

**VILLAGE OF YELLOW SPRINGS, OHIO
RESOLUTION 2018-18**

APPOINTING JOHNNIE BURNS AS PUBLIC WORKS DIRECTOR

WHEREAS, the position of Public Works Director currently exists in the Village Organizational Chart, as approved by Council, but said position has been unfilled for several years; and

WHEREAS, the Village as a whole is experiencing an unprecedented need for the close coordination of all infrastructure projects to make the best use of limited resources; and

WHEREAS, filling the position of Public Works Director with a highly qualified individual would better facilitate the coordination of all capital improvements; and

WHEREAS, the Village of Yellow Springs internally posted the notice for the vacant position of Public Works Director; and formed an interview committee that identified and interviewed two candidates; and

WHEREAS, the interview committee met with the prospective candidates and provided feedback to the Village Manager to consider for the purpose of making the final hiring decision as prescribed under the Village Charter, and

WHEREAS, the Village Manager has considered the feedback and determined that Johnnie Burns should be extended an offer of employment as the Public Works Director for the Village of Yellow Springs and makes same recommendation to Council,

NOW THEREFORE, Council for the Village of Yellow Springs, Ohio hereby resolves that:

Section 1. Johnnie Burns is hereby extended an offer of employment to serve as Public Works Director for the Village of Yellow Springs, to serve at the pleasure of the Village Manager.

Section 2. The duties of the Public Works Director shall be those as provided for in the job description for the Public Works Director and pursuant to the Employment Agreement attached to this Resolution as Exhibit A.

Section 3. The Employment Agreement is hereby approved in substantially the same form as Exhibit A. The Village Manager is hereby authorized to execute the Employment Agreement and to take such other actions on behalf of the Village as may be necessary to assure this appointment.

Section 5. This Resolution shall be in full force and effect upon its adoption. It is the intent of the Council that the Employment Agreement will be effective upon signature by the parties.

Brian Housh, President of Council

Passed: 5-21-2018

Attest: _____
Patti Bates, Deputy Clerk of Council

Roll Call: Brian Housh __Y__ Marianne MacQueen __Y__ Judith Hempfling __Y__
Kevin Stokes __Y__ Lisa Kreeger __Y__

**VILLAGE OF YELLOW SPRINGS
PUBLIC WORKS DIRECTOR EMPLOYMENT AGREEMENT**

This Employment Agreement (öAgreementö) is made and entered into this 28th day of May 2018, by and between the **Village of Yellow Springs**, Ohio, a municipal corporation (öthe Villageö), and **Johnnie Burns** (öEmployeeö).

WITNESSETH:

WHEREAS, the Village, through its Village Manager, desires to appoint Employee to be the Public Works Director, categorized as a salaried (Exempt) position pursuant to the Village Personnel Policy Manual; and

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

WHEREAS, it is the desire of Employee to accept employment as the Public Works Director;

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

1. Duties and Hours of Work:

The Village Manager hereby appoints Employee as Public Works Director effective the 28th day of May 2018. Employee shall perform the duties set forth in the position description for Public Works Director including proper duties and functions as the Village Manager may from time to time assign.

Employee shall devote a minimum of eighty (80) hours on a bi-weekly basis (concurrent with pay periods) to official Village business. Employee shall be designated as an öExemptö employee and it is expected that, through a combination of office hours and meetings, the Employee shall work a minimum of forty (40) hours each week. It is recognized that the Employee must devote some time outside the normal office hours to business of the Employer. Employee shall not receive additional compensation based on hours worked in excess of forty (40), but shall be allowed to establish an appropriate work schedule to offset hours worked in excess of forty (40) as approved by the Village Manager.

2. Term:

This Agreement is for a term of two (2) years, subject to the provisions of Paragraphs 3 and 4 below, which term may be renewed for successive periods of two (2) years thereafter by agreement of the Parties.

The Parties acknowledge the at-will nature of their employment relationship. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Village Manager to discharge Employee, subject only to the provision set forth in Paragraph 3 of this Agreement. Likewise, nothing in this Agreement is intended to prevent, limit or otherwise interfere with the right of Employee to resign at any time from Employee's position with the Village.

3. Termination and Severance Pay:

If Employee is discharged by the Village Manager at any time during Employee's employment without Cause, the Village will pay Employee severance pay in an amount equal to ninety (90) days aggregate salary and benefits, and Employee shall be compensated for accrued benefits in accordance with the

Personnel Policy Manual of the Village. In the event Employee is discharged for Cause as defined below, the Village shall have no obligation to provide severance pay or benefits pursuant to this Paragraph.

For purposes of this Agreement, "Cause" shall mean: (a) failure to perform Employee's duties (other than any such failure resulting from incapacity due to physical or mental illness); (b) failure to comply with any valid and legal directive of the Village Manager; (c) engaging in dishonesty or illegal conduct; (d) embezzlement, misappropriation or fraud, whether or not related to Employee's employment with the Village; or (e) being charged with a crime that constitutes a felony or a crime that constitutes a misdemeanor involving moral turpitude.

4. Resignation:

If Employee voluntarily resigns her position with the Village, Employee shall give the Village thirty (30) days' notice in advance, unless the parties agree otherwise in writing. Upon receiving notice, the Village, at its option, may choose to waive Employee's service for all or any part of the thirty (30) day notice period, provided that the Village continues to pay Employee's salary during the remaining notice period. Such a waiver by the Village will not trigger the severance pay provisions of Paragraph 3 above.

5. Salary:

The Village agrees to pay Employee an annual salary of \$95,000.00, commencing on Employee's first day of this agreement. Mutually agreeable changes and adjustments may be made by the Village 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. In addition, Employer agrees to increase said base salary and/or other benefits of Employee in such amounts and to such extent as the Village Manager may determine is desirable to do so on the basis of an annual performance evaluation (Article 7).

6. 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, or as such provisions may hereafter be amended by the Village, shall apply to Employee as they would to other employees of the Village, in addition to all benefits included herein.

The Village shall provide Employee with life insurance in the amount of \$50,000.00, subject to acceptance by carrier with double indemnity for accidental death.

Paid vacation shall accrue thereafter at the rate of fifteen (15) days per year, accrued January 1 of each calendar year. Employee may not carry forward more than five (5) days of vacation from one calendar year to the next and unused vacation time will not be paid at the end of the calendar year unless specifically authorized by the Village Manager, in writing. Employee shall receive compensation for unused, accrued vacation leave up to a maximum of forty (40) business days, at the then current rate of pay, upon termination without Cause or upon resignation with timely notice as set forth in Paragraphs 3 and 4 above.

7. Performance Evaluation

The Village Manager shall review and evaluate the performance of Employee annually. This evaluation shall be in accordance with the criteria and format developed jointly by Employee and the Village Manager.

8. 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. Such expenses must be approved in advance by the Village Manager.

9. 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 Public Works Director. 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 Employee's employment shall also be covered. Indemnification shall not apply to any claim, demand or other legal action, whether criminal or civil, where the alleged liability arises out of Employee's criminal activity.

10. Other Terms and Conditions of Employment

A. 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.

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

C. The Village shall provide Employee with a car when at work.

D. The Village Manager 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.

11. General Provisions.

A. The text herein and the Village Charter and ordinances and resolutions 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 May 28, 2018.

E. This Agreement constitutes the entire agreement between the parties, superseding all prior arrangements and agreements, and may be modified, amended or waived only by a written instrument signed by all of the parties.

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 law.

12. Severability

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

IN WITNESS WHEREOF, the Village has caused this agreement to be signed and executed on its behalf by the Village Manager, and Employee has signed and executed this Agreement, as set forth below.

VILLAGE OF YELLOW SPRINGS

By: _____
Village Manager

Date: _____

Its _____

EMPLOYEE

Date: _____