

RESOLUTION NO. 31-07
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Paul M. Gresham ON THE 16th
DAY OF July, 2007.

A RESOLUTION RATIFYING THE ACTION OF THE CITY
MANAGER TO EXECUTE AN EMPLOYMENT SEPARATION AND
RELEASE AGREEMENT WITH GORDON W. COLE, JR.

WHEREAS, Gordon W. Cole, Jr. is a police officer employed by the City of
Centerville; and

WHEREAS, claims and disputes arose between Cole and the City related to
Cole's employment with the City; and

WHEREAS, Cole resigned as an officer and employee from the City as of June
22, 2007;

WHEREAS, this Council is of the opinion that the proposed settlement is in the
best interests of the citizens of this City.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY
RESOLVES:

Section 1. That the action taken by the City Manager be and is hereby
ratified in the executing an employment separation and release agreement
with Gordon W. Cole, Jr. on behalf of the City upon the terms and
conditions set forth in Exhibit "A" attached and incorporated herein.

PASSED THIS 16th day of July, 2007.

P. M. Gresham
Mayor of the City of
Centerville, Ohio

ATTEST:

Debra A. James
Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 31-07, passed by the Council of the City of Centerville, Ohio on the 16th day of July, 2007.

Debra A. James
Clerk of the Council

Approved as to form, consistency with the
Charter and Constitutional Provisions.
Department of Law
Scott A. Liberman
Municipal Attorney

EMPLOYMENT SEPARATION AND RELEASE AGREEMENT

This Employment Separation and Release Agreement ("Agreement") is made this 25 day of June, 2007, by and between **Gordon W. Cole, Jr.** ("Cole") and **The City of Centerville** ("Centerville"), defined to include officers, employees, agents, representatives and elected officials.

WHEREAS, Cole has been employed by Centerville since October 3, 2000; and,

WHEREAS, Cole on June 25, 2007, submitted a written Notice of Resignation intending to resign as of June 22, 2007, which was accepted by Centerville; and,

WHEREAS, it is the parties' desire to conclude their relationship in an amicable manner in accordance with provisions applicable to Cole's employment; and,

NOW, THEREFORE, in consideration of their mutual promises, the parties agree as follows:

1. Centerville agrees to the following terms and conditions of Cole's separation from his employment with Centerville:
 - A. Cole shall resign effective June 22, 2007.
 - B. Cole will be paid a lump sum amount of Sixteen Thousand, Seventy-three and 19/100 Dollars (\$16,073.19), which is equal to three (3) months compensation, including base salary and applicable retirement contributions. Applicable taxes and deductions will be made.
 - C. Cole will be paid his accumulated vacation pay and holiday pay up through June 22, 2007. Cole has 150.88 hours of accrued vacation time and 35.28 hours of holiday pay due as of June 22, 2007. Applicable taxes and deductions will be made.
 - D. Cole agrees to immediately return all City property, including his badge, gun, and any computer equipment or software still in his possession.
 - E. Centerville will continue to pay all health insurance premiums customarily paid on behalf of full-time Centerville employees through June 30, 2007. Medical and dental insurance coverage shall continue

through June 30, 2007. Cole shall thereafter be eligible to continue health insurance benefits pursuant to his rights under the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA").

- F. No other benefits of retirement or separation other than those stated above are to be afforded to Cole.
 - G. The pending disciplinary action will be deemed moot due to Cole's resignation.
 - H. At the time of execution of this Agreement, Cole shall provide to Centerville's City Manager any and all information and/or documents, if any, regarding Cole's allegations of corruption in the Centerville Police Department.
 - I. This Agreement shall not affect Cole's eligibility for disability payments, to the extent allowed by law.
2. Cole agrees that no claims against Centerville, its employees, officers, representatives, agents, elected officials, or attorneys, 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 an employee of the City of Centerville. Moreover, Cole irrevocably and unconditionally releases, acquits, and forever discharges Centerville, its successors and assigns, and any of the elected officials, officers, or employees, representatives, agents or attorney 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 releases, 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 wrongful termination theories through and including final payment made under this agreement. Both parties agree to refrain from making any untruthful statements, statements of personal evaluation, or statements of opinion that would tend to cast aspersions upon the character or reputation of Cole or Centerville, its successors and assigns, and any of the Council Members, officers or employees, representatives, agents or attorneys.

3. This release specifically includes a release of all claims which could be asserted under Sections 4101.17, 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, 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 attorney fees, expenses or costs. This Release and Waiver also includes, but is not limited to, any and all claims including claims for attorney 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 Cole 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 Cole's employment relationship with Centerville or the termination of that relationship.
4. This Release and Waiver also includes, but is not limited to, all claims for past or future wages, severance pay, 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 attorney fees.
5. Cole agrees to indemnify and hold Centerville 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 attorney 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 Cole against Centerville or any of the Released Parties in any way based upon, growing out of, resulting from or because of the employment of Cole at Centerville or the termination thereof.
6. Cole agrees that he has been given the opportunity to fully review this Agreement, has thoroughly reviewed it, fully understands its terms and

knowingly and voluntarily agrees to all of its provisions including, but not limited to, the release and other provisions in paragraphs 2, 3, 4 and 5. Cole acknowledges that Centerville has provided him with up to twenty-one (21) days to deliberate whether to sign this Agreement, and that Centerville advised him to consult with an attorney regarding this Agreement. Cole further acknowledges that if this Agreement is executed prior to the expiration of the 21-day deliberation period, such execution was knowing and voluntary, in consultation with his attorney and/or such advisors as Cole deemed appropriate, and without coercion by Centerville or any other person.

7. Cole shall have the right to revoke this Agreement for a period of seven (7) days following the date of execution by Cole. Notice of revocation shall be in a signed writing delivered to Centerville before expiration of the revocation period. This Agreement shall not become effective or enforceable until the date on which this seven day revocation period has expired ("Effective Date").
8. The parties agree that in making this Agreement no party admits the violation of any law or any of the other's rights.
9. Cole waives any right or claim of recall from layoff and/or other re-employment with Centerville and agrees to make no claim or application for such employment in the future. Similarly, Centerville is not obligated in any fashion to consider Cole for future employment.
10. This Agreement shall be binding on and inure to the benefit of Cole, his heirs, administrators and assigns and Centerville, its successors and assigns. This Agreement and its releases apply not only to Centerville, but to all affiliated entities, and successors to Centerville, and to all Released Parties.
11. The invalidity of any paragraph or subparagraph of this Agreement shall not affect the validity of any other paragraph or subparagraph of this Agreement.
12. This Agreement shall be construed under the laws of the State of Ohio.
13. This Agreement contains the entire understanding of the parties and supersedes any and all previous verbal and written agreements. There are no other agreements, representations or warranties not referenced or set forth in this Agreement.
14. Cole admits that he has had the opportunity to consult an attorney and voluntarily has decided to execute this Agreement. Cole states and admits that in executing this Agreement, he does not rely and has not relied, upon any

other representation or statement made by Centerville, its agents, representatives, or attorneys, with regard to this Agreement.

15. This Agreement is subject to review and approval of Centerville City Council.

IN WITNESS WHEREOF, the parties have signed this Agreement on the day and year set forth above.

WITNESSES:

Carol A. Lisko

Shirley Yonak

Gordon W. Cole, Jr.
Gordon W. Cole, Jr., Employee

CITY OF CENTERVILLE, OHIO

Carol A. Lisko

Shirley Yonak

Gregory B. Horn
By: Gregory B. Horn
Its: City Manager