

VILLAGE OF YELLOW SPRINGS, OHIO
RESOLUTION 2024-16

APPROVING A CONTRACT WITH JOHNNIE BURNS AS VILLAGE MANAGER

WHEREAS, Johnnie Burns has served as Public Works Director for the Village of Yellow Springs since 2018, and in that capacity distinguished himself as a skilled professional possessed of exceptional leadership and communication skills; and,

WHEREAS, Johnnie Burns agreed to take on the role of Interim Village Manager following the departure of the Village's previous Manager, and in that role proved again to be a valuable asset to both the community and to Village government; and,

WHEREAS, Village Council, in response to an outpouring of support from diverse areas and from Village staff as well as from members of the community for the appointment of Mr. Burns to the position of Village Manager agreed as a body to conduct an interview with Mr. Burns for the purpose of determining whether to proceed with a search or to forgo a search and proceed with an appointment; and,

WHEREAS, As a result of that interview have unanimously agreed that an appointment is both appropriate and in the best interest of the Village,

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

Section 1. Johnnie Burns is hereby invited to serve the Village of Yellow Springs in the position of Village Manager. The duties of the Village Manager shall be those as provided for in the Village Charter and pursuant to the Employment Agreement attached to this Resolution as Exhibit A.

Section 2. The President of Council 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 3. The Village Manager shall be considered an employee on full-time status. As provided in the Contract, the Employee shall receive the salary and benefits as provided for in the Employment Agreement.

Section 4. This Resolution shall be in full force and effect upon its adoption. It is the intent of Council that the Employment Agreement will be effective upon signature by the affected parties, and does replace any other employment contracts between Mr. Burns and the Village; therefore, the Interim Village Manager contract dated August 7, 2023, and the Public Works Director contract dated August 21, 2023 are both terminated upon execution of the attached Employment Agreement.

Kevin Stokes, President of Council

Passed: 2-20-2024

Attest: _____
Judy Kintner, Clerk of Council

Roll Call: Kevin Stokes __Y__ Carmen Brown __Y__ Gavin DeVore Leonard __Y__
Brian Housh __Y__ Trish Gustafson __Y__

**VILLAGE OF YELLOW SPRINGS
EMPLOYMENT AGREEMENT**

This Employment Agreement (“Agreement”) shall become effective on February 21, 2024 by and between the Council of the Village of Yellow Springs (hereinafter referred to as the “Village Council”), and Johnnie Burns (hereinafter called “Employee”).

WITNESSETH:

WHEREAS Village Council desires to retain Employee as the 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, it is the desire of Village Council to adopt this Agreement to provide certain benefits, establish certain conditions of employment, and set working conditions for the Employee.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties 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 and resolutions, 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.

This Agreement is for a term of five (5) years, subject to Section 3 (Termination) below, which term may be automatically renewed for successive periods of 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 Council to discharge Employee. 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.

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 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 Council subject to the terms of the Village Charter, Ordinances and Resolutions and this Employment Agreement. Employee may only be terminated without cause by the following procedure: Any member of Council may, at any Council Meeting, introduce a motion to terminate the Employee. If such motion is seconded, the matter shall then immediately be tabled until the following Council Meeting. At the following Council Meeting, the Employee shall have the opportunity to have a hearing before Council, either in public or in Executive

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Session, at the Employee's request, to present information the Employee feels is relevant to the question of whether he 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. If a majority of the Council vote in favor of the motion, Employee shall be considered terminated immediately. If a majority of Council does not vote in favor of the motion, the motion shall fail.

- C. **Involuntary Termination With Cause.** 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 Council; (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. In the event Employee is discharged for Cause as defined herein, the Village shall have no obligation to provide severance pay or benefits pursuant to this Paragraph.
- 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 Employee's services be terminated involuntarily by Village Council on any other basis other than with cause, as defined in paragraph 3C, above, at a time when the Employee remains willing and able to perform the duties of Village Manager,

Employee shall be entitled to a minimum severance payment of a lump sum payment of six (6) months of pay at the then-current rate of pay plus 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.

Section 4. Salary and Benefits.

- A. **Base Salary.** The Employer agrees to pay Employee for services rendered pursuant to this Agreement at an annual salary of \$143,274.20. 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.

Except during Employee's first year as Manager, Employer agrees to increase said base salary and/or other benefits of Employee in such amounts and to such extent as the Council at its sole discretion may determine is desirable to do so on the basis of an annual performance evaluation. During Employee's first year as manager, Council shall evaluate Employee's performance six (6) months from the date of this contract and Employee will be eligible for a five-percent (5%) increase at that time.

- B. **Benefits.** Employee shall receive the benefits in the same manner and amount as apply to other employees of the Village and as specified in section 252.08 of the Codified Ordinances of the Village

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except as modified herein. Employee shall receive the same Holidays and Personal Leave days as other employees of the Village. Employee shall not be eligible for overtime/premium pay or longevity pay.

Employee shall receive twenty (20) days of vacation leave annually. Taking more than ten (10) consecutive days of vacation is subject to the approval of Council. Employee may not carry more than ten (10) days of vacation forward from one calendar year to another but shall be entitled to receive extra compensation in lieu of unused vacation leave for days not used or carried forward. Employee shall be entitled to receive compensation for unused, accrued vacation leave at the then-current rate of pay, upon separation from employment.

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. The Village agrees to enroll the Employee in the Ohio Public Employee Retirement System (OPERS) under the terms provided by State statute. In addition to the Village's payment to the OPERS referenced above, the Village agrees to execute all necessary agreements provided by ICMA Retirement Corporation (ICMA-RC) or other Section 457 deferred compensation plan for Employee's participation in said supplementary retirement plan upon request by Employee.

Employee shall be provided life insurance in the same form as other Village employees but at a level of survivor benefits of Fifty Thousand Dollars (\$50,000.00).

Section 5. Hours of Work.

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 "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 Employer, and to that end Employee will be allowed to adjust normal office hours as he and the Village Council deem appropriate during said office hours. Employee shall not receive additional compensation based on hours worked in excess of forty (40).

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 and shall appoint an employee as Acting Village Manager if he is expecting to be absent from the Village for any extended period of time. Council may require cessation of any non-Village business activity which interferes with effective performance of Employee's primary function as Village Manager. Failure to cease such activity, after due notice from Council, shall be grounds for termination with cause, and no severance pay or benefits shall be owed to Employee in that circumstance.

Section 6. Indemnification.

The Village Council 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 Council 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

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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 is 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. Village Council 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. These shall include, but not be limited to, membership in ICMA and OCMA and attendance at the annual ICMA conference and both OCMA annual seminars.
- D. Village Council shall provide Employee with a cell phone for official Village business.
- E. The Village shall provide Employee with a car when at work. 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.
- F. The Village shall provide an annual health and wellness benefit to Employee of no more than \$1,200.00 to reimburse Employee for membership at a health and wellness facility such as the YMCA.
- G. 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.
- H. After Employee's first year of service as Manager, Village Council and Employee mutually agree that Council shall review and evaluate the performance of the Employee annually. Employee's compensation shall be subject to adjustment annually during the term of this Agreement.
- I. Employee agrees to make such disclosure of personal finances as may be required at a time and in a format prescribed by state statute.
- J. 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.
- K. Employee shall, as a condition of continued employment, remain a full time resident of Greene County, Ohio.
- L. Village Council and Employee may at any time agree to extend the term of this Agreement upon such terms and conditions as are mutually acceptable.

Section 8. General Provisions.

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

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- 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 Village Council regardless of changes in the Village Council membership.
- D. 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.
- E. This Agreement supersedes all prior agreements, oral and written, between the parties hereto with respect to the subject matter hereunder.
- F. This Agreement may be signed in counterparts, each of which is considered an original and all of which constitutes one and the same instrument. A facsimile, scanned or paper copy of a signature is as valid as an original signature.

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.

Kevin Stokes, President of Council

DATE:

Johnnie Burns, Village Manager

DATE:

ATTEST: _____
Judy Kintner, Clerk of Council