

**VILLAGE OF YELLOW SPRINGS, OHIO
RESOLUTION # 2005-35**

WHEREAS, the Village, through its Council, desires to appoint Employee to be the Interim Village Manager, an Unclassified employee position as provided in Section 84 of the Yellow Springs Charter and as described on page 6 of the current Village Personnel Policy Manual; and

WHEREAS, the Village desires to provide certain benefits, establish certain conditions of employment, and set working conditions of said Employee; and

WHEREAS, the Village desires to retroactively compensate Employee for performing the duties of Acting Village Manager during the period of February 28, 2005 through May 19, 2005 without an increase in compensation; and

WHEREAS, it is the desire of the Employee to accept employment as the Interim Village Manager of the Village.

NOW, THEREFORE, THE COUNCIL OF THE VILLAGE OF YELLOW SPRINGS, OHIO HEREBY RESOLVES THAT:

Section 1. The Council hereby appoints Phillip Hawkey as Interim Village Manager. Mr. Hawkey shall perform the duties set forth in the Village Charter and in accordance with the applicable provisions of the Ohio Revised Code, and other legally permissible and proper duties and functions as the Council may from time to time assign.

Section 2. The attached Employment Agreement shall become effective on September 1, 2005. See Attachment "A".

Tony Arnett, President of Council

Passed:

Attest: _____
Deborah Benning, Clerk

ROLL CALL:

Arnett _____

Swinger _____

Alexander _____

Hardman _____

Rickenbach _____

ATTACHMENT A

VILLAGE OF YELLOW SPRINGS INTERIM VILLAGE MANAGER EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is made and entered into this ___ day of August 2005, by and between the VILLAGE OF YELLOW SPRINGS, OHIO, a municipal corporation, (the "Village"), and PHILLIP HAWKEY (the "Employee").

1. **Duties and Hours of Work**

The Council hereby appoints Employee as Interim Village Manager. Employee shall perform the duties set forth in the Village Charter and in accordance with the applicable provisions of the Ohio Revised Code, and other legally permissible and proper duties and functions as the Council may from time to time assign. The position is a full-time job, based on a 40-hour work week.

2. **Term**

Subject to Paragraphs 3 and 4, the term of the Agreement shall last until the earlier of: (1) when the Council appoints a permanent Village Manager, or (2) when the Council, by a majority vote of its members at any regular meeting, determines that it is in the best interests of the Village to return the Employee to his regular position of Village Planner.

Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Council to remove the Employee, subject only to the provision set forth in Paragraph 3 of this Agreement.

Nothing in this Agreement is intended to prevent, limit or otherwise interfere with the right of the Employee to resign at any time from his position with the Village, subject only to the provision set forth in Paragraph 4 of this Agreement.

3. **Termination and Severance Pay**

a. Terminated Without Cause. Terminated Without Cause means the Council removes the Employee from employment with the Village for reasons other than for death, disability, expiration of agreement and other than With Cause, as defined below. In the event that the Employee is Terminated Without Cause and at such time that Employee is willing and able to perform the duties of Interim Village Manager and/or the duties of his regular position, Village Planner, then the Village will pay Employee severance pay in the amount of ninety (90) days aggregate salary and benefits, less any applicable withholdings, at the salary rate under this agreement. Employee shall be compensated for accrued benefits in accordance with the Village Personnel Policy Manual.

b. Terminated With Cause. Terminated With Cause means the Council removes the Employee from employment with the Village due to the Employee's material misconduct or negligence with respect to his duties under this Agreement. Material misconduct or negligence will include, but not be limited to, conviction for a felony or perpetration of a common law fraud which has resulted or is likely to result in material economic damage to the Village; failure by Employee to perform his duties with the skill, diligence, knowledge and conscientiousness reasonably to be expected of personnel in similar positions; dishonesty; fraud; deliberate injury or attempted injury to the Village; unlawful, immoral or criminal act or acts of a serious nature; failure or refusal to carry out such reasonable tasks as the Village, consistent with this Agreement and with the law, may direct; or breach of this Agreement. The Village shall provide written notice to the Employee specifying the event relied upon. In the event the Employee is Terminated With Cause, then the Village shall pay the Employee any amounts due pursuant to the Village Personnel Policy Manual through his last date of employment and shall have no obligation to pay the severance pay designated in Paragraph 3(a).

c. Terminated Due to Death or Disability. Terminated Due to Death or Disability shall include termination caused by the Employee's death and termination in the event the Employee is unable to continue performing his duties as Interim Village Manager for a continuous period of three (3) months due to physical and/or mental health concerns. If the Employee's employment is Terminated Due to Death or Disability, the Village shall pay the Employee or his estate severance pay in the amount of ninety (90) days aggregate salary and benefits, less any applicable withholdings. Employee or his estate shall be compensated for accrued benefits in accordance with the Village Personnel Policy Manual.

d. Return to Position as Village Planner. Upon a the expiration of the Term of this Agreement, as defined above, the Employee shall be returned to his previous position as Village Planner, subject to the terms and conditions of his Employment Agreement with the Village specific to that role. No severance benefits shall be due to employee if/when he returns to his position as Village Planner.

4. **Resignation**

The Employee shall give the Council thirty (30) days' written notice of his intention to voluntarily resign his employment with the Village. The Employee shall not be entitled to severance pay in the event that he voluntarily resigns. The Employee shall not be entitled to return to his position as Village Planner in the event that he voluntarily resigns as Interim Village Manager. However, the Council may choose to permit the Employee to return to his position as Village Planner, prior to the expiration of this Agreement, upon Employee's written request.

5. **Salary**

The Village agrees to pay Employee an annual salary of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), less applicable withholdings,

effective as of the beginning of the pay period that includes September 1, 2005. It is further provided that the Village may make mutually agreeable changes and adjustments at any time. Salary shall be payable in equal installments every two weeks at the same time and in the same manner as other employees of the Village.

6. **Retroactive Salary**

The Village shall pay Employee for additional duties performed as Acting Village Manager for the period beginning with the pay period that includes February 28, 2005 through the pay period that included May 19, 2005. Employee's annual salary shall be recalculated for such period as if the Employee's annual salary was SEVENTY-SIX THOSAND DOLLARS (\$76,000.00). The amount the Village will pay the Employee shall be the difference between the recalculated annual salary and the amount actually paid the Employee during the period, including applicable withholdings. The Village will pay the Employee the retroactive salary calculated under this Paragraph 6, reduced for applicable withholdings, with his first regular paycheck following the execution of this Agreement. The Village shall also make at the same time the necessary pension system contributions attributable to the retroactive compensation.

7. **Benefits**

All applicable provisions of the Village's Personnel Policy Manual relating to employee benefits, including but not limited to holidays, personal leave, sick leave, medical insurance, retirement and pension system contributions, and other benefits and working conditions as they now exist or hereafter may be amended, shall apply to Employee as they would to other Village employees, in addition to such benefits enumerated in this Agreement specifically for the benefit of Employee. However, Employee shall not be entitled to longevity pay.

The Village shall provide life insurance in the amount of \$50,000, subject to acceptance by carrier with double indemnity for accidental death. Employee acknowledges that, as of February 1, 2005 he was credited with 23 years of service for purposes of calculating vacation leave and any other benefits that are linked to seniority. For each additional year of service after February 1, 2005, one (1) year shall be added to the base of 23 years of service. All benefits shall be calculated according to the provisions of the Village's Personnel Policy Manual.

Employee may carry forward up to twenty (20) days of vacation from one calendar year to another, and shall not be entitled to receive extra compensation in lieu of unused vacation leave. Upon termination, Employee shall be entitled to receive compensation for unused, accrued vacation leave up to a maximum of forty (40) days, at the then current rate of pay.

Employee acknowledges that the Employer approved the transfer of 1,584.92 hours of sick leave accumulated during the Employee's previous term with the City of Celina. Any additional sick leave benefits have accrued and will continue to accrue in accordance with the Village's Personnel Policy Manual.

8. **Performance Evaluation**

The Council shall review and evaluate the performance of the Employee annually under the same criteria and in the same manner as other Village employees.

9. **Dues and Subscriptions**

The Village will pay reasonable expenses for dues, subscriptions, conferences and out-of-pocket costs as are necessary to the performance of Employee's duties and Employee's professional development, to the extent that they benefit the Village. The Council shall approve in advance such expenses.

10. **Automobile**

The Village will provide Employee with a vehicle equipped with a two-way radio on the Village's frequency for use solely on Village business. The Village will be responsible for the operating costs, maintenance and insurance for said vehicle.

11. **Indemnification**

The Village 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 Interim Village Manager. The Village, or its insurance carrier, may, without personal cost to Employee, compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. Claims arising after the resignation or discharge of Employee but which are based on events which are alleged to have occurred during the Employee's employment shall also be covered. Indemnification shall not apply in the case of Employee's criminal activity.

12. **Other Terms and Conditions of Employment**

The Village may fix other such terms and conditions of employment from time to time as it may determine necessary or desirable, relating to the performance of Employee, provided such are not inconsistent or in conflict with the provisions of this Agreement, the Village Charter or any other law.

The Village shall not at any time during the term of this Agreement reduce the salary, compensation or other financial benefits of Employee, except to the degree of such a reduction is equally applicable to substantially all other Village employees.

13. **Effective Date**

This Agreement shall become effective on September 1, 2005.

14. **Severability**

If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

15. **Prior Agreements**

This Agreement supersedes all prior agreements, oral and written, between the parties hereto with respect to the subject matter hereunder, including any prior Employment Agreement between the Village and Employee. Provided, however, that if the Employee returns to the position of Village Planner, his prior Employment Agreement related to that position shall be revived and considered in full force and effect.

IN WITNESS WHEREOF, the Village has caused this agreement to be signed and executed on its behalf by the President of the Council, and the Employee has signed and executed this Agreement, the day and year first above written.

VILLAGE OF YELLOW SPRINGS

Witness: _____

By _____
President of the Village Council

Date: _____

EMPLOYEE

Phillip Hawkey