

**VILLAGE OF YELLOW SPRINGS, OHIO
RESOLUTION 2022-07**

**AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO A SETTLEMENT AGREEMENT AND
RELEASE WITH JOHNNIE BURNS**

WHEREAS, Johnnie Burns serves as Public Works Superintendent for the Village pursuant to Resolution 2018-18 and the incorporated Employment Agreement approved by Village Council May 21, 2018; and

WHEREAS, a request has been received regarding payment of legal and other expenses Mr. Burns incurred as a result of an Ohio Ethics Commission investigation which was concluded in 2020, pertaining to conduct performed under direct supervision of a prior Village Manager, dating back to 2014, after the Greene County Prosecuting Attorney declined to prosecute upon a referral from the Ohio Ethics Commission; and

WHEREAS, the Village and Mr. Burns' legal counsel have discussed ways to settle the dispute as Section 9 of Burns' Employment Agreement contains an indemnification provision; and

WHEREAS, the Village and Mr. Burns have agreed to the terms of a settlement of the dispute; and

WHEREAS, the Village Manager and Village Solicitor recommend Village Council authorize the Village Manager to enter into a Settlement Agreement and Release with Mr. Burns.

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

Section 1. Village Council hereby authorizes the Village Manager to enter into a Settlement Agreement and Release with Johnnie Burns and to take all actions required thereunder in substantially similar form as the attached and incorporated Exhibit A.

Brian Housh, President of Council

Passed: 1-18-2022

Attest: _____
Judy Kintner, Clerk of Council

ROLL CALL: Brian Housh __Y__ Marianne MacQueen __Y__ Kevin Stokes __Y__
 Lisa Kreeger __Y__ Carmen Brown __Y__

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is between the Village of Yellow Springs, Ohio (the “Village”) and Johnnie Burns (“Employee”) effective _____, 2021.

WHEREAS, the Village is a municipal corporation chartered under the laws of the State of Ohio; and

WHEREAS, Employee has worked for the Village since January 27, 2014, and remains employed pursuant to an Employment Agreement approved by Resolution 2018-18, dated May 21, 2018;

WHEREAS, Section 9 of the Employment Agreement specifies “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.”

WHEREAS, the parties agree that it is in the best interest of the Village and the Employee that the Village reimburse Employee for legal and other expenses Employee incurred during the course of an Ohio Ethics Commission investigation as the conduct alleged was due to in part to actions of Employee’s direct supervisor, the former Village Manager and inadequate advice was received from the former Village Solicitor as Employee received no Ohio Ethics Law training until June of 2018;

WHEREAS, Village and Employee agree that former Village Manager Patti Bates did not comply with the Personnel Policy Manual effective July 1, 2014 in ensuring that Employee was able to avoid a business-related conflict of interest as Employee notified the Village Manager of the conflict based on obtaining a quote from his outside employer, HB Electric, to build a barn on Village Property at the Sutton Farm. Employee notified the Village Manager pursuant to Section 108 of the Personnel Policy Manual but rather than assigning another person to manage the project Bates exacerbated the situation by giving Employee direct orders to continue with procuring a construction contract from HB Electric between November 11, 2014 and May 9, 2016.

WHEREAS, HB Electric asked to withdraw as well, but Bates continued to pursue the contract and advised HB Electric’s owner that “Council is well aware of the situation” by email on Monday, May 9, 2016, and Bates copied said email to Employee.

WHEREAS, Contrary to Bates’ email, Council received an anonymous letter which resulted in an internal investigation in 2016 by the Village as well as formal investigation by the Ohio Ethics Commission in 2017, and eventual referral to the Greene County Prosecuting Attorney, who declined to prosecute the alleged violation of the Ohio Ethics Law in 2018;

NOW, THEREFORE, the Village and Employee wish to resolve this matter and agree:

1. **Reimbursement of Legal and Travel Expenses.** The Village agrees to reimburse Employee for his legal expenses to private counsel David Duwel in the amount of \$5,430.75, and travel costs of \$282.24 for travel to and from the Ohio Ethics Commission in Columbus, Ohio.

2. **Reimbursement of Other Expense.** The Village agrees to pay Employee for his leave time that would have accrued but for his using paid time off to meet with his counsel, respond to inquiries and attend the Ethics Commission proceedings in a lump sum payment of \$6,026.80. This payment shall occur upon submission of proof of the amount of and stated use of the time to the Village by the Employee or his attorney as required for audit compliance purposes. Applicable taxes and other withholding required by law will be deducted from the gross amount of the Payment, at his regular rate of pay then in effect payable in the next regular pay cycle following the Effective Date.
3. **Employee Release of All Claims and Waiver.** Employee agrees no claims against the Village, its employees, officers, representatives, agents, Council Members, or attorneys past or present ("Released Parties"), either collectively or individually in any capacity, will be filed with respect to any federal, state or local administrative agency or in federal or state court whether filed against the municipal entity or against an individual in his or her capacity as a Released Party of the Village. Moreover, Employee irrevocably and unconditionally releases, acquits, and forever discharges the Village, its successors and assigns, and any of the Council Members, officers, or employees, representatives, agents or attorneys from any and all claims, liabilities, obligations, promises, agreements, controversies, actions, causes of action (including claims for attorneys' fees and costs actually incurred) of any nature whatsoever, whether known or unknown, suspected or unsuspected, which he now has or claims to have, or which he may claim to have against each or any of the above described Released Parties, excepting only those claims arising under the express terms of this Agreement. This release relates to all actions taken in any manner without limitation, any and all claims under federal, state or local law based upon race, sex, national origin, religion, handicap, harassment, counter retaliation, and age discrimination and constitutional rights violations, as well as claims based upon common law of tort, breach of contract, or negligent supervision.
4. **Scope of Release.** This release specifically includes a release of all claims which may be asserted under Section 4113.52 or Chapter 4112 of the Ohio Revised Code, or any other law of the State of Ohio or any other state, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 1981, the Age Discrimination in Employment Act of 1967, as amended, the Americans with Disabilities Act of 1990 ("ADA") and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), Whistleblower Protection, (Ohio Revised Code §4113.51 et seq.); Federal Whistleblower Protection Statutes, the Ohio Workers' Compensation Act, the Ohio Unemployment Compensation Act (except as provided in paragraph 1[C]); and all wage and hour laws. This release includes, without limitation, any and all claims for any damages, whether compensatory, liquidated, punitive or in the form of attorneys' fees, expenses or costs. This Release and Waiver also includes, but is not limited to, any and all claims including claims for attorneys' fees, arising out of or any action for breach of contract, wrongful discharge (including discharge in violation of public policy), infliction of emotional distress, harassment, negligence, defamation, fraud or misrepresentation, invasion of privacy or other action which Employee or his heirs or assigns ever had, now have, or may have, against any of the Released Parties created by, arising under or otherwise based upon, Employee's employment relationship with the Village or the termination of that relationship.

5. **Claims Included in the Agreement.** This release and waiver also includes, but is not limited to, all claims for past or future wages, bonuses, vacation pay, medical insurance, life or disability insurance, and other benefits (except vested benefits and those benefits expressly set forth in this Agreement) and all claims for violation of any express or implied agreement, written or verbal, that occurred before the execution of this Agreement, or for any violation of any common law duty or statute, including all claims for attorneys' fees. Notwithstanding this release, the parties acknowledge that Employee retains the right to file appropriate charges with any government agency; however, Employee relinquishes any right to recover damages or other remedies as a result. Further, the release set forth above will not affect (a) any claim for vested employee benefits; (b) any claim to enforce the terms of this Separation Agreement; (c) any pending claim or future claims for workers' compensation benefits, and (d) any claim that the law precludes Employee from waiving by agreement.
6. **Indemnification.** Employee agrees to indemnify and hold the Village and the other Released Parties harmless from all claims, charges, demands, actions, causes of action, judgments, executions, debts and from all liability for costs, costs of suit (including attorneys' fees and all costs of preparation, defense and settlement of suits or claims), or damages of whatsoever kind, nature or description now existing or which may hereafter arise which is asserted by any family member or other person claiming by, through or under Employee against the Village or any of the Released Parties in any way based upon, growing out of, resulting from or because of the employment of Employee by Village.
7. **Personnel File.** The Village agrees Employee's personnel file shall include a copy of this Agreement and this settlement is a matter of public record.
8. **Consideration.** The Parties expressly acknowledge that this Agreement is supported by sufficient consideration as binding upon all parties. This Agreement is not intended as an admission of wrongdoing, fault, or liability other than as expressly referenced.
9. **Consultation with Counsel.** In executing this Agreement, the Parties acknowledge that they have each had the full opportunity to consult with legal counsel and review the terms of this Agreement. Employee further acknowledges that upon signing this Agreement he fully understood and voluntarily accepted the terms and conditions free from duress or coercion.
10. **Severability.** Should any provision of this Agreement be held invalid or illegal, such invalidity or illegality shall not invalidate the whole of this Agreement. The Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.
11. **Choice of Law and Venue.** This Agreement shall be governed by and interpreted and construed in accordance with the laws of the State of Ohio with venue in a court of competent jurisdiction in Greene County, Ohio.
12. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same instrument. A facsimile, scanned, or paper copy of a signature is as valid as an original signature.

13. **Entire Agreement.** This Agreement contains the entire understanding of the Parties and supersedes previous verbal and written agreements except for terms of the Employment Agreement incorporated into Resolution 2018-18, which survive. There are no other agreements, representations or warranties not referenced or set forth in this Agreement and this Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever, except by writing duly executed by authorized representatives of all Parties.

Employee, Johnnie Burns

Date: _____

David M. Duwel
Legal Counsel for Employee, Johnnie Burns

Village of Yellow Springs, Ohio

By: _____
Village Manager, Josue Salmeron

Date: _____

Approved as to form:

Breanne Parcels, Village Solicitor