

CITY OF BATAVIA

DATE: September 25, 2018

TO: Committee of the Whole

FROM: Wendy Bednarek

SUBJECT: Approval of Resolution 18-112-R AMENDING THE EMPLOYMENT AGREEMENT WITH THE CITY ADMINISTRATOR (GS)

In July 2018 City Council discussed the performance of the City Administrator and recommended an increase of 4.5% to her salary and agreed to the City Administrator's request for certain modifications to her current employment agreement that include adding an additional week of paid vacation and eliminating her car allowance of \$500 per month and making this amount part of her salary.

Staff recommends approval of Resolution 18-112-R Amending the Employment Agreement of the City Administrator

Cc: Kevin Drendel, Jeffery Schielke

**CITY OF BATAVIA, ILLINOIS
RESOLUTION 18-112-R**

**AMENDING THE EMPLOYMENT AGREEMENT FOR THE CITY
ADMINISTRATOR**

WHEREAS, the City Administrator was appointed July 5, 2016 and has had no increase in salary since that date; and,

WHEREAS, the City Council finds her performance satisfactory and deserving of a 4.5% increase to her salary effective January 1, 2018; and,

WHEREAS, the City Administrator has requested certain other amendments to the Employment Agreement; and,

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Batavia, Kane and DuPage Counties, Illinois, that the Mayor and City Clerk are authorized to execute the Amended Employment Agreement between the City of Batavia and Laura M. Newman dated October 1, 2018, a copy of which is attached hereto as EXHIBIT "1."

CITY OF BATAVIA, ILLINOIS RESOLUTION 18-112-R

PRESENTED to and **PASSED** by the City Council of the City of Batavia, Illinois, this 1st day of October, 2018.

APPROVED by me as Mayor of said City of Batavia, Illinois, this 1st day of October, 2018.

Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Salvati				
2	Callahan					Wolff				
3	Meitzler					Chanzit				
4	Stark					Malay				
5	Atac					Uher				
6	Cerone					Russotto				
7	Brown					McFadden				
Mayor Schielke										
VOTE:		0 Ayes	0 Nays	0 Absent	0 Abstention(s)	counted as _____				
Total holding office: Mayor and 14 aldermen										

ATTEST:

Ellen Posledni, City Clerk

Employment Agreement
between
The City of Batavia, Illinois
and
LAURA M. NEWMAN

WHEREAS, the City Administrator and the City have agreed to modify the terms of the prior Employment Agreement between LAURA M. NEWMAN and the City of Batavia; and

WHEREAS, the City's intent is to provide stability to both the City and the City Administrator in establishing a long term employment relationship and anticipates a stable and long term working relationship, provided that the Administrator meets the operational and management requirements of the position, and conducts herself in accordance with the tenets and principles of the ICMA Code of Ethics; and

WHEREAS, this Agreement shall define the terms and conditions of employment of the City Administrator in Batavia, Illinois.

NOW THEREFORE, this Agreement is made and entered into as of the first day of October, 2018, by and between the City of Batavia, Illinois a municipal corporation, (hereinafter called "Employer") and LAURA M. NEWMAN, (hereinafter called "Employee"), as follows:

Section 1: Term

This Agreement shall remain in full force in effect to the extent legally permissible from and after October 1, 2018, ("Effective Date") until terminated by Employer or Employee as provided in Section 9, 10 or 11 herein below.

Section 2: Duties and Authority

A. Employer agrees to employ LAURA M. NEWMAN as City Administrator to perform the functions and duties specified in the City Code and Ordinances of the City of Batavia, and to perform such other legally permissible and proper duties and functions as authorized and directed by Batavia City Council.

Section 3: Compensation

A. Salary. Employer agrees to pay Employee an annual base salary of \$178,425 retroactive to January 1, 2018, payable bi-weekly in accordance with the Employer's usual payroll schedule.

B. Annual Performance and Salary Review. Consideration shall be given on an annual basis to an increase in compensation dependent upon the results of a performance evaluation conducted pursuant to the provisions of Section 12 of this Agreement. Increased compensation may take the form of a salary increase and/or bonus.

C. Automatic Amendment for Adjustments. This Agreement shall be automatically amended to reflect any salary adjustments that are authorized by Batavia City Council.

Section 4: Health, Disability and Life Insurance Benefits

A. Standard Benefits. The Employer agrees to provide health, hospitalization, surgical, vision, dental and comprehensive medical insurance benefits for the Employee and her dependents equal to that which is provided to all other non-collective bargaining unit employees of the City of Batavia.

B. Life Insurance. The Employer shall provide term life insurance and pay the premium in the amount of insurance equal to one times base salary. The Employee shall have the right to name the beneficiary of the life insurance policy.

C. Additional Benefits. Employee is automatically entitled to any other standard benefits available to non-collective bargaining unit employees of the City as may now exist or be made available during the term of this contract.

Section 5: Vacation and Sick Leave

A. Vacation . As of January 1, 2018, Employee shall be entitled to four (4) weeks' vacation granted every January 1.

B. Annual Vacation and Sick leave Awards . The Employee shall be awarded sick leave and vacation leave in accordance with other non- collective bargaining City employees.

C. Compensation for Leave; Effect of Termination. The Employee is entitled to accrue all allowable unused vacation leave, as provided for non-collective bargaining employees , except in the event that the Employee's employment is terminated, either

voluntarily or involuntarily, in which case compensation for accrued leave shall be determined according to Sections 9 and 10.

D. Additional Leave. Employee is automatically entitled to any other standard leave available to non-bargaining unit employees of the City as may now exist or be made available during the term of this contract.

Section 6: Intentionally left blank.

Section 7: Retirement

A. IMRF Enrollment. The Employee will be enrolled in the Illinois Municipal Retirement Fund (IMRF), and both Employee and Employer agree to make their assigned payments to the IMRF system as required.

B. Deferred Compensation Plan Participation. In addition to the Employer's payment to the state retirement system referenced above, Employer agrees to execute all necessary agreements provided by the ICMA Retirement Corporation (ICMA-RC) deferred compensation plan for Employee's continued participation in said supplementary retirement plan on the Employee's voluntary election to participate.

Section 8: General Business Expenses

A. Professional Dues and Subscriptions. Employer agrees to pay for professional dues and subscriptions of the Employee necessary for full participation in national, regional, state and local associations and organizations necessary for the Employee's continued professional growth and advancement, and for the good of the Employer, including but not limited to IML and ILCMA.

B. Travel Expenses. Employer agrees to pay for the most economical travel and reasonable 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 Illinois Municipal League, the Illinois City and County Management Association, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member.

C. Education Expenses. Employer agrees to pay for tuition, registration fees, and 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, as well as the professional development plan approved by the Mayor pursuant to Section 15. Employee and Employer will agree on a process for advance approval of such professional development expenses that exceed \$250 per event, requires overnight travel, or requires absence from the office for more than one-half day.

D. Community Involvement Expenses. Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs and organizations. Accordingly, Employer agrees to pay for the reasonable membership

fees and/or dues to enable the Employee to become an active member of the Batavia Rotary Club.

E. Technology. The Employer shall provide Employee with the use of a laptop computer, City software, City e-mail, and an allowance to cover the cost of a cell phone required for the Employee to perform the job and to maintain communication with the City Council and City staff consistent with established City practices..

F. Documentation. Sections A through E. of Section 8 -above will be subject to annual appropriations and applicable Employer expense policies. The Finance Director is authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits, submitted in accordance with the Employer's policies relating thereto.

Section 9: Termination

A. Termination with Severance. Any of the following may be considered a termination of this Agreement for which severance shall be paid to the Employee:

1. A determination by the Mayor to remove the City Administrator from office, which termination with the consent of the City Council at a duly authorized public meeting;
2. Resignation as a result of a substantial reduction of the role, powers, duties, authority, or responsibilities of the Administrator position in the City Code by action by the City Council;
3. Resignation as a result of reduction of the salary, other 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;
4. Resignation of the Employee following a request for resignation not as a result of cause made in writing by a representative of or representatives of a majority of the City Council;
5. Material Breach of this Agreement by the Employer, which breach continues thirty (30) after notice of the breach in writing and failure to cure the breach. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 20.
6. A determination by the City Council to terminate the Agreement during the six (6) months immediately following the seating and swearing-in of one or more new City Council members following an election, and during such time that Employee is willing and able to perform his duties under this Agreement.

B. Termination without Severance. Termination shall be without severance if termination occurs as a result of resignation by the Employee for reasons not identified in Section A above, or termination is for cause. **C.**

Cause. "Cause" means, but is not limited to,

1. A substantial violation or multiple violation of the ICMA Code of Ethics or any

applicable state ethical law relating to the performance of the duties and authority of the Administrator;

2. A material breach of the terms of this Agreement that occurs or continues after notice in writing and thirty (30) days to cure;

3. Refusal or repeated failure to follow expressly stated or formally adopted policy of the City;

4. An act or threat of violence or repeated acts of harassment of City staff or members of the public;

5. Stealing or knowingly misappropriating City funds or property for personal benefit or other benefit to the detriment of the City;

6. Lying or falsifying records;

7. Extreme insubordination to the City Council

8. Failing an alcohol or drug test; or

9. Conviction of a felony or any crime that involves dishonesty, illicit drugs, alcohol or sexual activity.

Section 10: Severance

When employment is terminated as defined in Section 9.A for which severance is to be paid, the Employee shall be entitled to the following severance benefits:

A. Severance Payment. The Employee shall receive a minimum payment equal to six (6) months' salary at the current rate of pay to be paid in a lump sum unless otherwise agreed to by the Employer and the Employee.

8. Accrued Leave. The Employee shall also be compensated for accrued, earned but not used vacation leave and all paid holidays occurring during the six (6) month severance period.

C. Benefits. For a period of six (6) months following the date of termination, or until such time as equivalent benefits are available through a new employer, whichever comes first, the Employer shall pay the costs to continue the following benefits:

1. Employer's share of health insurance or COBRA benefits for the employee and all dependents as provided in Section 4A;
2. Life insurance as provided in Section 48;
3. Out placement services, should the Employee desire them, in an amount not to exceed \$10,000; and
4. Any other standard benefits available to non-collective bargaining unit employees of the City.

Section 11: Resignation

If the Employee voluntarily resigns his position with the Employer, other than for the provisions of Sections 9. A. 1, and 4, the Employee shall provide the Employer with not less than thirty (30) days advance written notice of his resignation, unless the parties agree otherwise.

Section 12: Performance Evaluation

A. Annual Review. Employer shall review the performance of the Employee on no less than an annual basis.

8. Evaluation Process. The evaluation 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 thirty (30) days of the evaluation meeting.

Section 13: Hours of Work

It is expected that the Employee will typically work during normal City Hall office hours. However, it is recognized that the Employee must devote a great deal of time outside those normal office hours on business for the Employer. Accordingly, and to that end, Employee may establish her own work schedule, subject to reasonable direction by the Mayor. Employee is not eligible for overtime or paid compensatory hours.

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, with the consent of the Mayor, elect to accept limited teaching, consulting or other business opportunities as long as such arrangements do not interfere with or cause a conflict of interest with Employee's responsibilities and primary duties pursuant to this Agreement.

Section 15: Professional Development Plan

The Employer and Employee recognize the importance of career development and keeping up with contemporary practices in City Administration and municipal affairs. In

addition to the in service career training outlined in Sections 8 A, B, and C of this Agreement, the Employee shall within 9 months of the adoption of this Agreement file with the Mayor a professional development plan which focuses on increasing

knowledge and proficiency of the City Administrator in Public Administration,

City Administration, and technology practices related thereto. Such a plan may or may not be degree oriented, and is subject to the approval of the Mayor, who may modify the plan to reflect the specific needs of the City of Batavia. After the professional development plan is approved by the Mayor, the Employee shall take all reasonable measures to implement the plan. Tuition reimbursement for implementation of this plan shall be consistent with the educational reimbursement policies of the City of Batavia.

Section 16: Indemnification

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 and arising out of the course and scope of Employee's duties as City Administrator, or resulting from the exercise of judgment or discretion in connection with the performance of the duties or responsibilities of the City Administrator, unless the act or omission involved a finding of willful or wanton conduct. 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 her duties and occurring within the course and scope of his employment, regardless if the Employee is still employed by the City of Batavia. 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.

Employer agrees to pay Employee's reasonable litigation expenses, including travel expense, throughout the pendency of any litigation to which the Employee is a party or witness. Such expense payments shall continue beyond Employee's service to the Employer as long as the litigation is pending.

Section 17: Bonding

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance, and professional liability insurance.

Section 18: Other Terms and Conditions of Employment

The Employer, upon agreement with Employee, may provide for such other terms and conditions of employment as it may determine from time to time relating to the performance and duties of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Code of Batavia, or applicable law.

Section 19: 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, unless designated otherwise by either party in writing:

EMPLOYER:

Mayor
City of Batavia
100 North Avenue
Batavia, Illinois 60510

EMPLOYEE:

Laura M. Newman
345 North Batavia Avenue
Batavia, Illinois 60510

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 20: General Provision

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 may only amend this Agreement by mutual agreement in writing. Such amendments shall be incorporated and made a part of this Agreement when reduced to writing and signed by both parties.

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 October 1, 2018.

D. Severability. The 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.

Adopted and approved by the Batavia City Council as of the this 1st (1) day of October, 2018.

MAYOR Jeffrey Schielke

Laura M. Newman

Date: _____, 2018

Date: _____, 2018

Attested:

City Clerk