

First Reading: December 3, 2020  
Second Reading: dispensed

**RESOLUTION 2020- 095**

**A RESOLUTION AUTHORIZING A CONTRACT FOR THE TOWNSHIP ASSISTANT ADMINISTRATOR AND HIGHWAY/ROAD SUPERINTENDENT, DISPENSING WITH THE SECOND READING, AND DECLARING AN EMERGENCY**

**WHEREAS**, the Board of Township Trustees of Sycamore Township desires to retain the services of and to approve a contract with Tracy Kellums for the position of Assistant Township Administrator and Highway/Road Superintendent of Sycamore Township;

**NOW THEREFORE, BE IT RESOLVED** by the Board of Township Trustees of Sycamore Township, State of Ohio:

**SECTION 1.** The attached contract with Tracy Kellums for the position of Assistant Township Administrator and Highway/Road Superintendent is hereby authorized and approved and the Township Trustees and Fiscal Officer are directed to execute the contract on behalf of the Board.

**SECTION 2.** The Board of Township Trustees of Sycamore Township, by at least two-third vote of all of its members, dispenses with any requirement that this Resolution be read on two separate days and authorizes its passage upon one reading.

**SECTION 3.** Upon the unanimous vote of the Sycamore Township Trustees, this Resolution is hereby declared to be an emergency measure necessary for immediate preservation of the public peace, health, safety and welfare of Sycamore Township and shall take effect immediately. The reason for the emergency is to provide for the immediate appointment of a full time permanent Assistant Township Administrator and Highway/Road Superintendent for Sycamore Township.

**VOTE RECORD:**

Mr. James AYE      Mr. LaBarbara AYE      Mr. Weidman AYE

**PASSED** at the meeting of the Board of Trustees this 3<sup>rd</sup> day of December, 2020.

/s/ Jim LaBarbara  
Jim LaBarbara, Chairman

/s/ Thomas C. James, Jr.  
Thomas C. James, Jr., Vice Chairman

/s/ Thomas J. Weidman  
Thomas J. Weidman, Trustee

**AUTHENTICATION**

This is to certify that this Resolution was duly passed and filed with the Sycamore Township Fiscal Officer, this 3<sup>rd</sup> day of December, 2020.

/s/ Robert C. Porter, III

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Robert C. Porter, III  
Sycamore Township Fiscal Officer

**APPROVED AS TO FORM:**

/s/ Deepak K. Desai

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Deepak K. Desai, Law Director

## **EMPLOYMENT AGREEMENT**

This Employment Agreement ("Agreement") is entered into by and between The Board of Township Trustees of Sycamore Township, Ohio, an Ohio township (the "Board") as authorized by resolution adopted by the Board and Tracy Kellums ("Employee").

WHEREAS, the Board desires to continue the employment of Employee as Highway/Road Superintendent and Assistant Township Administrator of Sycamore Township, Ohio; and

WHEREAS, the Board and Kellums desire to enter into this Agreement to establish the terms and conditions under which Employee will be employed as Highway/Road Superintendent and Assistant Township Administrator of Sycamore Township;

NOW THEREFORE, in consideration of these premises and the mutual promises contained herein, the parties agree as follows:

### **Section 1. Duties**

The Board hereby employs the Employee as Highway/Road Superintendent and Assistant Township Administrator of Sycamore Township to assist the Township Administrator in performing the functions and duties specified in Sections 505.031 and 505.032 and Chapter 55 of the Ohio Revised Code, and as modified by the job description for the position, and to perform all other legally permissible and proper duties and functions as assigned by the Board and Township Administrator from time to time. The Employee is generally expected to maintain office hours from 8:00am to 4:30pm, Monday through Friday. The Employee may vary the work hours at his discretion, but it is generally expected that the normal workweek shall be a minimum of 40 hours averaged during the calendar year. In addition to the duties listed in Section 505.032 of the Revised Code, Employee's additional duties shall include those items listed in the job description for Road Superintendent of Sycamore Township.

### **Section 2. Term**

The term of this agreement shall begin on December 27, 2020 and shall remain in effect until December 31, 2023 (the "Termination Date") unless sooner terminated pursuant to Section 3 of this Agreement, or unless Employee voluntarily chooses to retire from his employment with the Township. In the event the parties mutually desire to extend the employment relationship beyond December 31, 2023, they shall exercise reasonable efforts to discuss terms during the period beginning ninety (90) days prior to the Termination Date (Employee shall be responsible for notifying the Board of this date within thirty (30) days prior thereto), and enter into a revised agreement consistent with such discussions. Should there then be no agreement between the parties to renew or enter into a new employment agreement on or before the Termination Date, then Employee's employment with the Township will end on the Termination Date and Employee shall be entitled to the severance compensation (salary and benefits) set forth in Section 3A. as if he were terminated without cause. Such Severance Compensation as hereinafter defined shall commence on January 1, 2024.

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

- A. In the event Employee is terminated by the Board on or before December 31, 2021 without just cause, and during that time Employee is willing and able to perform his duties under this Agreement, the Board shall continue to pay Employee's

salary for a period of twelve (12) months after the date of termination (the "Severance Period") and shall continue Employee's then current health insurance coverage for a period of twelve (12) months. In the event Employer is not able to maintain Employee's health insurance coverage pursuant to the terms of the Township health insurance plan, then Employer shall pay to Employee, for a period of twelve (12) months, the cost of health insurance premiums at a rate that will continue substantially similar health benefits for Employee and Employee's family, if applicable, as provided under the then current township health insurance plan. In the event Employee is terminated by the Board after December 31, 2021 but on or before December 31, 2022 without just cause, and during that time Employee is willing and able to perform his duties under this Agreement, the Board shall continue to pay Employee's salary for a period of nine (9) months after the date of termination (the "Severance Period") and shall continue Employee's then Current health insurance coverage as stated above for a period of nine (9) months. In the event Employee is terminated by the Board after December 31, 2022 without just cause, and during that time is willing and able to perform his duties under this Agreement, the Board shall continue to pay Employee's salary for a period of six (6) months after the date of termination (the "Severance Period") and shall continue Employee's then current health insurance coverage as stated above for a period of six (6) months. In addition, the Board shall pay the cash value of any accrued vacation time. The Board shall buy back any accrued and unused sick time in accordance with the policies and buy back terms adopted by the Board for all nonunion township employees. All of the above shall hereinafter be referred to as the Severance Compensation. The parties agree that this Severance Compensation shall constitute Employee's sole and exclusive remedy for termination without just cause.

In the event Employee finds employment with another employer during the applicable Severance Period, then the Severance Compensation to be paid after the conclusion of the first two-thirds of the applicable Severance Period shall be reduced by the amount of salary and benefits Employee receives from his new employer from that date forward (meaning the Severance Compensation would be subject to any applicable offsetting reduction after 8 months if the date of termination occurred in 2021, after 6 months if in 2022, or after 4 months if in 2023). In all events, Employee shall be entitled to receive the total Severance Compensation without setoff for at least two-thirds of the applicable Severance Period.

- B. In the event Employee is terminated by the Board before the expiration of the term of this agreement with just cause, the Board shall have no obligation to pay the Severance Compensation set forth in Section 3A.
- C. In the event the Board, at any time during the term of this Agreement, reduces the salary or other financial benefits of Employee in a greater percentage than an applicable across-the-board reduction for all employees of the Board, or in the event the Board refuses, following written notice, to comply with any other provision benefiting Employee herein, or Employee resigns following a written request by the Board that he resign, then, in that event, Employee may, at his option, be deemed to be "terminated without just cause" as of the date of such reduction, refusal to comply, or written request and Employee shall be entitled to the Severance Compensation as set forth in Section 3A. as if he were terminated without cause. For the purposes of this paragraph, the Board's failure to grant Employee a raise equivalent to that given any or all other Township Employees shall not be deemed a "reduction" as provided herein.
- D. In the event Employee desires to voluntarily resign his position with the Board, whether for

retirement or other reasons, before the expiration of the above term of this employment, then Employee shall give the Board thirty (30) days notice in advance, unless the parties agree otherwise in writing. In the event the Employee voluntarily resigns his position, he shall not be entitled to the severance pay provisions contained in Section 3A hereof.

- E. For the purposes of Section 3. hereof, "just cause" shall mean the following:
- (a) The Employee is convicted of a felony;
  - (b) The Employee has failed or neglected to carry out his duties hereunder in any material and significant respect, or has been guilty of misfeasance, malfeasance or nonfeasance in office for a period of thirty (30) days after written notice to him from the Board specifying the nature of such failure, neglect, misfeasance, malfeasance, or nonfeasance in office, unless such misfeasance, malfeasance, or nonfeasance is so egregious or of such a nature that it is of a criminal nature or it cannot be corrected.
- F. If the Employee is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of eight successive weeks beyond any accrued sick leave and vacation time, the Board shall have the option to terminate this Agreement, and Employee shall receive the Severance Compensation set forth under Paragraph 3A. above.

#### **Section 4. Compensation**

Beginning December 27, 2020, the Board agrees to pay Employee for his services rendered pursuant hereto at an annual rate of \$120,263.62 payable on a bi-weekly basis at the same time as other employees of the Board are paid. Said compensation shall be increased to the sum of \$123,871.53 per annum effective upon the start of the first regular pay period following January 1, 2022, and increased to the sum of \$127,587.68 per annum effective upon the start of the first regular pay period following January 1, 2023. Thereafter, compensation shall be reviewed as part of the contract negotiations set forth in Section 2. While it is recognized that the Employee must devote considerable time outside the normal working hours to the business of the Board, no additional compensation will be granted to the Employee for such additional time. The salary shall be subject to required state and federal withholdings, and such additional holdings as may from time to time be requested in writing by Employee.

The Employee will be provided with a Township vehicle to be supplied by the Board including any necessary fuel, maintenance, and insurance expenses. In addition, if Employee presents to the Fiscal Officer in a timely manner as determined by the Fiscal Officer a record of his use of his own private vehicle for official Township business taking him outside the Township, he will be reimbursed for gas/oil and wear and tear at the Federal reimbursement rate established by the Internal Revenue Service, as from time to time adjusted. Reimbursement for other modes of travel shall follow Board policy and practices as from time to time amended.

During the Term, the Board may pay for such dues, subscriptions, tuition, seminar and convention fees, and related travel, lodging and meals as the Board determines are reasonably necessary and desirable to preserve and enhance Employee's professional knowledge and skills as such. Employee shall provide to the Board prior written requests for such payment, setting forth the justification therefore.

#### **Section 5. Benefits**

The Employee shall be entitled to such other benefits as the Board provides to other employees of the Board including health insurance, dental insurance, vision insurance, life insurance, PERS, vacation, personal time, and sick leave, as provided in the Sycamore Township Employee Personnel Manual. Accumulated, unused sick leave will be subject to the policies adopted by the Board for all nonunion township employees. Employee shall qualify for two hundred forty (240) hours of vacation on January 1, 2021 and shall qualify for two hundred forty (240) hours of vacation on January 1, 2022 and shall qualify for two hundred forty (240) hours of vacation January 1, 2023. Employee will also qualify for an additional three hundred (300) hours that can be used anytime from January 1, 2021 to December 31, 2023. Employee vacation time will not be subject to the Sycamore Township Personnel Manual policies pertaining to vacation time. In addition to the benefits set out in this paragraph, Employee shall be entitled to additional benefits set out below:

The Employee shall be reimbursed for the monthly service of a cell phone at a rate established for other employees, currently \$65.64 per month and as amended from time to time. In addition, the Board agrees to purchase for the Employee a cellular phone once every 18 months.

**Section 6. Indemnification**

The Board 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 his duties as such, and will compromise and settle any such claim or action and pay or cause to be paid the amount of any settlement or judgment rendered thereon, provided, however, that this paragraph shall not apply to any criminal proceeding in which Employee is convicted of any crime, and the Board's liability under this paragraph shall not exceed such coverage as may from time to time be provided under the applicable insurance policy or policies, insurance pool or other insurance arrangement from time to time in force and to the extent of such coverage.

**Section 7. Amendments**

This Agreement may be modified or amended at any time by mutual written consent of the parties hereto.

**Section 8. Severability**

If any part of this agreement is found to be unconstitutional or unenforceable by a Court of competent jurisdiction, or legislative or administrative tribunal, then such decisions or legislation shall apply only to the specific provision of this agreement. The parties hereto will meet and discuss the abrogated provision. The remainder of the agreement shall remain in full force and effect to the extent reasonable in light of the abrogated provisions.

Signature Page follows

N WITNESS WHEREOF, the parties have executed this Employment Agreement on the dates set forth below.

THE BOARD OF TOWNSHIP TRUSTEES  
OF SYCAMORE TOWNSHIP, OHIO

By: /s/ Thomas C. James, Jr.  
Thomas C. James, Jr.

By: /s/ Jim LaBarbara  
Jim LaBarbara

By: /s/ Thomas J. Weidman  
Thomas J. Weidman

By: /s/ Robert C. Porter, III  
Robert C. Porter III, Fiscal Officer

Date: 12/03/2020

  
Tracy Kellums

Date: 12/9/20

APPROVED AS TO FORM:

/s/ Deepak K. Desai  
Deepak K. Desai  
Law Director

**FISCAL OFFICER'S CERTIFICATE**

**O.R.C. Section 5705.41(D)(1)**

It is hereby certified that the amount required to meet the obligation under this attached contract, agreement, order, statement of work, or expenditure, or in the case of a continuing contract to be performed in whole or in part in an ensuing fiscal year, the amount required to meet the obligation in the year in which the contract is made, has been lawfully appropriated for such purpose and is in the Treasury or is in the process of collection to the credit of an appropriate fund free from any previous encumbrances, and is not appropriated for any other purpose. This certificate is given in compliance with Sections 5705.41 and 5705.44 of the Revised Code.

/s/ Robert C. Porter, III  
Robert C. Porter, III, Fiscal Officer