

TOWNSHIP OF WEST ORANGE**EMPLOYMENT AGREEMENT**

THIS AGREEMENT, effective on September 1, 2011 is made by and between the **TOWNSHIP OF WEST ORANGE ("Township")** having municipal offices located at 66 Main Street, West Orange, New Jersey 07052 and **JOHN O. GROSS** (hereinafter called "Employee"),

WITNESSETH

WHEREAS, the Township is desirous of employing the Employee; and

WHEREAS, the Township is desirous of filling the open position of Chief Financial Officer; and

WHEREAS, the Township is desirous of creating, by Ordinance, the position of Director of Finance; and

WHEREAS, the Township has considered and determined that Employee is competent and qualified to perform the duties assigned to the position of Chief Financial Officer *and Director of Finance*; and

WHEREAS, the employment of Employee to serve as Chief Financial Officer *and Director of Finance* is necessary for the efficient operation of the Township;

NOW, THEREFORE, it is agreed by and between the parties hereto, as follows:

1. **APPOINTMENT AND EMPLOYMENT**

The Mayor, with the advice and consent of the Township Council for the Township has appointed Employee as the Chief Financial Officer *and Director of Finance*; subject to the execution of this Agreement.

2. **ACCEPTANCE/EMPLOYEE MANUAL**

Employee accepts the appointment and agrees to perform the duties and obligations set forth in this agreement and any and all governing statutes, provisions of the municipal code for the Township, and any additional administrative and managerial duties which may be imposed by the Mayor for the Township from time to time. Employee hereby accepts and agrees to comply with all terms and provisions of the Township Employee Policy and Procedures Manual and any other written directive or memoranda issued from time to time.

3. **TERM**

It is hereby agreed that the employment term of Employee by the Township as Chief Financial Officer and Director of Finance shall be for a period commencing on October 1, 2011 and ending September 30, 2015.

4. **SALARY**

Employee's annual salary as Chief Financial Officer is \$130,000 payable in weekly or bi-weekly increments as determined by the Township at its sole discretion ("Salary"). Beginning January 1, 2012, Employee's annual Salary as Chief Financial Officer will be \$135,000 payable in weekly or bi-weekly increments as determined by the Township at its sole discretion. Salary includes but is not limited to longevity and any other compensation or fee. Employee shall serve as Director of Finance with no additional compensation.

5. **INTERIM CONSULTATION FEE**

Employee shall serve as a consultant beginning September 1, 2011 through September 30, 2011 ("Consulting Term") for a total remuneration of \$10,000 as a consulting fee. This shall be paid as 1099 compensation; no benefits shall be paid or accrue during the Consulting Term. During the Consulting Term, the Employee shall be responsible to work with the current Chief Financial Officer and Township to ensure that the Employee becomes fully versed in all of the Chief Financial Officer's duties and responsibilities. It is understood that during the Consulting Term, the Employee will continue to be employed by the Village of South Orange but shall expend whatever time and efforts are necessary to meet his responsibilities hereunder.

6. **DUTIES**

Employee's responsibility shall be consistent with those set forth in New Jersey State statutes, New Jersey Local Finance Board regulations, the Municipal Code for the Township, any additional duties and responsibilities as determined by the Mayor. The goals and objectives set forth on Schedule "A" annexed hereto are incorporated herein by reference.

7. **WORK HOURS**

The regular work schedule shall be a minimum of eight (8) hours per day with an hour for lunch. In addition, Employee shall be required to attend all meetings of the governing body and committee meetings and agency meetings as required by the Mayor for the Township. There shall be no additional compensation paid by the Township for any additional hours worked as required to accomplish the duties and responsibilities of Chief Financial Officer. Any compensation by any other party shall be approved in advance in writing by the Township.

8. **FULL TIME**

During the term of this agreement, Employee agrees that he/she shall devote his/her full time and attention to the performance of his/her duties. He/she may accept part-time employment, provided that there is no Township business which would otherwise require his/her presence or attention at those specific times and provided further, that a request for approval to do so shall first, be submitted to the Mayor in writing, which approval shall not be unreasonably withheld. In no event, shall any such employment be in conflict with the interest of the Township, nor shall it create the appearance of such a conflict. The prohibition extends to the holding of any professional or community offices, unless approved in writing in advance by the Mayor. Notwithstanding the foregoing, it is understood and agreed that the Employee may provide certain services to the Village of South Orange for not more than ten (10) hours per week to occur at the facilities of South Orange Village; provided, however, that the Employee shall always be available to the Township and that the services to the Village of South Orange shall not interfere with this Agreement. The compensation for these services is to be negotiated exclusively between the Employee and the Village of South Orange Village and not deducted from the compensation specified in paragraph 4.

9. **BENEFITS**

During the term of this agreement, Employee and the members of his/her family who qualify shall be provided with all health benefits provided to the Township's employees during that time as may be modified from time to time as determined by the Township including but not limited to applicable co-pay obligations. The benefits shall include, hospitalization, dental, prescription and life insurance. Employee shall also have coverage under the Public Employee Retirement System. Upon retirement, Employee shall be entitled to any accumulated sick and vacation days as well as any other benefits generally received by other Township employees as per the Township's policies. The Township further agrees to defend and indemnify Employee against any and all claims arising solely within the scope of his/her employment with the Township. The Township, at its sole discretion, shall determine all decisions regarding selection of counsel, strategy and other aspects of these benefits including but not limited to indemnification.

10. **VACATION DAYS**

Employee shall be entitled to receive twenty (20) vacation days per year which shall be used in accordance with Township Policy. Employee shall receive personal days at the same level as all other Township employees. Employee shall also receive the same time off for holidays as all other Township employees.

11. **SICK TIME**

Employee shall be entitled to fifteen (15) paid sick days each year as per Township policy. At any time the Township may require him/her to submit to an independent medical examination for the purpose of verifying the nature and extent of any sickness, illness or condition.

12. **PERFORMANCE EVALUATION**

The Township reserves the right to conduct a performance evaluation periodically. Both parties agree that the renewal of this Agreement is at the sole discretion of the Mayor.

13. **EXPENSES**

The Township shall reimburse Employee for reasonable and occasional expenses incurred in connection with the duties of Chief Financial Officer provided that such expenses are approved by the Mayor. Any reimbursement for mileage shall be strictly in accordance with the Internal Revenue Service Guidelines. No travel more than fifty (50) miles from the Municipal Building at 66 Main Street, West Orange, New Jersey shall be permitted unless approved in advance in writing by the Mayor or his designee. Any expense reimbursement must be sought within thirty (30) days of its incurrence or be forfeited. Any expense reimbursement request must be accompanied by full and complete documentation, in the Township's sole discretion, accompanied by a certification that the travel was solely for the Township's purposes.

14. **REMOVAL/TERMINATION OF AGREEMENT**

The following provisions shall govern the termination of this Agreement:

a. Death. This Agreement shall terminate immediately upon the death of Employee. In such event, Township shall pay to Employee's surviving spouse or estate (i) the portion of Salary earned through the date of death; and (ii) business expenses, if any, advanced by Employee but not yet reimbursed, pursuant to the policy of Township.

b. Disability. This Agreement shall terminate upon the good faith determination by Township, after consultation with a physician selected by Township, that Employee has incurred a "permanent and total disability," as such term is defined in Section 22(e)(3) of the Internal Revenue Code of 1986, as amended. In such event, Township shall pay to Employee (or his spouse or estate, if appropriate) (i) the portion of his Salary earned through the date of the determination of permanent and total disability; and (ii) business expenses, if any, advanced by Employee but not yet reimbursed, pursuant to policy of Township.

c. Termination for Cause. Notwithstanding anything in the contrary contained herein, Township may discharge Employee at any time, without notice, for (i) Employee's negligent conduct or willful misconduct in connection with the performance of the Services, including but not limited to dishonesty, embezzlement or misappropriation of funds, (ii) Employee being convicted of a felony (whether or not related to the performance of the Services), (iii) any violation of any express direction or any reasonable rule or regulation established by Township from time to time regarding the conduct of the Business which is not cured within thirty (30) days following the receipt by Township of a written notice with respect thereto, or (iv) any violation by Employee of the terms and conditions of this Agreement which is not cured within thirty (30) days following the receipt by Employee of a written notice with respect thereto (collectively, "Cause"). In such event, Township shall pay Employee (i) the portion of his Salary earned through the date of termination of this Agreement; and (ii) reimbursable expenses, if any, advanced by Employee but not yet reimbursed, pursuant to policy of Township.

d. Voluntary Termination by Employee. If Employee voluntarily terminates this Agreement, Township shall pay Employee (i) the portion of his Salary earned through the date of termination; and (ii) business expenses, if any, advanced by him but not yet reimbursed, pursuant to policy of Township.

15. BOOKS AND RECORDS/CONFIDENTIAL INFORMATION

At the termination or this agreement, Employee shall turn over to the Township all books, records and other property that may belong to the Township and be in his/her custody and possession. All books and records maintained during the course of employment are the sole property of Township and shall be maintained at the Township's place of business.

a. Employee acknowledges that Township currently has and may subsequently develop certain confidential information, including without limitation employee records, personnel information, HIPAA protected information, investigative files and information, and any other materials or data of any kind that have been or may be furnished to Employee by Township or developed by Employee on behalf of Township or at Township's direction or for Township's use or otherwise in connection with Employee's employment hereunder, whether written or oral, tangible or intangible, electronic or verbal, whether machine readable or otherwise, which Township holds confidential and that is not disclosed to and is not generally known by the public (collectively, the "Confidential Information").

b. Employee acknowledges that, while Employee is employed by Township, Employee may have access to such Confidential Information and agrees that all Confidential Information that Employee previously obtained while employed by Township, and that Employee may obtain, acquire or have access to, both during and after any expiration or termination of Employee's employment, and for all purposes, shall be regarded and maintained by Employee in the strictest confidence, and shall not be disclosed, communicated or divulged, directly or indirectly, to any unauthorized person without the prior written consent of Township, except as may otherwise be required by law. Employee agrees that all written materials and documents constituting Confidential Information are and shall remain the sole property of Township. Upon any expiration or termination of Employee's employment with the Township for any reason whatsoever, or at such other time as may be requested by Township, Employee shall immediately return all such materials and all copies thereof in Employee's possession or under Employee's control to Township.

c. In the event of a breach or threatened breach by Employee of this agreement, Township shall be entitled to injunctive relief restraining and prohibiting Employee from utilizing or disclosing, in whole or in part, such material, or from rendering any service to any person, firm, corporation, association, or other entity to which such material might be divulged, without the necessity of posting any bond. Nothing herein shall be construed as prohibiting Township from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of damages from Employee, and an equitable accounting of all earnings, profits and other benefits arising from such violation, which rights shall be cumulative and in addition to any other rights or remedies to which Township may be entitled.

16. PRIOR AGREEMENTS

Employee represents to Township (a) that there are no restrictions, agreements or understandings whatsoever to which Employee is a party which would prevent or make unlawful Employee's execution of this Agreement or Employee's employment hereunder (b) that Employee's execution of this Agreement and Employee's employment hereunder shall not constitute a breach of any contract, agreement or understanding, oral or written, to which Employee is a party or by which Employee is bound and (c) that Employee is free and able to execute this Agreement and fully understands all the terms and conditions contained herein.

17. MISCELLANEOUS

a. Neither the failure nor any delay on the part of Township to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

b. Controlling Law. This Agreement and all questions relating to its validity, interpretation, performance and enforcement (including, without limitation, provisions concerning limitations of actions), shall be governed by and construed in accordance with the laws of the State of New Jersey, notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary, and without the aid of any canon, custom or rule of law requiring construction against the draftsman.

c. Waiver of Right To Jury. Employee waives the right to trial by jury to the fullest extent provided by law.

d. Notices. All notices hereunder shall be sufficiently given for all purposes hereunder if in writing and delivered personally, sent by documented overnight delivery service or, to the extent receipt is confirmed, telecopy, telefax or other electronic transmission service to the appropriate address or number as set forth below:

If to the Company:

Township of West Orange
66 Main Street
West Orange, NJ 07052
Attention: Municipal Clerk

If to Employee:

To the address specified for Employee in the Company's records.

Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

e. Binding Nature of Agreement. This Agreement shall be binding upon and inure to the benefit of Township and its successors, assigns and legal representatives, and Employee and Employee's heirs, permitted assigns and legal representatives.

f. Provisions Separable. The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

g. Entire Agreement. This Agreement contains the entire understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as herein contained. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof.

h. Paragraph Headings. The paragraph headings in this Agreement are for convenience only; they form no part of this Agreement and shall not affect its interpretation.

i. Modifications. This Agreement may not be modified or amended orally but only by written agreement signed by Township and Employee.

j. No Assignment by Employee. Employee acknowledges that the services to be rendered by Employee are unique and personal. Accordingly, Employee may not assign or delegate any of his rights or obligations hereunder without the prior written consent of Township.

k. Counterparts. This Agreement may be executed and delivered by facsimile in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

WITNESS:

ATTEST:

KAREN J. CARNEVALE
Township Clerk

JOHN O. GROSS

TOWNSHIP OF WEST ORANGE

By: _____
ROBERT D. PARISI
Mayor

435388_1.DOC