

VILLAGE OF OAK PARK
AGENDA ITEM COMMENTARY

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Item Title: RESOLUTION AMENDING THE EMPLOYMENT AGREEMENT WITH THE VILLAGE MANAGER

Resolution or Ordinance No. _____

Date of Board Action June 20, 2011

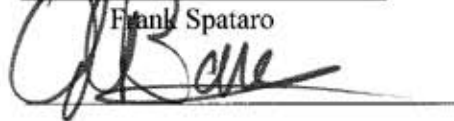
Staff Review:

Human Resources Director:



Frank Spataro

Village Manager's Office:



Item History: The current employment agreement with the Village Manager requires that an annual performance review be conducted by the President and Board of Trustees, and that any related adjustments in base salary and performance-based pay for the Village Manager coincide with the Village's fiscal year of January 1 to December 31. The Village Board has met and discussed the Village Manager's performance resulting in compensation and benefits changes in described below in the Item Policy Commentary Section.

Item Policy Commentary: After a review of the year relating to his accomplishments during the evaluation period, the Village Board of Trustees have indicated that the employment agreement with Village Manager Thomas Barwin be amended to reflect the following changes shown as underlined:

- Section 3A of the Employment Agreement (Base Salary Compensation) shall be amended as follows:

Base Salary Compensation: For the time period covering January 1, 2011 to December 31, 2011, the Employer agrees to pay Employee an annual base salary of One Hundred and Sixty-Five Thousand Four Hundred and Eleven dollars and Fifty-Three cents (\$165,411.53) representing a 0.0% increase in the Employee's annual base salary in place between January 1, 2010 and December 31, 2010, payable in bi-weekly installments at the same time other management employees of the Employer are paid.

- Section 3B of the Employment Agreement (Performance-Based Pay) shall be amended as follows:

Performance-Based Pay: The Employer agrees to provide additional compensation in the form of an annual Performance-Based Pay payment in the amount of two and one-half percent (2.5%) of the Employee's Base Salary in place between January 1, 2010 and December 31, 2010, or Four Thousand One Hundred Thirty-Five dollars and Twenty-Nine cents (\$4,135.29) for performance-based pay as a lump-sum payment not added to base.

- Section 7C of the Employment Agreement (Retiree Health Care) shall be amended as follows:

Retiree Health Care – 401/457 Deferred Compensation: The Employer will make a three (3) to one (1) matching contribution up to a maximum of three and three-fourths percent (3.75%) of the Employee's base salary for a retiree Health Care Account or ICMA/RC 401 or 457 plan, as designated the Employee. The total Employer and Employee contribution may not exceed five percent (5%) of the Employee's base salary. For example purposes, an Employer contribution equal to 3.75% of base salary is contingent on the Employee making a contribution of 1.25% of base salary.

- Section 14 of the Employment Agreement (Outside Activities) shall be amended as follows:

The employment provided for by this Agreement shall constitute the Employee's sole employment. However, the Employee may engage in speaking, teaching, or writing activities for a fee or in return for other compensation subject to prior notification to members of the Village Board, insofar as such arrangements do not constitute interference or a conflict of interest with the Employee's responsibilities under this agreement, and no members of the Village Board object.

Item Budget Commentary: Sufficient funds have been budgeted for the adjustments described above in the Village Manager's budget Program 1001-41020-101-510501.

Proposed Action: Approve the Resolution

VILLAGE MANAGER EMPLOYMENT AGREEMENT

Introduction

This Agreement, made and entered into this June 29, 2006, by and between the Village of Oak Park, Illinois, a municipal corporation, (hereinafter called "Employer") and Thomas W. Barwin, (hereinafter called "Employee") an individual who has the education, training and experience in local government management and who, as a member of ICMA, is subject to the ICMA Code of Ethics, both of whom agree as follows:

Section 1: Term

This agreement shall remain in full force and effect from June 29, 2006 until terminated by the Employer or Employee as provided in Section 9, 10 and 11 of this Agreement.

Section 2: Duties and Authority

Employer agrees to employ Thomas W. Barwin as Village Manager to perform the functions and duties specified in Chapter 2, Article 4 (Village Manager) of the Oak Park Village Code and to perform other legally permissible and proper duties and functions.

Section 3: Compensation

- A. **Base Salary:** Employer agrees to pay Employee an annual base salary of One Hundred and Fifty-Two Thousand Five Hundred dollars (\$152,500) payable in bi-weekly installments at the same time other management employees of the Employer are paid. Consideration shall be given on an annual basis to increase compensation in conjunction with performance evaluation practices as provided in Section 12 of this Agreement.
- B. **Performance-Based Pay:** The Employer agrees to provide additional compensation in the form of an annual Performance-Based Pay payment up to ten percent (10%) of the Employee's Base Salary dependent upon the results of the performance evaluation conducted under the provisions of Section 12 of this Agreement. Such payment shall be provided in an annual one-time payment on the pay day following the conclusion of the Employee's annual review.

Section 4: Health, Disability and Life Insurance Benefits

- A. The Employer agrees to make available to the Employee the same health, hospitalization, surgical, vision, prescription drug, dental and comprehensive medical insurance choices available to the Employers' other non-union employees. The Employee shall be responsible to pay the premiums equal to those paid by other non-union employees for the health, hospitalization, surgical, vision, prescription drug, dental and comprehensive medical insurance plan selected by the Employee.
- B. The Employer agrees to put into force and to make required premium payments for short term and long-term disability coverage for the Employee for the first twelve (12) months of employment. After twelve months, Employee will be eligible for IMRF disability coverage.
- C. The Employer shall pay the amount of premium due for term life insurance in the amount of two (2) times the Employee's annual base salary, including all increases in the base salary during the life of this Agreement. The Employee shall name the beneficiary of the life insurance policy.

Section 5: Paid Vacation, Sick Leave and Administrative Leave

- A. **Vacation:** Upon commencing employment, the Employee shall have access to a bank of two (2) weeks of vacation (equal to 10 days). Also, upon commencing employment, the Employee shall accrue four (4) weeks of vacation leave (equal to 20 days) to be allocated equally over each of the annual twenty-six (26) pay periods.

The Employee is permitted to carry over no more than four (4) weeks of vacation from one year to the next. For purposes of this provision, a year shall be defined as twelve months from the date upon which the Employee commences employment. Unused vacation in excess of four (4) weeks will be forfeited at the end of each year of employment.

In the event the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all accrued vacation as of the date of termination.

- B. Sick Leave: Upon commencing employment, the Employee shall have access to a bank of thirty (30) sick days to be used in the case of non-work related illness or injury. Also, upon commencing employment, the Employee shall accrue fifteen (15) days of paid sick leave to be allocated equally over each of the annual twenty-six (26) pay periods.

The Employee is permitted to carry over no more than thirty (30) days of sick leave from one year to the next. For purposes of this provision, a year shall be defined as twelve months from the date upon which the Employee commences employment. Unused sick leave in excess of thirty (30) days will be forfeited at the end of each year of employment.

In the event the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall not be compensated for any accrued sick leave.

- C. Administrative Leave: Upon commencing employment and on each January 1 thereafter, the Employee shall have access to a bank of five (5) days of paid leave in recognition of work demands that extend outside the normal office hours. This leave cannot be accrued or carried over into the next calendar year.

Section 6: Automobile

The Employer agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits provided herein, the sum of six thousand dollars (\$6,000) per year, payable monthly, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. The Employer shall reimburse the Employee at the IRS standard mileage rate for any business use of the vehicle beyond the greater Chicago area. For purposes of this Section, use of the car within the greater Chicago area is defined as official travel to locations within a fifty (50) mile radius of the Village Hall of the Village of Oak Park.

Section 7: Retirement

The Employee's retirement plan and related benefits shall consist of the following:

- A. Upon commencing employment, the Employee shall be required to become a member of the Illinois Municipal Retirement Fund (IMRF). As a member of IMRF, the Employee shall be responsible for making the IMRF-required employee contribution of four and one-half percent (4.5%) of total cash compensation (Base Salary and Performance-Based Pay as described above in Section 3 of this Agreement). The Employer shall make the IMRF-required employer contribution applicable to the Employee's total cash compensation (Base Salary and Performance-Based Pay as described above in Section 3 of this Agreement) at the applicable annual rate set by the IMRF.
- B. In addition to the Employer's payment to the IMRF as referenced above, the Employer agrees to make a contribution to the ICMA Retirement Corporation [ICMA-RC] or other Section 457 deferred compensation plan for Employee equal to the following calculation: ten percent of the

Employee's total cash compensation (Base Salary and Performance-Based Pay) minus the Employer's IMRF-required employer contribution

- C. Retiree Health Care: The Employer will make a three (3) to one (1) matching contribution up to a maximum of three and three-fourths percent (3.75%) of the Employee's base salary for a retiree Health Care Account. The total Employer and Employee contribution may not exceed five percent (5%) of the Employee's base salary. For example purposes, an Employer contribution equal to 3.75% of base salary is contingent on the Employee making a contribution of 1.25% of base salary.

Section 8: General Business Expenses

- A. Employer agrees to budget for and to pay for professional dues and subscriptions of the Employee necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.
- B. Employer agrees to budget for and 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 Employer, including but not limited to the ICMA Annual Conference, the state league of municipalities, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member.
- C. Employer also agrees to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the Employer.
- D. Employer recognizes that certain expenses of a non-personal but job-related nature are incurred by Employee, and agrees to reimburse or to pay said general expenses. The finance director is authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.
- E. The Employer shall provide Employee with a computer, software, cell phone, and pager required for the Employee to perform the job and to maintain communication.

Section 9: Termination

For the purpose of this agreement, termination shall occur:

- A. If the majority of the Village Board votes to terminate the Employee at a duly authorized public meeting.
- B. If the Employer, citizens or legislature act to amend any provisions of the Village Code pertaining to the role, powers, duties, authority, or responsibilities of the Employee's position in such a way as to substantially change the form of government from that of a Council-Manager form.
- C. If the Employer reduces the base salary 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 a termination.
- D. If the Employee resigns following an offer to accept resignation by the majority of the governing body at a duly-noticed meeting, then the Employee may declare a termination as of the date of the majority's offer.
- E. If a breach of contract is declared by either party with a thirty (30)-day cure period for either the Employee or Employer, and such breach remains at the conclusion of the thirty (30)-day period.

Written notice of a breach of contract shall be provided in accordance with the provisions of Section 20 (Notices).

Section 10: Severance

Severance shall be paid to the Employee when employment is terminated as defined in Section 9 except as otherwise provided herein.

If the Employee is terminated, the Employer shall provide a severance payment equal to nine (9) months of base salary at the Employee's current base rate of pay. This severance shall be paid in a lump sum unless otherwise agreed to by the Employer and the Employee.

The Employee shall also be compensated for all accrued vacation time at the time of severance.

For the nine (9) month severance period, the Employer shall pay the cost to continue the Employee's short-term and long-term disability as provided above in Section 4 (B), and life insurance as provided in Section 4 (C). Also, for the nine (9) month severance period, the Employer shall continue to make available to the Employee the same health, hospitalization, surgical, vision, prescription drug, dental and comprehensive medical insurance choices available to the Employers' other non-union employees. The Employee shall be responsible to pay the premiums for this period equal to those paid by other non-union employees.

The Employee shall receive no severance if he is terminated for "just cause" which includes but is not limited to the following: conviction of a felony or accepting a guilty plea or nolo contendere; demonstrated incompetence or dishonesty; substantial or manifest neglect of duty; and/or personal conduct, such as sexual harassment, which substantially impairs fulfillment of Employee's responsibilities and/or sullies the reputation or image of the Village.

Section 11: Resignation

In the event that the Employee voluntarily resigns his position with the Employer, the Employee is required to provide the Village President and Board of Trustees with a sixty-day prior written notice of resignation.

Section 12: Performance Evaluation

The Employer shall annually review the performance of the Employee in the anniversary month in which the Employee commenced employment subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Employer and Employee. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee within 30 days of the evaluation meeting unless the parties agree otherwise. Any resulting adjustment in Base Salary shall be effective as of the Employee's anniversary date

Section 13: Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule subject to periodic review by the Village Board.

Section 14: Outside Activities

The employment provided for by this Agreement shall constitute the Employee's sole employment. The Employee shall not engage in speaking, teaching, writing, or consulting activities for a fee or in return for other compensation. The Employee may, however, speak, teach, and write (but may not engage in consulting activities), in non-compensated circumstances insofar as such arrangements do not constitute interference nor a conflict of interest with the Employees responsibilities under this

agreement, and ongoing engagement in these activities is reviewed and approved periodically, and at least annually, by the Village Board. Such approval shall not be unreasonably withheld.

Section 15: Moving and Relocation Expenses

The Employee agrees to establish residence within the corporate boundaries of the Village of Oak Park within six (6) months of employment, and thereafter to maintain residence within the corporate boundaries of the Village of Oak Park.

- A. Employer shall pay directly for reasonable expenses of moving Employee, family and personal property from Ferndale, Michigan to the Village of Oak Park. Said moving expenses include packing, moving, storage costs, unpacking, and insurance charges. The Employee shall provide the Employer with at least two bids from nationally-recognized moving companies with the Employer reserving the right to select the best bid.
- B. Employer shall reimburse Employee for actual lodging and meal expenses for his family in route from Ferndale, Michigan to the Village of Oak Park. Mileage costs for moving two personal automobiles shall be reimbursed at the current IRS allowable rate of forty-four cents (\$0.44) per mile. The Employee shall provide the Village Finance Director with receipts and other documentation of expenses for reimbursement.
- C. Employer shall pay Employee an interim housing supplement of one thousand five hundred dollars (\$1,500) per month for a period commencing on a mutually agreed date but no later than the Employee's first day of employment, and shall continue for a maximum of six (6) months, or until a home within the corporate limits of the Village of Oak Park is purchased and closed on, or until the Employee secures permanent housing within the corporate limits of the Village of Oak Park, whichever event occurs first.
- D. Employer shall reimburse the Employee up to but not exceeding two thousand five hundred dollars (\$2,500) for reasonable expenses incurred by Employee or his family members during the initial six months of employment for travel conducted prior to relocation, as detailed herein. The Employee shall provide the Village Finance Director with receipts and other documentation of expenses for reimbursement.
- E. The Employee shall be reimbursed, or Employer may pay directly, for reasonable expenses of packing and moving from temporary housing to permanent housing within 24-months of the date of this Agreement. The Employee shall provide the Employer with at least two bids from nationally-recognized moving companies with the Employer reserving the right to select the best bid.

Section 16: Home Sale and Purchase Expenses

- A. The Employee shall be reimbursed for the direct costs associated with the sale of Employee's existing personal residence with said reimbursement being limited to real estate agents' fees, and other closing costs that are directly associated with the sale of the house. Said reimbursement may not exceed ten thousand dollars (\$10,000).
- B. The Employee shall be reimbursed for the costs incidental to buying or building a primary residence within the Village of Oak Park, including real estate agent fees, title insurance, and other costs directly associated with the purchase or construction of the house. Said reimbursement may not exceed five thousand dollars (\$5,000).

Section 17: Indemnification

Beyond that required and to the extent permitted under Federal, State or Local Law, 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 occurring in the performance of Employee's duties as Village Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. The Employee may request and the Employer shall not unreasonably refuse to provide independent legal representation at Employer's expense. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his or her duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available.

Employee recognizes that Employer shall have the right to compromise and the Employee shall have no veto authority over any settlement, or an ability to settle any claim or suit without the specific approval of the Village Board. Further, Employer agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation arising from the Employee's service with the Village of Oak Park to which the Employee is a party, witness or advisor to the Employer. Such expense payments shall continue beyond Employee's service to the Employer as long as litigation is pending. Further, on and after the Employee's termination, Employer agrees to pay Employee reasonable consulting fees at an hourly rate of pay not to exceed the Employee's hourly base rate of pay at the time of his separation from the Village, and reasonable travel expenses when Employee serves as a witness, advisor or consultant to Employer regarding pending litigation.

Section 18: Bonding

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

Section 19: Other Terms and Conditions of Employment

The Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Oak Park Village Code or any other law.

- A. Except as otherwise provided in this Agreement, the Employee shall be entitled to the highest level of benefits that are enjoyed by other department heads or equivalent-level employees of the Employer as provided in the Oak Park Village Code, Personnel Rules and Regulations or by practice.

Section 20: Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

- (1) EMPLOYER: [Village President, Village of Oak Park, Village Hall, 123 Madison. Oak Park, Illinois, 60302
- (2) EMPLOYEE: Thomas W. Barwin (*Address to be included*)

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 21: General Provisions

- A. **Integration.** This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the Employer and the Employee not specifically stated in this Agreement are rendered null and void by this Agreement. The Employer and the Employee, by mutual written agreement, may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement.

- B. **Binding Effect.** This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

- C. **Effective Date.** This Agreement shall become effective on June 29, 2006

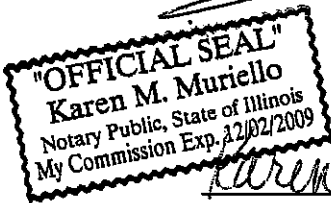
- D. **Severability.** The invalidity or partial invalidity of any portion of this Agreement does not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

VILLAGE MANAGER

By: *Thomas W. Barwin*
Thomas W. Barwin

VILLAGE OF OAK PARK

By: *David G. Pope*
David G. Pope
Village President



Karen M. Muriello
NOTARY

ATTEST:

Sandra Sokol
Sandra Sokol, Village Clerk

07.20.06