of the Attorney's voluntary resignation, the Attorney shall not be entitled to severance pay as provided herein.

**D. Disability**

If Attorney is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity, or health that exceeds exhaustion of allowed state and federal family medical leaves, the City shall have the option to terminate this Agreement and, in that case, Severance will be equal to six (6) months of wages, but will cease to be paid as soon as disability insurance proceeds begin to be received, if such payments occur sooner than the expiration of the six (6) month severance period.

**10. GENERAL PROVISIONS**

A. Professional Liability. The City agrees to defend, hold harmless, and indemnify the

Attorney from all demands, claims, suits, actions, and legal proceedings brought against Manager 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. Amendments. No amendment to this Agreement shall be valid unless in writing and signed by the Attorney and an authorized representative of the City after approval by the City Council.
- C. Applicable Law. This Agreement is construed under the laws of the State of Oregon, the City of Sherwood Charter, and the Sherwood Municipal Code. Venue shall be in Washington County Circuit Court or, only if there is no state court jurisdiction, U.S. District Court for the District of Oregon.
- D. Counterparts. This Agreement may be executed in duplicate original counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.
- E. Compliance with Laws. Attorney shall perform his duties in accordance with all applicable laws, ordinances, rules, and regulations applicable to his position.
- F. Entire Agreement. This Agreement constitutes the entire Agreement between the parties on the subject matter hereof and supersedes all prior written or oral discussions or agreements regarding the same subject. The provisions of this Agreement are solely for the benefit of the parties and not for the benefit of any other person, persons, or legal entities.
- G. Inducements and Representations. The Attorney acknowledges that he has not been induced to enter into this Agreement by any representations or statements, oral or written, not expressly contained herein or guarantees, expressed or implied, other than the expressed representations, warranties, and guarantees contained in this Agreement.
- H. Assignment. This Agreement may not be assigned by either the City or the Attorney.
- I. Representation. The City has been represented by Ryan Adams, its City Attorney, in the preparation of this Agreement. Attorney acknowledges that he has the right to independent counsel at his own expense regarding the preparation of this Agreement.
- J. 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.

- K. Severability. It is understood and agreed by the parties that if any part, term, portion, or provision of this Agreement is held by the courts to be illegal or in conflict with the laws of the State of Oregon, the validity of the remaining portion of this Agreement shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, portion, or provision.

**IN WITNESS WHEREOF**, the **CITY OF SHERWOOD, OREGON**, has caused this Agreement to be signed and executed by its Mayor, Tim Rosener, and Sebastian Tapia has signed and executed this Agreement, on the date noted below each signature.

**CITY OF SHERWOOD**

**SEBASTIAN TAPIA**

\_\_\_\_\_  
Tim Rosener, Mayor

\_\_\_\_\_  
Sebastian Tapia

DATED THIS 7th day of May 2024.

APPROVED AS TO FORM:

\_\_\_\_\_  
Ryan Adams, City Attorney