

Employment and Settlement Agreement
With Release and Waiver

This Agreement is between, and binding on, **Heather Roberts**, on behalf of herself, and her heirs, executors, administrators, successors, assigns, agents, attorneys, representatives and other agents, (“Roberts”), and the **Village of Johnstown, Ohio**, (“Village”), **Chief of Police Don Corbin**, (“Corbin”), and **Village Manager Jim Lenner**, (“Lenner”), (hereinafter the “parties”). The parties enter into this Agreement voluntarily and with advice of counsel. This Agreement is effective the last date signed below.

This Agreement concludes Roberts’ employment with the Village and resolves all disputes between the parties, including claims by Roberts in Licking County Court of Common Pleas case numbers 11-CV-0879, individually and when consolidated with case number 12-CV-00406, and 13-CV-00161, and United States District Court for the Southern District of Ohio case number 2:12-cv-00307, (“Lawsuits”), all matters relating to Roberts’ employment, and all disputes that have or could have been asserted between the parties as of the date of this Agreement. In consideration of the mutual promises herein, the adequacy of consideration of which is hereby acknowledged, the parties agree as follows:

1. **Not an Admission of Wrongdoing.** The Parties understand and agree this Agreement is NOT an admission of any violation of any law or breach of any duty by the other, nor does it constitute an admission of any allegation of wrongdoing or illegal conduct on the part of the parties. The parties recognize that they specifically deny each and every one of the allegations of wrongdoing and illegal conduct made by the other party. The parties are settling this dispute in order to avoid the inconvenience of further controversy and for no other reason. The consideration in this Agreement will be provided to resolve these disputes, notwithstanding the fact that, in the absence of this Agreement, the parties dispute whether the other would be entitled to them.
2. **Roberts Forever Resigns Her Employment.** Roberts hereby irrevocably and forever resigns from employment with the Village immediately, effective December 1, 2015. The Village hereby accepts Roberts’ resignation. Roberts’ resignation cannot be rescinded.
3. **Leave Period.** The Village hereby places Roberts on administrative leave from the date of this Agreement until December 1, 2015 (“Leave Period”). During the Leave Period, the Village will continue Roberts’ current pay, less deductions, retirement contributions, and withholding required by law, and she will be provided health insurance benefits under the same terms and contribution rates as they are made available to all other employees of the Village Police Department; she will not accrue paid time off balances or benefits. Roberts agrees that she has not performed job duties in the course of and arising out of her employment since May 8, 2014, shall not be required to perform job duties during the leave period, and will not act or hold herself out as an agent of the Village of Johnstown at any point in the future, unless otherwise directed by the Village. During the Leave Period, the Village will continue to make all applicable employer retirement contributions and/or withholding for Roberts’ earning during the Leave Period with the Ohio Public Employees Retirement System (OPERS) throughout the term of the Leave Period. Should OPERS return to the Village any amounts that were withheld from Roberts’ pay and

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forwarded to OPERS, those amounts will be forwarded to Roberts at her last address on record with the Village. Should OPERS deny Roberts service credit or refuse to credit contributions for the Leave Period, Roberts shall be responsible for any administrative appeal.

4. **Accrued and Unused Leave.** Upon the approval of this Agreement by all parties, Roberts will be paid her accrued unused benefits in accordance with the Village Employee Handbook as if the date of her separation was the date of the approval of this Agreement. She will also be paid for any portion of her suspension she already served which is currently under appeal by her to the Village Personnel Review Board.

5. **Settlement of Costs and Attorney Fees.** Within a reasonable time, but in no event sooner than seven (7) days after the effective date of this Agreement or more than twenty-one (21) days after the effective date of this Agreement, the following sums will be paid to Roberts' attorneys for attorney fees and costs associated with her Lawsuits: A) Payment to Michael A. Moses, Attorney, in care of Michael A. Moses, Attorney, Moses Law Offices, LLC Trust: in the amount of Forty-Six Thousand Dollars (\$46,000.00) and no cents; B) Payment to John S. Marshall, Esq., in care of Marshall & Morrow, LLC Trust in the amount of Four Thousand Dollars (\$4,000.00) and no cents.

6. **Dismissal with Prejudice.** Plaintiff will dismiss her Lawsuits with prejudice within ten (10) days after the execution of this Agreement, agreeing never to attempt to reassert her claims in any way. This Agreement also acts to withdraw with prejudice Roberts' appeal to the Village Personnel Review Board. Roberts hereby affirms that she has not filed any other charge, complaint, report or cause of action with any State or Federal court or agency, including the Equal Opportunity Commission ("EEOC"), Ohio Civil Rights Commission ("OCRC"), or Department of Labor ("DOL"), regarding her Employment or regarding any of the Defendants, and she affirms that no such action will be filed by her or on her behalf pending this Agreement. Roberts agrees that she will not file or cause to be filed any such action after this Agreement concerning the matters stated herein.

7. **Costs & Attorney Fees.** Each party will pay their own litigation expenses and attorney fees of the Lawsuits. Roberts agrees that she is not a prevailing party under any law or procedure by which she has asserted any claim against the Released Parties in any forum.

8. **Roberts Will Not Disparage the Village and Related Persons.** Roberts will forever refrain from any statement or publication, oral or written, of a defamatory, disparaging, or otherwise derogatory nature pertaining to the Village, Corbin, Lenner and the "Released Parties" identified in this Agreement. This Agreement applies to any direct or indirect communications, whether stated openly or anonymously by Roberts. It will not be a violation of this section if a spouse, relative or associate of Roberts disparages the Village, Corbin or Lenner, unless participation by Roberts in the disparagement is proven. This prohibition applies to any comments made orally, in writing, or electronically, such

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as on social media. This provisions shall not prohibit truthful statements of fact made under oath in response to legal process.

9. **Non-Disparagement of Roberts.** The Village, Corbin and Lenner will forever refrain from any statement or publication, oral or written, of a defamatory, disparaging, or otherwise derogatory nature pertaining to Roberts. This Agreement applies to any direct or indirect communications, whether stated openly or anonymously. This prohibition applies to any comments made orally, in writing, or electronically, such as on social media. The Village will take the following steps to control its employees from disparagement of Plaintiff: post a memorandum stating “The Roberts matter has concluded. The Village does not condone any disparaging comments about the matter or Roberts.” It will not be a violation of this section if a current or former Village employee disparages Roberts, unless participation by the Village, Lenner or Corbin in the disparagement is proven. This provision shall not prohibit truthful statements of fact made under oath in response to legal process.

10. **Pursuit of other claims.** Plaintiff agrees not to voluntarily assist any other person who is bringing or may bring any threats, demands, claims, charges, actions or causes of action against the Village, Lenner, Corbin or the Released Parties either personally or through her agents or family members. This paragraph is not intended to and will not be construed as prohibiting Roberts from providing truthful testimony compelled by legal process or responding truthfully to government agencies as required by law or to enforce any provision of this Agreement. Upon service on Roberts, or anyone acting on her behalf, of any subpoena, order, or other legal process requiring Roberts or her attorneys to disclose any information the disclosure or dissemination of which by Roberts is prohibited by this Agreement, Roberts or her attorneys shall provide the Village Manager a copy of documents served upon Roberts within five (5) business days.

11. **Confidentiality.** Roberts agrees that she will not at any time talk about, write about, or otherwise publicize, verbally or nonverbally, whether openly or anonymously, and whether or not the communication is initiated by her or she is responding to the communication of others, the terms or existence of this Agreement, or any fact concerning its negotiation, execution or implementation. Roberts will not testify or give evidence in any forum concerning her employment or disputes regarding her employment with the Village unless required by law. Roberts may, however, disclose that she resigned her employment to prospective employers and the terms of this Agreement to only her attorneys, tax accountants, spouse, or financial advisors, as is necessary, but only after instructing the same to maintain the confidentiality of this Agreement. Roberts affirms that as of the date of this Agreement, she has not disclosed the nature of, or any of the terms of, this Agreement, except as heretofore described. Roberts’ obligations under this paragraph continue to apply and be enforceable whether or not the terms of this Agreement have become known or later become known to others. ROBERTS IS ONLY PERMITTED TO STATE, IF ASKED ABOUT ANY DISPUTES OR THIS LITIGATION OR SETTLEMENT WITH THE RELEASED PARTIES, THAT, “THE MATTER HAS CONCLUDED.”

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This paragraph is not intended to and will not be construed as prohibiting Roberts from providing truthful testimony compelled by legal process or responding truthfully to government agencies as required by law or to enforce any provision of this Agreement; **NOR IS IT INTENDED TO INHIBIT THE RELEASED PARTIES IN THEIR COMPLIANCE WITH R.C. SEC. 149.43 OR THEIR PROVIDING RESPONSES TO REQUESTS FOR PUBLIC RECORDS.**

12. **Return of Village Property.** Defendants and Plaintiff agree that Plaintiff shall not re-enter the work place effective **May 9, 2014**; her personal belongings, if any, will be returned to Plaintiff promptly, and Plaintiff will return all uniforms and employment identification and other Village property and equipment, including computer passwords, at the same time.

13. **Roberts is Not Eligible for Re-Hire.** Plaintiff agrees never to seek, attempt to seek or reapply for employment or reinstatement with the Defendants, including seeking reinstatement pursuant to Ohio Revised Code Chapter 145, and Plaintiff agrees that Defendants have a legitimate and valid reason not to hire her based on her violation of this paragraph.

14. **Release and Waiver.** The spirit and intent of this Agreement is to terminate with finality any and all disputes, whether known or unknown, the parties may have with each other on the date hereof, and this Agreement will be interpreted in accordance with such spirit and intent. The following Release and Waiver will be enforced to the maximum extent permitted by law. In accordance with that intent, the parties hereby execute the following Release and Waiver.

A. Released Parties. The Release and Waiver by Roberts extends to the following **“Released Parties”**: The Village of Johnstown, Ohio, and each of its current and former elected and appointed officials, employees (including, without limitation, Village Manager Jim Lenner, Chief of Police Don Corbin, and Sonny Whalen), contractors, vendors, attorneys, insurers and other agents, in their official and individual capacities, including Trident Insurance and its current and former shareholders, members, directors, officers, employees, agents, attorneys, representatives, subsidiaries, affiliates, successors and assigns, all in their official and individual capacities where applicable.

B. Release and Waiver by Roberts. Roberts understands there are many laws and regulations prohibiting employment discrimination, harassment or retaliation on the basis of age, race, color, sex, religion, national origin, handicap, disability, ancestry, genetic information, military status, and other protected characteristics and activities by her, retaliation or opposing unlawful acts or reporting wrongdoing, or otherwise regulating employment or claims relating to the employment or interactions she may have with the Released parties, under which she may argue to have rights or claims. These laws may include, without limitation, as amended: **Ohio Revised Code**

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Chapter 4112 and 4113, Ohio Revised Code Section 4123.90, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Older Worker Benefit Protection Act, the Americans with Disabilities Act of 1990, the Family Medical Leave Act, the Fair Labor Standards Act, claims brought under 42 U.S.C. 1983 for alleged violation of rights under the U.S. Constitution or other Federal rights, and other federal, state and local laws. Roberts also understands there are other provisions of the United States and Ohio Constitutions, statutes, regulations, common law, public policy and other legal protections relating to her employment and interactions with the Released Parties that are not specifically defined above, but to which this Release and Waiver applies. Roberts hereby discharges, releases and waives any rights or actions she may have as to the Released Parties under these and other laws as of the date she signs this Agreement, whether those rights and possible actions are known or unknown to her at this time, and whether they are accruing or accrued, legal or equitable, including the present, continuing or future effects of past discrimination, harassment or retaliation, or other policies, practices, customs, or acts. This Release and Waiver extends to any claims, charges, demands, suits, actions or causes of action Roberts may have as of the date of this Agreement for pay, benefits, compensation, reimbursement, costs, attorney fees, expenses or any amounts whatsoever, or for equitable or injunctive relief regarding any matter arising on or before the date of execution of this Agreement against the Released Parties.

- C. **ADEA/OWBPA Disclosure and Acknowledgment.** Roberts understands that she is releasing any claims under the **Age Discrimination in Employment Act (“ADEA”)**, the **Older Workers Benefit Protection Act (“OWBPA”)**, and corresponding **Federal and Ohio laws**, as amended. In signing this Agreement and Release and Waiver, Roberts understands that she has the **right to seek counsel from others**, including an attorney of her choosing. She acknowledges that she has had a full **opportunity to seek clarification** of any of these terms from the Village and from her own attorneys. Roberts further affirms that she received this Agreement on June 13, 2014 and that she has **twenty-one (21) calendar days** to consider this Agreement before signing it, or until July 5, 2014. If Roberts elects to execute this Agreement prior to the expiration of the 21-day period, she warrants that she has done so knowingly and voluntarily having had a full opportunity to consider the Agreement. Roberts has **seven (7) days** following the execution of this Agreement to revoke this Agreement. Any revocation of the Agreement will be in its entirety and may be made by providing written notice delivered to Fishel Hass Kim Albrecht, LLP, 400 S. Fifth Street, Suite 200, Columbus, OH 43215. If written notice of revocation is not received by the 8th day after execution of the Agreement by Roberts, the Agreement will become effective on that day. This Agreement shall not become effective or enforceable until the seven (7) day revocation period has expired. No payments shall be made

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under this Agreement until the seven (7) day revocation period has expired. Roberts acknowledges that the parties have fully complied with all requirements of the Age Discrimination in Employment Act and Older Worker Benefit Protection Act.

- D. **No Further Remedy.** Roberts agrees not to request, or to directly or indirectly cause, any governmental agency or other person to commence any investigation or bring any action against the Released Parties, and Roberts waives any remedy or recovery in any action which may be brought on her behalf by any government agency or other person. Roberts acknowledges that she has timely received all compensation and benefits to which she is entitled. She affirms that she is owed no other pay, vacation pay, holiday pay, sick leave, personal leave, or other compensation or benefit whatsoever other than what has been provided to her by the Village.
- E. **If Roberts violates this Agreement by filing or bringing any charges, claims, or actions contrary to this Release and Waiver, in addition to any other remedies that may be available to the Released Parties, including but not limited to, remedies for breach of contract, Roberts will pay all costs and expenses of the Released Parties in defending against such charges, claims, or actions brought by her or on her behalf, including reasonable attorney fees. If any of the Defendants violate the Release and Waiver in addition to any other remedies that may be available, including but not limited to remedies for breach of contract, the violating Defendant will pay all costs and expenses of Roberts in defending against such action.**
- F. **Release and Waiver by the Village, Lenner and Corbin.** The Village, Corbin and Lenner hereby release and discharge Roberts from all claims that they now have or may have or that they may hereafter have of any nature, be they common law or statutory, legal or equitable, known or unknown, accruing or accrued, whether based in contract, tort, statute, or any other theory of recovery, including but not limited to claims arising out of Roberts' employment with the Village. The Village, Corbin and Lenner waive all rights to assert a claim for relief available under any such laws, including but not limited to damages and attorney fees. At no time subsequent to the execution of this Agreement will the Village, Corbin or Lenner pursue, or cause or knowingly permit the pursuit, in any state or federal court, or before any local, state, or federal administrative agency, or any other tribunal, any charge, claim or action of any kind.
- G. **Cooperation.** Roberts agrees that she will comply with legal process served by the Village in connection with the defense or prosecution of any claim that may be made against or by the Village or Released parties, or in connection with any ongoing future investigation or dispute or claim of

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any kind involving the Village, including any proceeding before any arbitral, administrative, judicial, legislative, or other body or agency, including testifying in any proceeding to the extent such claims, investigations, or proceedings, relate to services performed or required to be performed by her, pertinent knowledge possessed by her, or any action or omission by her. Roberts further agrees to produce any documents upon service of legal process or request that may be reasonably necessary to carry out the provisions of this paragraph.

15. **Non-Assignment.** Roberts hereby warrants that she has not assigned or transferred interest in any action against the Released Parties to any third party or filed with any agency or court any claim released by this Agreement, and that she is acting with full authority to resolve the matters stated herein. The parties agree and acknowledge that they are relying upon this warrant, in entering into this Agreement.

16. **No Waiver of Terms.** No failure by a party to insist upon the strict performance of any term in this Agreement, or to exercise any right, power or remedy available to the party due to a breach of the Agreement, shall constitute a waiver by the party of any term or of any remedy for a breach. No waiver of any remedy for a breach shall affect or alter this Agreement, which will continue in full force and effect.

17. **Modification.** The Agreement may not be modified except in writing signed by each party or the authorized agents of them.

18. **Choice of Laws/Forum Selection.** This Agreement is to be construed and interpreted under Ohio Law. Any breach of this Agreement is to be litigated in a Federal or State court of competent jurisdiction and venue within Ohio.

19. **Entire Agreement.** The spirit and intent of this Agreement is to terminate with finality any and all disputes, whether known or unknown, the parties may have with each other on the date hereof, and this Agreement will be interpreted in accordance with such spirit and intent. This document constitutes the entire agreement between the parties. There are no other agreements, promises, terms or conditions between the parties besides for those expressed herein. It is the intention of the parties that this Agreement, and each of its subparts be enforced to the fullest extent possible by law. If any term of this Agreement is deemed invalid or unenforceable by a Court, the remainder of the Agreement will remain in full force and effect.

20. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original but which together shall constitute one and the same instrument notwithstanding that all parties have not signed the original or the same counterpart.

Having first had sufficient opportunity to consider this Agreement, including the Release and Waiver of claims, consult with their respective counsel, request clarification

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and explanation of the terms of the Agreement from the other party, the parties hereby enter into this Agreement effective the last date signed below:

For Heather Roberts:

Heather Roberts (date)

Witness
Print Name: _____

For the Village, Corbin, and Lenner:

For the Village of Johnstown (date)
Print Name: _____

Don Corbin (date)

Jim Lenner (date)