

## **EMPLOYMENT AGREEMENT**

THIS AGREEMENT ("Agreement") is made and entered into this 9TH day of January, 2018, by and between the City of Huber Heights, Ohio, an Ohio municipal corporation, ("City") and Robert B. Schommer, ("Schommer").

WHEREAS, City desires to appoint Schommer as the City Manager of the City of Huber Heights, as provided for in Article VI of the Charter of the City of Huber Heights; and

WHEREAS, it is the desire of the City Council of Huber Heights to provide certain benefits and to establish certain conditions associated with the appointment of Schommer as set forth in this Agreement; and

WHEREAS, Schommer desires to accept the appointment as City Manager of Huber Heights, Ohio pursuant to the terms and conditions set forth in this Agreement.

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

### **Section 1. Nature of Appointment.**

The parties mutually agree to terminate the Employment Agreement dated April 14, 2014 by and between the parties. Effective with the termination of that Employment Agreement, and the retirement of Robert B. Schommer from the Ohio Police and Fire Pension Fund, this Agreement shall take effect, and Schommer shall be immediately appointed the City Manager of the City of Huber Heights. As such, Schommer shall perform the functions and duties specified in the Charter and City Code, 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.

As a result of the duties of City Manager Schommer is expected to respond to certain emergencies, and conduct activities associated with all city services; therefore, City will provide a City owned vehicle for his use.

Schommer 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 Huber Heights, 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. Schommer shall serve at the pleasure of the City Council. This Agreement shall become effective immediately upon the retirement of Schommer from the Ohio Police and Fire Pension Fund and remain in full force and effect from that date through the 31<sup>st</sup> day of December, 2022 subject to the termination provisions set forth within the Agreement.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Schommer to resign or retire at any time from his position with City. However, Schommer agrees to provide thirty



B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Schommer to resign or retire at any time from his position with City. However, Schommer agrees to provide thirty (30) days' notice of his resignation and such resignation shall forfeit any right of severance, except as provided for in Section 3 (F) of this agreement.

C. Schommer agrees not to undertake any employment that would in any way hinder his ability to provide his full attention to the position of City Manager of Huber Heights. However, this 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 Huber Heights.

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

A. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Council to terminate the services of Schommer at any time with or without cause as provided by the City Charter.

B. Terminated "for cause" shall mean Schommer is terminated because of a violation of, or failure to comply with, the terms of this Agreement after being given a written notice which describes the violation and provides thirty (30) days for Schommer to cure the violation or obtain compliance thereof; conviction of any illegal act involving personal gain to Schommer or any other person; or for any felony or for any crime of moral turpitude which negatively impacts the City. In the event Schommer is terminated for cause then, in that event, City shall have no obligation to pay the severance sum designated herein.

C. In the event Schommer is terminated without cause, the City shall: (1) pay Schommer a lump sum cash payment equal to six (6) months of his annual base salary; (2) pay Schommer the unpaid balance of salary earned from the beginning of the then-current pay period through the date of termination; (3) pay for all accrued benefits in accord with the Employment Manual of the City applicable to all employees; (4) continue in full force and coverage all health, dental, and vision insurance and all other City provided benefits at City expense, for a period of twelve (12) months or until other coverage is provided to Schommer by a subsequent employer or said coverage is provided through retirement benefits (and is in full force and effect), whichever comes first. Schommer will continue to pay the employee portion of benefits in accord with the Employment Manual of the City applicable to all non-union employees. Said continuation of group health insurance coverage shall be in addition to any protection afforded Schommer by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Coverage under COBRA shall begin on the date all coverage extended under the severance provisions herein expires.

D. In the event the City Council at any time reduces the salary, compensation or other benefits of Schommer in a greater amount than an applicable across-the-board reduction Schommer may, at his option, be deemed to be "terminated without cause" at the date of such reduction.

E. 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 Agreement.



F. Resignation or retirement by Schommer 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.

G. Contemporaneously with the delivery of the severance pay set forth in this Agreement, Schommer shall execute and deliver to City a release, releasing City of all claims that Schommer may have against City.

#### **Section 4. Salary.**

City agrees to pay Schommer for his services rendered pursuant hereto as Schommer an annual base salary equivalent to the employee's most recent and current salary as City Manager which is currently (\$141,060) payable in installments at the same time as employees of the City are paid. City agrees to increase said salary by the annual Cost of Living Adjustment (COLA), if any, provided to city employees in accordance with the City of Huber Heights 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), effective with the first pay period as all non-union City employees, without further action.

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

Schommer shall be credited for his past accrued vacation and sick leave hours upon his retirement. Commencing with his reappointment Schommer shall be entitled to accrue hours for various leave (including but not limited to vacation leave, personal leave, and sick leave) at the rate and pursuant to City policies for non-bargaining employees. Schommer may opt to cash out the maximum number of hours per year of vacation time as provided for in the Employee Manual applicable to all employees.

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

Schommer shall be covered and governed by the Ohio Public Employee's Retirement System (OPERS), with the City contributing its required percentage of base salary (based on a solely administrative position which shall not include the designation as a safety director or peace officer). As provided for in the City Personnel manual for non-union employees, the City agrees to pay a portion of Schommer's OPERS contribution (1% per year) on behalf of Schommer. Calculations for retirement contributions shall include all compensation normally reportable to OPERS.

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

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

#### **Section 8. Policies, Rules & Regulations of City**

All provisions of the Charter, and policies, rules and regulations of City including those relating to fringe benefits and working conditions as they now exist or hereafter may be amended, shall apply



to Schommer as they would to non-union employees of City. All benefits which vary according to tenure shall be calculated and granted in accordance with City provisions.

#### **Section 9. Residency.**

In consideration of the standing Legal Opinion regarding Section 6.01 of the Charter of Huber Heights, there shall be no residency requirement for Schommer.

#### **Section 10. Hours of Work.**

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

#### **Section 11. Professional Development.**

City 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 12. Indemnification.**

City shall defend, indemnify and hold Schommer 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 in connection with a governmental or proprietary function and occurring during or arising out of Schommer's good faith performance of duties of City Manager. City 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 Schommer's term of appointment, and the otherwise expiration of this Agreement, to provide full and complete protection to Schommer by the City of Huber Heights, 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 Schommer's appointment with City.

#### **Section 13. General Provisions.**

A. This Agreement sets forth and establishes the entire understanding between the City and Schommer relating to the appointment of Schommer as City Manager. 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 part of the Agreement.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Schommer.

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

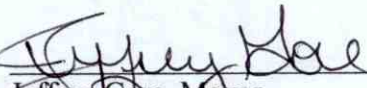
D. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.


E. Contemporaneously with the execution of this Agreement, Schommer shall execute and deliver to City a Release signed by Schommer releasing and waiving any and all past potential claims Schommer has or may have against the City occurring prior to the execution of this Agreement. In exchange for said Release, City shall pay to Schommer with the next applicable pay period after execution of this Agreement and the Release, a one time lump sum payment of \$15,000.

IN WITNESS WHEREOF

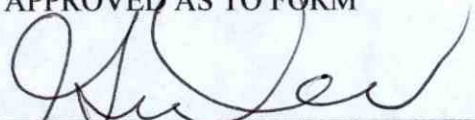
CITY OF HUBER HEIGHTS, OHIO

SCHOMMER

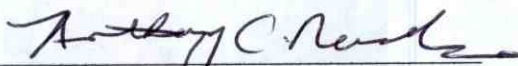
  
Jeffrey Gore, Mayor

  
Robert B. Schommer

APPROVED AS TO FORM

  
Gerald L. McDonald, Law Director

AUTHENTICATION

  
Anthony C. Rodgers, Clerk of Council