

VILLAGE OF YELLOW SPRINGS, OHIO

RESOLUTION 2019-24

APPROVING A CONTRACT WITH POLICE CHIEF BRIAN CARLSON

WHEREAS, Brian Carlson has served as the permanent Chief of Police for the Village of Yellow Springs since June of 2017; and

WHEREAS, Council for the Village of Yellow Springs has determined that it is currently in the best interests of the Village to amend and renew the employment of Brian Carlson in the position of Chief of Police for the Village of Yellow Springs,

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

Section 1. Brian Carlson is hereby offered employment as Chief of Police for the Village of Yellow Springs, to serve at the pleasure of the Village Manager.

Section 2. The duties of the Chief of Police shall be those as provided for in the Charter for the Chief of Police and pursuant to the Employment Agreement attached to this Resolution as Exhibit A.

Section 3. The Employment Agreement for the Chief of Police 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 4. The Chief of Police shall be considered an employee on full-time status. The Employee shall receive the salary and benefits as provided for in the Contract.

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: 6-3-2019

Attest: \_\_\_\_\_  
Judy Kintner, Clerk of Council

Roll Call: Brian Housh \_\_Y\_\_ Marianne MacQueen \_Y\_\_ Kevin Stokes \_ABSENT\_\_  
Lisa Kreeger \_\_Y\_\_ Kineta Sanford \_\_Y\_\_

**VILLAGE OF YELLOW SPRINGS  
FIRST AMENDED EMPLOYMENT AGREEMENT  
POLICE CHIEF**

This First Amended Employment Agreement (“Agreement”) is made and entered into this \_\_\_ day of June, 2019, by and between the **Village of Yellow Springs**, an Ohio municipal corporation (the “Village”), and **Brian P. Carlson** (the “Employee”). The Village and the Employee shall be collectively referred to as the “Parties.”

WITNESSETH:

WHEREAS, the Village Manager desires to continue to employ the services of Employee as the Village Police Chief (“Police Chief”) as provided by the Charter and ordinances of the Village; and

WHEREAS, it is the desire of the Village Manager 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 Police Chief;

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

**Section 1. Duties and Hours:**

The Village Manager hereby agrees to employ Employee as the Police Chief. Employee shall perform the duties and functions specified in the Village Charter for Police Chief, 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 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 a salaried (Exempt) 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 Village, and to that end Employee will be allowed to adjust normal office hours as he and the Village Manager deem appropriate during said office hours. Employee shall not receive additional compensation based on hours worked in excess of forty (40). See Section 6 of the Agreement for additional terms and conditions pertaining to the hours of work.

In addition thereto, Employee shall attend Village Council meetings as required and perform such other functions as may be directed by Village Manager 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.

**Section 2. Term:**

This Agreement is for a term of one (1) years with a review after three (3) and six (6) months (“Review Periods”) by the Village Manager and Village Council. See Section 6 of the Agreement for additional terms and conditions pertaining to the Review Periods.

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 provisions set forth in Section 3 of this Agreement. Likewise, nothing in this

## Exhibit A to Resolution 2019-24

Agreement is intended to prevent, limit or otherwise interfere with the right of the Employee to resign at any time from Employee's position with the Village, subject only to the provisions set forth in Section 3 of this Agreement.

### **Section 3. Termination:**

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.

B. Involuntary Termination Without Cause. The Village Manager retains the right to terminate the employment of the Employee pursuant to the Village Charter and the process set forth below without cause. The Employee serves as an at-will employee of the Village Manager subject to the terms of the Village Charter, Ordinances, Resolutions, and this Agreement.

C. Involuntary Termination With Cause. In the event Employee is terminated for cause as defined below, the Village shall have no obligation to provide severance pay or benefits pursuant to Section 3D.

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; (e) being charged with a crime that constitutes a felony or a crime that constitutes a misdemeanor involving moral turpitude; or (f) failure to meet the performance measures established by Village Council.

D. Severance. By submitting a notice of voluntary termination pursuant to Section 3A above, 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. Likewise, if Employee is terminated for cause, as provided in Section 3C above, such act shall be deemed a waiver of any rights the Employee may otherwise have to severance pay pursuant to this Agreement or Article II, 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. For purposes of a termination pursuant to Section 3A, "salary" shall include only unpaid wages for time worked, accrued but unused vacation time, personal time and one-fourth (1/4) of accrued but unused sick leave as established in the Village Personnel Policy Manual at his then-current rate of pay. Other benefits that might be available under the Village Personnel Policies or other rules shall not apply to Employee in that situation.

Should this Agreement not be renewed, the Village agrees to provide Employee no less than sixty (60) days notice in writing. Employee shall not be entitled to severance pay in the event the Agreement is not renewed.

### **Section 4. Salary and Benefits:**

A. Base Salary: The Village agrees to pay Employee an annual salary of \$81,090.00 commencing on Employee's first day of this Agreement. Salary shall be payable in equal installments every two (2) weeks, at the same time and in the same manner as other employees of the Village. Furthermore, the Village 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 or sooner if the Village Manager determines an increase in benefits is appropriate based on meeting the performance measures established by Village Council.

B. Benefits: Health insurance and dental insurance will be offered in accordance with the insurance plan for other salaried and non-salaried employees. Employee shall receive the same holidays and personal leave days as other salaried and non-salaried employees of the Village. Sick time will be accrued at the same rate and schedule as specified for other salaried and non-salaried employees. Employee shall not be eligible for overtime-premium pay. Employee shall receive three (3) weeks of vacation annually, which can be taken as needed during each twelve-month period. Employee may not carry vacation forward from one calendar year to another, nor be entitled to receive extra compensation in lieu of unused vacation. Taking more than ten (10) consecutive days of vacation is subject to the approval of the Village Manager.

**Section 5. 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 Police Chief, absent gross negligence or intentional wrongdoing. 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 6. Other Terms and Conditions of Employment:**

- A. The Village Manager and Village Council shall review and evaluate the Employee's performance at Review Periods to determine if specific performance measures/objectives and goals("Performance Measures") that shall be set by Council have been met or that satisfactory progress toward meeting these Performance Measures is being achieved. It is probable that more than forty (40) hours per week shall be necessary to meet these Performance Measures, and Employee is expected to dedicate and devote the necessary time and effort to meet the Performance Measures.
- B. The Performance Measures for Employee will be set based, in part, on information being gathered and the report that is being prepared from the Yellow Springs Police Department Assessment. The Performance Measures will be reviewed and discussed with Employee. The calculation for the Reviews Periods commences when the Performance Measures, are provided to the Employee.
- C. The Parties agree to abide by the provisions of the Village Charter.
- D. The Village Manager may fix other such terms and conditions of employment as he 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.
- E. 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 they benefit the Village.
- F. The Village shall provide Employee with a cell phone for official Village business.

Exhibit A to Resolution 2019-24

G. The Village shall provide Employee with a vehicle for use in the performance of Village business. In order to respond to emergencies, the Employee shall be allowed to use the Village vehicle to commute to work and to his personal residence.

H. 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 consistent with the Village Charter or other law.

**Section 7. 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 June 6, 2019.

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 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.

IN WITNESS WHEREOF, the Village Manager of the Village of Yellow Springs, Ohio has caused this Agreement to be signed and the Employee has signed this First Amended Employment Agreement on the dates recorded with their signatures.

\_\_\_\_\_  
Brian P. Carlson

\_\_\_\_\_  
Date

\_\_\_\_\_  
Patti Bates, Village Manager

\_\_\_\_\_  
Date