

# RECORD OF RESOLUTIONS

Resolution No. 2021-Z

August 4, 2021

## CITY OF BELLBROOK, OHIO

### RESOLUTION NO. 2021-Z

#### **A RESOLUTION TO APPOINT ROBERT SCHOMMER AS THE CITY MANAGER, APPROVING HIS SERVICE AS THE DIRECTOR OF FINANCE AND DIRECTOR OF SAFETY, AND TO APPROVE AND ENTER INTO AN EMPLOYMENT AGREEMENT**

WHEREAS, the Council of the City of Bellbrook and Robert Schommer desire to enter into a written employment agreement for appointment as the City Manager; and

WHEREAS, it is required that the Council of the City of Bellbrook, pursuant to Article VI, Section 6.01 of the Bellbrook Charter, shall appoint a City Manager by a majority vote of its Members and fix his compensation.

#### **NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BELLBROOK, STATE OF OHIO:**

Section 1. Robert Schommer is hereby appointed to the employment position of City Manager of the City of Bellbrook substantially in accord with the terms and conditions contained in the Agreement attached hereto as Exhibit A and is approved to serve as the Director of Finance and Director of Safety.

Section 2. Michael W. Schweller, as Mayor of the City of Bellbrook, is hereby authorized to execute an employment agreement, attached hereto, with Robert Schommer on behalf of the City of Bellbrook.

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This resolution shall take effect at the earliest date allowed by law.

PASSED this 4<sup>th</sup> day of AUGUST, 2021.



Michael W. Schweller, Mayor



Pamela Timmons, Clerk of Council



EXHIBIT A

**Employment Agreement  
between  
City of Bellbrook, Ohio  
and  
Robert B. Schommer**

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## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of August, 2021 by and between the City of Bellbrook, Ohio, an Ohio municipal corporation, hereinafter called "Employer or City," and Robert B. Schommer, hereinafter called "Employee or City Manager."

### WITNESSETH

WHEREAS, Employer desires to maintain the employment of Robert B. Schommer as City Manager/ of the City of Bellbrook, as provided for in Article VI of the Charter of the City of Bellbrook; and

WHEREAS, it is the desire of the City Council of Bellbrook to provide certain benefits and to establish certain conditions of employment of said Employee as set forth in this Employment Agreement; and

WHEREAS, Employee desires to accept employment as City Manager of Bellbrook, Ohio pursuant to the terms and conditions set forth in this Employment Agreement.

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

### Section 1: Nature of Appointment.

Employer hereby agree to immediately create employment of Robert B. Schommer as City Manager of the City of Bellbrook to perform the functions and duties specified in Article VI of the Charter, and to perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign, subject to this Agreement.

Employer also agrees, designates and approves by adoption of this Agreement and approving Resolution that employee shall serve, until no longer deemed required by City Council, as the Director of the Departments of Finance and Safety.

The positions of Director of Finance and Safety is tied to the job of City Manager except as herein otherwise provided. If for any reason Employee leaves the employ of the City as City Manager, the designation of the Employee as the Director of Finance and Safety shall automatically terminate. No benefits accrue to the Employee hereunder in his capacity as Director of Finance and/or Safety.

Employee agrees that he will support the Constitution of the United States, the Constitution of the State of Ohio, the Charter and all Ordinances of the City of Bellbrook, Ohio, and will at all times faithfully, honestly, and impartially discharge the duties of the office of the City Manager to the best of his abilities.

**Section 2: Term of Agreement.**

A. This Agreement shall become effective immediately upon the adoption of an approving Resolution by the Council of the City of Bellbrook and remain in full force and effect indefinitely as provided in Article VI of the Charter.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Manager to resign or retire at any time from his position with Employer. However, the City Manager agrees to provide sixty (60) days' notice of his resignation and such resignation shall forfeit any right of severance, except as provided for in Section 3E of this agreement.

C. The City Manager agrees to remain in the exclusive employ of the City of Bellbrook while employed by the City of Bellbrook. The term "employed" however, shall not be construed to include occasional teaching or consulting performed outside of his working hours for the City and at his own cost, even if outside compensation is provided for such services. Said activities are expressly allowed, provided that in no case is any activity allowed which would present a conflict of interest with the City of Bellbrook.

**Section 3: Termination and Severance Pay.**

A. In the event the City Manager is terminated by the City Council through the process required in Article VI Section 6.04 of the Charter of the City of Bellbrook and in the absence of unlawful conduct (as noted in Section C) or gross misconduct that is willful and deliberate on Employee's part and that, in either event, is materially injurious to the City, then in that event the City shall continue payment of the Employee's salary and all other benefits set forth in this Agreement for a period of six (6) months. The City may choose to pay Employee the remaining payment in a lump sum upon Employee accepting another position. No claim shall be made for unemployment benefits until the expiration of the six (6) month period.

B. In the event the City Council at any time reduces the salary, compensation or other benefits of the City Manager in a greater amount than an applicable across-the-board reduction for all employees of the City, or in the event the City Council fails to comply with any other provision of this Employment Agreement, then, in that event, Employee may, at his option, be deemed to be "terminated" at the date of such reduction, or such refusal to comply within the meaning and context of the herein severance pay provision.

C. In the event the City Manager is terminated because of unlawful conduct or gross misconduct that is willful and deliberate on Employee's part and that, in either event, is materially injurious to the City (excluding minor traffic-related offenses), then, in that event, Employer shall have no obligation to pay the aggregate severance sum designated herein.

D. For purposes of complying with this Section 3 of this Agreement, appropriations held as an unencumbered fund balance in the General Fund or other account of the City shall be deemed to be available and authorized for transfer to the appropriate salary and benefit expenditure accounts to ensure fulfillment of this provision of the

**Employment Agreement.**

E. Resignation by the Employee forfeits any rights of severance under this Agreement, except for such rights as would be provided to any city employee upon resignation or retirement pursuant to the City personnel rules, policies and regulations.

F. Contemporaneously with the delivery of the severance pay set forth in this Agreement, Employee shall execute and deliver to Employer a release, releasing Employer of all claims that Employee had, may have, or may have in the future against Employer.

**Section 4: Salary and Compensation.**

A. Employer agrees to pay Employee for his services rendered pursuant hereto as City Manager/Director of Finance and Safety an annual base salary of \$120,000. This salary shall be payable in installments at the same time as other employees of the City are paid.

B. This Agreement shall be automatically amended to reflect any salary adjustments authorized by the Employer.

C. Employer agrees to automatically adjust said salary on an annual basis as is provided to other city employees in accordance with the City of Bellbrook Performance Compensation Plan for Non-Bargaining Employees (or other documents which may be adopted by City Council from time to time for non-union employee compensation) without further action.

D. Consideration will be given on an annual basis to adjust base salary compensation and/or merit/bonus pay. Increases in compensation shall be dependent upon the results of a performance evaluation conducted pursuant to the provisions of Section 8 of this Agreement. Increased compensation may take the form of a salary increase and/or bonus. Merit increases or bonuses based on annual performance evaluations and salary reviews are exclusive of any general cost-of-living adjustment increases provided to other employees.

E. The Employer agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of \$6,000 per year as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a personal vehicle. The vehicle allowance shall be paid in installments on a bi-weekly basis within the normal pay period schedule. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for gas, oil and all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle.)

**Section 5: Vacation, Sick and Other Leave.**

Upon commencing employment, the Employee shall be credited with two weeks sick leave and two weeks' vacation leave. Employee may transfer up to 160 hours of sick

leave from his prior employer. The employee shall then accrue sick, vacation, and any other defined leave in accordance with other non-collective bargaining City employees and shall be credited with service time earned as full-time, regular employee with any other political subdivision of the State of Ohio for the purpose of determining vacation accrual rates. Employee shall be entitled to the ongoing accumulation of hours for various leave (including but not limited to vacation leave, personal leave, and sick leave) pursuant to City policies for non-bargaining employees. Employee may opt to cash out eighty (80) hours per year of vacation time which is accrued but not used; and may carry over up to eighty (80) hours into subsequent years without limitation and without forfeiture, any accrued but unused leave types including but not limited to vacation leave, sick leave and personal leave.

#### **Section 6: Retirement Benefits.**

The City Manager shall be covered and governed by the Ohio Public Employee's Retirement System (OPERS) with the Employer and Employee contributing the required percentage of base salary.

#### **Section 7: Insurance Coverage.**

The City Manager shall be covered by the same life, health, dental, vision, disability plans, including FMLA and worker's compensation benefits, and any other insurance at least equal to that which is provided to other employees of the City.

#### **Section 8: Performance Evaluation.**

Employer shall at least annually review the performance of the Employee. The evaluation process, at a minimum, shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee within 30 days of the evaluation meeting.

#### **Section 9: Policies, Rules & Regulations of City.**

All provisions of the Charter, and policies, rules and regulations of the City including those relating to fringe benefits and working conditions as they now exist or hereafter may be amended, shall apply to the City Manager as they would to all other non-union employees of the City. All benefits which vary according to tenure shall be calculated and granted in accordance with City provisions.

#### **Section 10: Residency.**

In accordance to Article VI Section 6.01 of the Charter of the City of Bellbrook, the City Manager need not be a resident of the City while in office with approval of a majority of Council. Acceptance and execution of this Agreement along with any accompanying Resolution shall indicate said approval.

**Section 11: Hours of Work.**

It is expected that the Employee will typically work during normal City Hall office hours. However, it is recognized that the Employee must devote a great deal of time outside those normal office hours on business for the Employer including after hour meetings. Accordingly, and to that end, Employee shall establish a work schedule necessary to fulfill his duties as City Manager. Employee is not eligible for overtime or paid compensatory hours.

**Section 12: Professional Development.**

Employer agrees to pay the expense of memberships, registration, travel, meals and lodging in association with business-related conferences, education or other meetings, according to approved appropriation for travel, training, and professional dues in the annual City Budget.

**Section 13: Indemnification.**

Employer shall defend, indemnify and hold Employee harmless from and against any and all torts, claims, causes of action, demands, costs, expenses or other legal action, including all attorneys' fees, whether groundless or otherwise, arising out of any alleged act or omission occurring during or arising out of Employee's performance of duties as City Manager. Employer shall have the right to compromise and settle any such claim or suit and shall pay the amount of any settlement or judgment rendered thereon. Said indemnification shall extend beyond Employee's termination of employment, and the otherwise expiration of this Agreement, to provide full and complete protection to Employee by the City of Bellbrook, as described herein, for any acts undertaken or committed in his capacity as City Manager, regardless of whether the filing of a lawsuit for such tort, claim, cause of action, demand, or other legal action occurs during or following Employee's employment with Employer.

**Section 14: General Provisions.**

A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.

B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective Date. This Agreement shall become effective as defined in Section 2 and upon adoption and approval by the City Council of the City of Bellbrook.





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

**IN WITNESS WHEREOF**, the City of Bellbrook has caused this Agreement to be signed and executed on its behalf by its Mayor and duly authenticated by its Clerk of Council, and the City Manager has signed and executed this Agreement, the day and year first written above.

CITY OF BELLBROOK, OHIO



Michael W. Schweller, Mayor

CITY MANAGER



Robert B. Schommer

APPROVED AS TO FORM:

\_\_\_\_\_  
Stephen M. McHugh, Law Director

AUTHENTICATION:



Pamela Timmons, Clerk of Council