

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
MARCH 5, 2013 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Resolution authorizing execution of an amended employment agreement.	✓ Resolution Ordinance Motion Discussion Only	Enza Petrarca Village Attorney

SYNOPSIS

A resolution has been prepared authorizing execution of an amended employment agreement with David B. Fieldman, Village Manager.

STRATEGIC PLAN ALIGNMENT

The goals for 2011-2018 include *Exceptional Municipal Services*.

FISCAL IMPACT

Funding for the agreement has been budgeted in the FY13 General Fund.

RECOMMENDATION

Consideration on the March 5, 2013 active agenda.

BACKGROUND

The Village Council conducted an annual evaluation of the Village Manager's performance on January 15, 2013. The employment agreement between the Village and Village Manager will be amended by adding an additional three (3) months of severance payment in the event the Village Manager is terminated without cause, and increasing the base salary by 2%. With this amended agreement, the Village Manager will also receive a \$10,000 bonus based upon his performance in 2012.

ATTACHMENTS

Resolution
Agreement

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Mayor **DATE:** March 5, 2103
(Name)

RECOMMENDATION FROM: _____ **FILE REF:** _____
(Board or Department)

NATURE OF ACTION:

STEPS NEEDED TO IMPLEMENT ACTION:

- Ordinance
- Resolution
- Motion
- Other

Motion to authorize an amended employment agreement, a two percent (2%) raise and a \$10,000 bonus for performance in 2012 for Village Manager David Fieldman.

SUMMARY OF ITEM:

Adoption of this motion shall authorize an amended employment agreement, a two percent (2%) raise and a \$10,000 bonus for performance in 2012 for Village Manager David Fieldman.

RECORD OF ACTION TAKEN:

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF
AN AMENDED EMPLOYMENT AGREEMENT**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Amended Employment Agreement (the “Agreement”), between the Village of Downers Grove (the “Village”) and David B. Fieldman (the “Employee”), for employment services as Village Manager, as set forth in the form of the Agreement submitted to this meeting, is hereby approved.

2. That the Mayor and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Village Attorney shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

AMENDED EMPLOYMENT AGREEMENT

This Amended Employment Agreement (“Agreement”) is made effective and entered into this _____ day of _____, ~~2012~~2013, by and between the Village of Downers Grove, Illinois, a municipal corporation (“Employer”), and David B. Fieldman (“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

The term of this Agreement shall commence on ~~January 1, 2012~~March 5, 2013 and terminate in accordance with the terms of this Agreement.

Section 2: Duties and Authority

Employer agrees to employ Employee as Village Manager to perform the functions and duties specified in within the applicable Municipal Code of the Village of Downers Grove, applicable state statutes of the State of Illinois, this Agreement, and such other legally permissible and proper duties and functions, as may be assigned to Employee from time-to-time by the Village Council.

Section 3: Compensation

- A. Base Salary: Employer agrees to pay Employee an annual base salary of ~~\$160,000.00~~163,200.00, payable in bi-weekly installments at the same time that the other management-level employees of the Employer are paid.
- B. On an annual basis, at a mutually agreeable time, Employer will consider making adjustments to Employee’s Base Salary or other compensation based upon available market information, Employee’s annual performance reviews, and other measurable criterion as determined by the Village Council (including, but not limited to, Employee’s performance with respect to implementation of the Village’s Strategic Plan and Employee’s self-assessment report as to his annual performance). Any salary increase may be approved by motion and this Agreement shall be automatically amended to reflect any salary increase that is thereby provided.
- C. Employee will be eligible for potential bonuses, to be awarded in Employer’s unfettered discretion, similar to other management employees consistent with the “pay for performance” structure preferred by Employer.

Section 4: Health, Disability and Life Insurance Benefits

The Employer agrees to provide Employee with medical, dental, vision and life insurance under the same terms and conditions as such benefits are provided to other FLSA exempt, IMRF, non-union, management employees.

Section 5: Vacation and Sick Leave

- A. Employee shall be entitled to one hundred twenty hours (120) of vacation benefits annually (including “exempt employee vacation bonus” as provided for in the Village of Downers Grove Personnel Manual), sixteen (16) hours of floating holiday leave and ninety-six (96) hours of sick leave benefits annually. Such benefits shall accrue at the same rate as provided for all other FLSA exempt, IMRF, non-union, management employees.
- B. The Employee is entitled to use or bank all unused leave, in accordance with the Village of Downers Grove’s Personnel Manual. In the event the Employee’s employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for any appropriately accrued vacation time.

Section 6: Vehicle Allowance

The Employer agrees to pay to the Employee, during the term of this Agreement, and in addition to other salary and benefits herein provided that, the sum of \$5,000.00 per year, payable in twelve monthly installments, 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 all 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 Chicago-land area. For purposes of this Section, use of the car within the greater Chicago-land area is defined as travel to locations within a 75 mile radius of the Village of Downers Grove.

Section 7: Retirement Benefits

- A. The Employer agrees to enroll the Employee into the applicable state or local retirement system and to make all the required contributions on the Employee’s behalf, for both the Employer and Employee share required. It is expressly understood that the Employee’s share shall be deducted from the Employee’s Base Salary.
- B. Employer agrees to execute all necessary agreements provided by ICMA Retirement Corporation or other Section 457 deferred compensation plan for Employee’s participation in said supplementary retirement plan and pay a designated sum certain directed by Employee of Employee’s compensation (not any additional sums, but any allocated portions of Employee’s Base Salary) into the designated plan on the Employee’s behalf, in equal proportionate amount each pay period until the maximum contribution amount, if any, has been reached.

Section 8: General Business Expenses

- A. Employer agrees to pay for professional dues and subscriptions of the Employee that Employer deems 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 pay for travel and meal 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 Illinois Municipal League, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member, but as deemed material and appropriate in the unfettered discretion of the Employer. Upon pre-approval by Employer, Employee shall attend said professional and/or training events, and Employee shall not be required to exhaust vacation leave benefits for attendance.
- C. Employer acknowledges the value of having Employee participate and be directly involved in certain local civic clubs or organizations. Accordingly, Employer shall pay for the reasonable membership fees and/or dues to enable the Employee to become an active member in certain local civic clubs or organizations, as pre-approved by Employer.
- D. Employer shall provide Employee for home use such computer equipment as may be compatible with the Village's computer equipment and a Nextel (or comparable) communication device. In addition, the Village will pay for monthly internet access charges for broadband or equivalent service. All equipment shall at all times remain the property of the Village and shall upon termination of Employee's employment, be returned promptly to the Village.

Section 9: Termination

For the purpose of this Agreement, termination of Employee's employment shall occur when:

- A. The majority of the governing body votes to terminate the Employee at a duly authorized public meeting;
- B. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the Employer as representative of the majority of the governing body that the Employee should resign, at such time the Employee may declare a termination as of the date of the resignation; and/or
- C. Upon failure to cure a declared breach of this Agreement by either party within thirty (30) days of the declaration of breach. Written notice of a declaration of a breach of this Agreement shall be provided in accordance with the provisions of Section 18, below.

Section 10: Severance

- A. If the Employee is terminated without Cause, the Employer shall provide him a severance payment equal to ~~nine (9)~~ twelve (12) months annual Base Salary (inclusive of insurance benefits) at the then current rate of pay. Such severance shall be paid in equal bi-weekly installments unless otherwise agreed to by the Employer and the Employee.

- B. The Employee shall also be compensated for all accrued vacation time actually earned.
- C. If the Employee voluntarily resigns or is terminated for Cause, then the Employer is not obligated to pay any severance whatsoever under this Section 10, or otherwise.
- D. For purposes of this Agreement, “Cause” shall be defined as:
 - 1. The commission of a material act of fraud affecting or involving the Village or the performance of the Employee’s duties;
 - 2. The conviction of the Employee of any crime that involves moral turpitude or constitutes a felony in the relevant jurisdiction;
 - 3. Any demonstrable failure to substantially perform the duties of Village Manager, as may be assigned by the Employer, other than due to mental or physical incapacity;
 - 4. Any breach of any of the Employee’s obligations under this Agreement, and the failure to cure such breach subject to the 30-day notice and cure provision provided for in Section 9(C), above;
 - 5. Some substantial shortcoming that renders the Employee’s continuance in office or employment in some way detrimental to the discipline and efficiency of the service of the Village of Downers Grove; and/or
 - 6. Something that the law and sound public opinion recognize as good cause for the Employee to no longer occupy the position of Village Manager.

Section 11: Resignation

In the event that the Employee resigns his/her position with the Employer, the Employee shall provide a minimum of 30 days notice to Employer unless the parties hereto agree otherwise.

Section 12: Performance Evaluation

Employer shall annually review the performance of the Employee subject to a process, form, criteria, and format for the evaluation set by Employer. 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 or oral summary of the evaluation results. The final written or oral evaluation should be completed and delivered to the Employee within 30 days of the evaluation meeting, the date and time of which are to be mutually agreed upon.

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 professional work schedule.

Section 14: Outside Activities

The employment provided for by this Agreement shall be the Employee’s sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may elect to accept limited teaching, consulting

or other business opportunities with the understanding that such arrangements shall not constitute interference with nor a conflict of interest with his or her responsibilities under this Agreement and upon prior approval of the Employer.

Section 15: Moving and Relocation Expenses

Employee has previously re-located his residence to Downers Grove, Illinois and agrees to maintain his residence within the corporate boundaries of the Village of Downers Grove, Illinois, throughout the Term of this Agreement.

Section 16: Indemnification

Beyond that required 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 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; provided however that any such claim or award did not arise out of Employee's willful or wanton conduct by Employee.

Section 17: 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 Village of Downers Grove Municipal Code or any other law.

Section 18: Notices

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

(1) EMPLOYER:

Mayor
Village of Downers Grove
801 Burlington Ave.
Downers Grove, Illinois 60515

And also

Village Attorney
Village of Downers Grove
801 Burlington Ave.
Downers Grove, Illinois 60515

(2) EMPLOYEE: David B. Fieldman
Village of Downers Grove
801 Burlington Ave.
Downers Grove, Illinois 60515

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 19: 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 parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the term 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 ~~January 1, 2012~~ March 5, 2013.
- D. Severability. The invalidity or partial invalidity of any portion of this Agreement will 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.

EMPLOYER:

VILLAGE OF DOWNERS GROVE

Martin T. Tully, Mayor

EMPLOYEE:

David B. Fieldman