03/20/24 ORDINANCE NO. 2024-4392

ORDINANCE APPROVING AND AUTHORIZING THE ENGAGEMENT OF ATTORNEY DAVID ETERNO TO PROVIDE CERTAIN LEGAL SERVICES FOR THE VILLAGE AS THE VILLAGE'S ADMINISTRATIVE ADJUDICATION HEARING OFFICER, AS AN INDEPENDENT CONTRACTOR

WHEREAS, the Village of Barrington is an Illinois Home Rule municipal corporation located in Cook and Lake Counties, Illinois (hereinafter, the "Village"); and

WHEREAS, representatives of the Village solicited and received proposals from and interviewed three (3) attorneys with regard to providing certain legal services to the Village to serve as the Hearing Officer relative to the Village's Administrative Adjudication program; and

WHEREAS, the Village desires to accept the proposal of Attorney David Eterno in this regard; and

WHEREAS, Attorney David Eterno has indicated to the Village that he is willing to provide the required legal services to the Village of Barrington as its Administrative Adjudication Hearing Officer effective June 1, 2024; and

WHEREAS, the Corporate Authorities of the Village desire to approve the engagement of and retain the services of Attorney David Eterno to provide the required legal services for the Village as the Village's Administrative Adjudication Hearing Officer, as an independent contractor:

NOW THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Barrington, Cook and Lake Counties, Illinois, in exercise of the authority of this Village as a Home Rule unit, as follows:

SECTION 1: That the Corporate Authorities of the Village of Barrington find that the facts as stated in the preamble hereof are true and correct and are incorporated herein by reference as its findings as if fully set forth herein.

SECTION 2: That the Board of Trustees hereby approves the engagement by the Village of Attorney David Eterno, not as an employee of the Village but as an independent contractor, and does advise and consent to the appointment by Village President Darch of Attorney David Eterno as the Administrative Adjudication Hearing Officer for the Village effective June 1, 2024, and said attorney is hereby authorized to provide legal services to the Village as the Village's Administrative Adjudication Hearing Officer as required for the Village's Administrative Adjudication System at the rate of One Hundred Seventy-Five Dollars ($175.00) per hour, payable in quarter-hour segments ($43.75 per 15-minute segment), with a one (1) hour minimum billing time, for professional services provided to the Village pursuant to a certain Independent Contractor Agreement Between David Eterno and Village of Barrington, a copy of which Agreement is attached hereto as Exhibit A and thereby made a part hereof, execution of which Agreement is hereby approved, authorized, and ratified.

SECTION 3: The Village President, or her designee, and the Village Clerk are authorized to execute such documents as may be consistent with the approval and authorization herein granted.

SECTION 4: This Ordinance shall take effect from and after its passage and approval as provided by law.

PASSED THIS 8 DAY OF April, 2024, BY ROLL CALL VOTE AS FOLLOWS:

AYES: Trustees Johnson, Holen, Andrade, Duncan, Nigro, 3 President Darch

NAYS: None

ABSENT: None

ABSTAIN: None

RECUSE: None

APPROVED THIS 8 OF April, 2024

Karen Darch

Karen Darch, Village President

ATTESTED AND FILED THIS

8TH DAY OF APRIL, 2024

Tony Ciganek

Tony Ciganek, Village Clerk

(SEAL)

Village of Barrington CORPORATE SEAL Cook & Lake Counties, IL

EXHIBIT A

Independent Contractor Agreement
Between David Eterno and Village of Barrington

INDEPENDENT CONTRACTOR AGREEMENT
BETWEEN
DAVID ETERNO
AND
VILLAGE OF BARRINGTON, IL

THIS INDEPENDENT CONTRACTOR AGREEMENT is made and entered into as of this 28th day of March, 2024 (the "Effective Date"), by and between **DAVID ETERNO** (the "Attorney"), and the **VILLAGE OF BARRINGTON** ("Village").

WHEREAS, David Eterno is an attorney licensed to practice law in the State of Illinois, in good standing; and

WHEREAS, the Village desires to retain the services of the Attorney to serve in its administrative adjudication system as the Village's "Administrative Hearing Officer", conducting hearings of the type as directed by the Village Manager and therefore to perform duties commensurate with this function, including but not limited to reviewing appropriate ordinances, rules, forms and related documents pertaining to this system, and presiding over the hearings as the Village's Administrative Hearing Officer; and

WHEREAS, the Attorney desires to be retained by the Village in such capacity, and the Village desires to retain the Attorney in accordance with the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of such consideration are hereby acknowledged, the parties agree as follows:

Section 1. Retention. Subject to the provisions of this Agreement, the Village hereby retains David Eterno to serve as the Village's "Administrative Hearing Officer", and David Eterno hereby accepts retention by the Village to perform the duties of the Administrative Hearing Officer pursuant to and as set forth in Chapter 19, "Administrative Adjudication System/Code Hearing Department" of Title 1 of the Village of Barrington Village Code and as otherwise described herein. The parties acknowledge and understand that the hearings of the Village's Administrative Adjudication System are currently held at the Village of Barrington Village Hall, 200 S. Hough Street, Barrington, IL, at 4:00 p.m. on the third Thursday of each month. The Village and the Attorney shall reasonably establish any other day(s) the Attorney shall perform his duties. The Attorney shall act at all times as an independent contractor and not as an employee of the Village.

Section 2. Attorney's Duties, Responsibilities, and Substitutions.

All duties of the Attorney as set forth in the Village's Ordinances, and specifically, Chapter 19, "Administrative Adjudication System/Code Hearing Department" of Title 1 of the Village of Barrington Village Code, including but not limited to:

1. Presiding over and adjudicating hearings conducted within the Administrative Adjudication system for the Village, held pursuant to all relevant provisions of the Village Ordinance and relevant statutes of the State of Illinois.

2. Reviewing and providing input on notices, documents, and processes used in the Village's system of administrative hearings, as directed.

3. Performing any and all other tasks which are necessary, incidental, or helpful to the Administrative Hearing Officer's duties and hearing process under the ordinance and to his obligations as imposed by this agreement and by the Illinois Rules of Professional Conduct.

4. Demonstrate continuous effort to improve and/or uphold hearing procedures, and work cooperatively and jointly to provide for the fair and efficient conduct of hearing for the citizens of Barrington and all other persons and entities appearing before the Administrative Hearing Officer.

In the event that David Eterno is unable to preside over any hearing session, as contracted within this Agreement, the Village and the Attorney agree that Joan Vasquez, a duly licensed attorney within the State of Illinois and in good standing with the Illinois Attorney Registration Disciplinary Committee, shall serve in his stead as his substitute under all terms and conditions as set forth within this Agreement, provided Attorney provides the Village with reasonable notice before any such substitution. The Village reserves the right to retain a different substitute attorney to preside over any hearings for any session upon providing twenty-four hours' notice to Ms. Vasquez prior to the relevant hearing session.

Section 3. Nature of Agreement. The parties acknowledge and agree that the Attorney will be retained as an independent contractor of the Village, not as an employee. Nothing in this Agreement shall be construed to create an employer/employee relationship between the parties. The Attorney is not authorized to enter into contracts or agreements on behalf of the Village or to otherwise create obligations of the Village to third parties.

Taxes and Other Obligations. The Attorney shall report for Federal and state income tax purposes all amounts received by him under this Agreement as income. The Attorney shall have sole responsibility for the withholding of all Federal and State income taxes, unemployment insurance tax, social security tax, and other withholding with respect to payments made under this Agreement. The Attorney shall not be entitled to any employment benefits of any kind provided by the Village to its employees including, but not limited to, vacation pay, sick leave pay, retirement plan and related benefits, social security, workers' compensation insurance, disability insurance, employment insurance benefits, and other benefits of any kind provided by the Village to its employees. The Attorney expressly acknowledges the Attorney's obligation to pay self-employment (if required by law), local, state and Federal taxes, and expressly agrees to make all such payments as may be required by applicable law. The Attorney acknowledges that the Village will report compensation paid to the Attorney on a Form 1099 (if required by law) at the end of the year during which the Attorney's services were provided.

Section 4. Term of Retention. The term of the Attorney's retention hereunder shall commence on June 1, 2024 (the "Effective Date") and will continue for two (2) consecutive years from that Effective Date, and thereafter shall continue for successive terms of two (2) years or unless earlier terminated by either party upon thirty (30) days prior written notice to the other party.

Section 5. Compensation. During the Term of this Agreement, for all services rendered by the Attorney pursuant to this Agreement, the Village shall compensate the Attorney for professional services rendered under this Agreement at the rate of One Hundred Seventy-Five ($175.00) Dollars per hour of service performed, in quarter hour increments ($43.75 per 15 minute segment), with a 1 hour billing minimum. The Attorney shall not bill the Village for any travel time to/from the Attorney's office to/from the Village's principal location, nor for travel to/from the site of administrative hearings being conducted under this Agreement for the Village, nor for any copying and faxing of documents. The Attorney shall be responsible for submitting monthly timesheets/invoices of services performed for review and approval by the Village. The Village shall pay the Attorney within thirty (30) calendar days after submission of the Attorney's invoice. Notwithstanding anything contained herein to the contrary, the Village's obligation to pay any compensation pursuant to this Agreement shall cease upon termination of the Term of this Agreement for any reason or no reason, provided, the Village shall pay the Attorney all compensation which accrues through the date of termination of the Term.

Section 6. Attorney's Representations and Warranties. The Attorney represents and warrants to the Village that the Attorney (a) is duly licensed and in good standing in the State of Illinois as an attorney; (b) has no knowledge of any administrative proceedings or other matters which would affect his licensure within the State of Illinois; (c) agrees that if his license is suspended or terminated by the Attorney Registration and Disciplinary Commission, this contract will be immediately terminated, and (d) agrees the foregoing representations shall be a continuing obligation.

Section 7. Village's Representations and Duties. The Village represents and warrants to the Attorney (a) to provide the Attorney with copies of, or full access to, all pertinent Village ordinances; (b) to provide the Attorney with copies of all relevant policies, rules and regulations related to all matters to be heard via an administrative adjudication hearing process; and (c) to provide the Attorney with any appropriate facilities and support staff for any "on-site" duties performed.

Section 8. Notices. Any and all notices, demands, requests, consents, designations and other communications required or desired to be given pursuant to this Agreement will be given in writing and will be deemed duly given upon personal delivery, or on the third day after mailing if sent by certified mail, postage prepaid, return receipt requested, or on the day after deposit with a nationally recognized overnight delivery service which maintains records of the time, place and receipt of delivery, or upon receipt of a confirmed facsimile transmission, and in each case to the person and address set forth below, or to such other person or address which the Village or the Attorney may respectively designate in like manner from time to time.

Section 9. Governing Law. This Agreement shall be subject to and governed by the laws of the State of Illinois. The Attorney and the Village irrevocably agree and hereby consent and submit to the exclusive jurisdiction of the Circuit Court of Cook County, Illinois, with regard to any actions or proceedings arising from, relating to or in connection with this Agreement. The Attorney and the Village hereby waive their respective right to transfer or change the venue of any litigation filed in the Circuit Court of Cook County, Illinois.

Section 10. Severability. If any provision contained in this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision will be severed here-from and such invalidity or unenforceability will not affect any other provision of this Agreement, the balance of which will remain in and have its intended full force and effect; provided, however, if said invalid

or unenforceable provision may be modified so as to be valid and enforceable to the maximum extent permitted by law.

Section 11. Entire Agreement. This Agreement constitutes the entire agreement between the Village and the Attorney with respect to the subject matter hereof, and supersedes any and all prior and contemporaneous oral or written agreements between the Village and the Attorney with respect to the subject matter hereof.

Section 12. Interpretation. This Agreement has been prepared jointly by the parties hereto after arms length negotiations, and any uncertainty or ambiguity herein shall be interpreted against any party, but according to the applicable rules of construction and interpretation of contracts.

Section 13. Waiver. No waiver of any provisions of this Agreement shall be valid, unless such waiver is in writing and signed by both the Village and the Attorney.

Section 14. Amendment. No change or modification of this Agreement shall be valid unless the same may be in writing and signed by the Attorney and the Village.

Section 15. Recitals. The recitals set forth at the beginning of this Agreement are hereby incorporated into and made part of this Agreement as if fully set forth herein.

WHEREFORE, the Village and the Attorney have executed this Agreement as of the date first above written:

Village of Barrington
By: _____
Village Representative
Dtd. April 8, 2024

Attorney
By: _____
Name: David Eterno
Dtd. March 28, 2024