

**VILLAGE OF YELLOW SPRINGS, OHIO  
RESOLUTION #2007-22**

**WHEREAS**, the Village Council has decided to amend the employment agreement of Eric Swansen the Village Manager; and

**WHEREAS**, it is the desire and intent of Council to include a due process clause to the agreement; and

**WHEREAS**, the Council is also increasing compensation to cover the cost of the annual premium for his disability insurance.

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

**Section 1.** The attached revised employment agreement for Village Manager Eric C. Swansen, incorporated herein by reference, is hereby approved.

**Section 2.** This annual compensation increase of \$1,925.60 would go into effect immediately to cover the \$4,000 per month disability insurance benefit, which includes a 90-day waiting period.

**Section 3.** The Village Manager is solely responsible for the payment to Mass Mutual of said disability insurance premium.

**Section 4.** The employment agreement shall also included a due process clause that shall read:

“The Village Manager shall serve as an at-will employee of the Council subject to the terms of the Village Charter, Ordinances and Resolutions and Employment Contract. The Village Manager may only be terminated by the following procedure: Any member of Council may, at any Council meeting, introduce a motion to terminate the Village Manager.. If such motion is seconded, the matter shall then immediately be tabled until the following Council meeting. At the following Council meeting, the Village Manager shall have the opportunity to have a hearing before Council, either in public or in Executive Session, at the employee’s request, to present information the employee feels is relevant to the question of whether they should be terminated. Following the end of that hearing, the Motion shall be automatically removed from the table and, following deliberation by Council, a vote taken on its adoption.”

**Section 5.** The Vice President of Village Council is hereby authorized and directed to execute the aforesaid employment agreement with Eric C. Swansen on behalf of the Village.

\_\_\_\_\_  
Karen Wintrow, Vice President of Council

Passed: August 6, 2007

Attest: \_\_\_\_\_  
Deborah Benning, Clerk of Council

ROLL CALL:

Karen Wintrow \_\_Y\_\_

Bruce Rickenbach \_\_Y\_\_

Judith Hempfling \_\_Y\_\_

Kathryn Chase \_\_Y\_\_

Kathryn Van der Heiden \_\_Y\_\_

VILLAGE OF YELLOW SPRINGS  
EMPLOYMENT AGREEMENT

This agreement entered into this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between the Village of Yellow Springs, Ohio, a municipal corporation, hereinafter called the Village, and the Council of the Village of Yellow Springs, hereinafter called Village Council (hereinafter collectively referred to as the "Employer"), and Eric C. Swansen, hereinafter called "Employee,"

WITNESSETH:

WHEREAS the Village Council desires to continue to employ the services of said Employee as Village Manager of Yellow Springs as provided by Article IV and other sections of the Charter of the Village of Yellow Springs, Ohio; and

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

WHEREAS Employee and Employer entered into an employment agreement originally effective January 17, 2006; and

WHEREAS Employee and Employer desire to revise the existing employment agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Section 1. Duties:

Village Council hereby agrees to employ said Employee as Village Manager of Yellow Springs to perform the duties and functions specified in the Village Charter for Yellow Springs, and those provided by state statute and Village ordinances, as well as to perform such other legally permissible and proper duties and functions as the Village Council may from time to time assign. This position shall be considered an unclassified, exempt position.

Section 2. Term:

Employee agrees, except as otherwise provided herein, to remain in the exclusive employ of the Village until December 19, 2010 (the "Employment Term"), and not to become employed by any other employer until after that date. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of Village Council or the Employee to terminate this agreement at any time, subject only to the provisions set forth in Section 3 hereof and the Village Charter.

Section 3. Termination:

The Village Manager shall serve as an at-will employee of the Council subject to the terms of the Village Charter, Ordinances and Resolutions and Employment Contract. The Village Manager may only be terminated by the following procedure: Any member of Council may, at any Council meeting, introduce a motion to terminate the Village Manager.. If such motion is seconded, the matter shall then immediately be tabled until the following Council meeting. At the following Council meeting, the Village Manager shall have the opportunity to have a hearing before Council, either in public or in Executive Session, at the employee's request, to present information the employee feels is relevant to the question of whether they should be terminated. Following the end of that hearing, the Motion shall be automatically removed from the table and, following deliberation by Council, a vote taken on its adoption.

A. Voluntary termination by the Employee: The Employee retains the right to voluntarily terminate this Agreement and his employment with the Village upon written notice at least sixty (60) calendar days prior to his proposed last date of employment. By submitting a notice of voluntary termination, the Employee shall waive any rights he may have under Article I, Section 19 of the Village Charter and shall therefore not be entitled to any hearing or severance pay.

B. Involuntary Termination Without Cause: The Village retains the right to terminate the employment of the Employee pursuant to Article I, Section 19 of the Village Charter. The definition of "salary" as used in Section 19 of the Yellow Springs Village Charter shall include wages and benefits. Should Employee's services be terminated involuntarily by Village Council on any other basis other than the with cause, as defined in paragraph C, below, at a time when

the Employee remains willing and able to perform the duties of Village Manager, Employee shall be entitled to a total of twelve (12) months severance pay and benefits.

C. Involuntary Termination With Cause: In the event that Employee is convicted of any illegal act involving personal gain to himself, or such act reflecting negatively upon himself, his profession, or the Village, the Employee shall be deemed terminated immediately upon conviction. Such act shall be deemed a waiver of any rights the Employee may otherwise have to severance pay pursuant to Article I, Section 19 of the Village Charter and the Employee shall receive no severance pay or any other compensation, except such unpaid salary due him at the time of conviction.

#### Section 4. Salary and Benefits:

A. Base Salary: The Employer agrees to pay Employee for his services rendered pursuant to this Agreement an annual salary of \$78,000 from the beginning of the pay period in which \_\_\_\_\_, 2007 occurs. It is further provided that mutually agreeable changes and adjustments may be made by Village Council 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.

B. Benefits: Employee shall receive the following benefits in the same manner and amount as applies to other employees of the Village and as specified in section 252.08 of the Codified Ordinances of the Village: holidays, sick leave, medical insurance and bereavement leave. Employee shall not be eligible for overtime-premium pay, cost of living adjustments or longevity pay. Life insurance in the amount of \$100,000 with double indemnity for accidental death shall be provided by the Village. Employee shall receive 10 days per year of vacation leave and five (5) days per year of executive leave. Employee may not carry more than 20 days of vacation forward from one calendar year to another, nor be entitled to receive extra compensation in lieu of unused vacation leave. Employee shall be entitled to receive compensation for unused, accrued vacation leave up to a maximum of 35 days, at the then current rate of pay, upon termination. Employee shall be eligible to receive 60 days of catastrophic sick leave that may be used consecutively in addition to sick days otherwise available. Employee shall be eligible for education assistance payments on the same basis as other employees of the Village except that such use shall be subject to approval by the Village Council. Employee shall be a member of the Ohio Public Employee Retirement System under the terms provided by state statute as applied to other employees of the Village. Employee may, at his option, elect to have a portion of his pay directed to the deferred compensation plan administered by the International City/County Management Association (ICMA), provided that by doing so no additional costs are incurred by the Village. In addition, the employee will have his yearly compensation increased by \$1,925.60 to cover the cost of the disability insurance premium. The employee is solely responsible for payment to Mass Mutual. In the event the Employee is terminated pursuant to Section 3, The Village shall compensate Employee for any non-vested balance of Village contributions to the Employee's Member Directed Ohio Public Employee Retirement System Account.

#### Section 5. Hours of Work:

Employee shall devote a minimum of 80 hours on a bi-weekly basis (concurrent with pay periods) to official Village business. It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Village, and to that end Employee shall be allowed to establish an appropriate work schedule. Regular office hours will be posted. In addition thereto, Employee shall attend all meetings of Village Council and such other functions as may be directed by Village Council or required by prudent management of the Village. Employee shall take reasonable steps to ensure that other Village personnel are available to respond to emergencies in his absence. Council may require cessation of any non-Village business activity, which interferes with effective performance of Employee's primary function as Village Manager.

#### Section 6. 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 Village Manager. The Village may 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 criminal activity.

#### Section 7. Other Terms and Conditions of Employment:

A. Both parties agree to abide by the provisions of the Village Charter.

B. Village Council may fix other such terms and conditions of employment as it may determine necessary or desirable, from time to time, provided such are not inconsistent or in conflict with this agreement, the Village Charter or any other law.

C. The Village agrees to budget and 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.

D. The Village shall provide Employee with a cell phone for official Village business.

E. The Village shall provide Employee with a Village vehicle equipped with a two-way radio on the Village's frequency for his use on Village business and shall also provide for operating costs, maintenance and insurance for said vehicle. The vehicle shall not be used for personal activities.

F. Village Council and Employee may mutually agree to amend this agreement from time to time as they may determine it necessary to establish other terms and conditions of employment, provided that any such amendment is not inconsistent with the Village Charter or other law.

G. Village Council and Employee mutually agree that Council shall review and evaluate the performance of the Employee annually. Said evaluation shall be in accordance with criteria and format developed jointly by both parties. Employee's compensation shall be subject to adjustment annually during the term of this contract. The results of the annual performance evaluation shall be considered in arriving at said compensation adjustment.

H. Employee agrees to make such disclosure of personal finances as may be required at a time and in a format prescribed by state statute.

I. In the event that the Village attains City status, this agreement shall remain in full force and effect, subject only to those changes required by such change in status.

#### Section 8. General Provisions.

A. The text herein and the Village Charter and ordinances shall constitute the entire agreement between the parties.

B. This agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Employee.

C. This agreement shall be binding upon the Village regardless of changes in the Village Council membership.

D. This agreement shall be effective beginning \_\_\_\_\_, 2007.

E. If any provision of this agreement is held to be invalid, illegal or unenforceable, the remainder of this agreement shall not be affected and shall remain in full force and effect.

F. 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 Council of Yellow Springs, Ohio has caused this agreement to be signed on its behalf by the President of Council and duly attested to by the Clerk of Council, and the Employee has signed this agreement on the dates recorded with their signatures.

\_\_\_\_\_  
Karen Wintrow, Vice President of Council

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Eric C. Swansen, Village Manager

\_\_\_\_\_  
DATE

ATTEST:

\_\_\_\_\_  
Deborah Benning, Clerk of Council