

RESOLUTION NO. 56-07
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Susan Lienesch ON THE 19th DAY
OF November, 2007.

**A RESOLUTION AUTHORIZING AND DIRECTING THE CITY
MANAGER TO EXECUTE THE EMPLOYMENT RELEASE AND
RELEASE OF CLAIMS AGREEMENT WITH CHESTER W. SMITH.**

WHEREAS, Chester W. Smith was allegedly injured while employed by the City of Centerville; and

WHEREAS, Chester W. Smith filed a workers' compensation claim; and

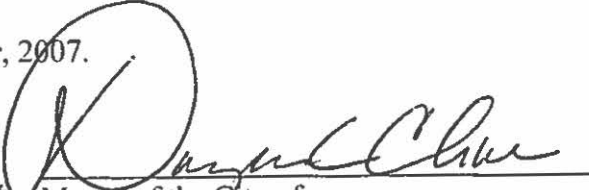
WHEREAS, Chester W. Smith wishes to settle all claims against the City of Centerville arising out of his employment; and

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 Release and Release of Claims agreement with Chester W. Smith on behalf of the City upon the terms and conditions set forth in Exhibit "A" attached and incorporated herein.

PASSED THIS 19th day of November, 2007.


Deputy 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. 56-07, passed by the Council of the City of Centerville, Ohio on the 19th day of November, 2007.

Debra A. James
Clerk of the Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions
Department of Law
Scott A. Liberman
Municipal Attorney

EMPLOYMENT RELEASE AND RELEASE OF CLAIMS

This Employment Release and Release of Claims (the "Agreement") is hereby entered into and executed by and between CHESTER W. SMITH ("Claimant"), and CITY OF CENTERVILLE ("Employer"), collectively referred to as the "Parties."

RECITALS

WHEREAS, the Claimant was allegedly injured while in the employ of the Employer (Athe injury");

WHEREAS, the Claimant filed a workers' compensation claims which was assigned claim number 06-831032;

WHEREAS, the Employer, with no admission of liability and for purely economic reasons, wishes to settle all claims, of whatever nature, the Claimant has, or claims to have, against the Employer arising out of or touching upon his employment with the Employer;

WHEREAS, the Claimant wishes to settle all claims, of whatever nature, he has, or claims to have, against the Employer arising out of or touching upon his employment with the Employer;

WHEREAS, to settle the Workers= Compensation portion of any claims Claimant has, the parties have executed a Bureau of Workers= Compensation Settlement Agreement, and

NOW THEREFORE, in consideration of the covenants and the conditions contained herein, the Parties hereby agree as follows:

T E R M S

1. **Other Agreement.** The Parties each have executed a certain agreement settling any Workers= Compensation claims the Claimant has against the Employer. The parties agree that the Claimant=s execution of this Agreement is a material inducement to the Employer to execute and agree to the Bureau of Workers' Compensation Settlement Agreement. Should the Claimant rescind his agreement to the Bureau of Workers' Compensation Settlement Agreement, and/or the Claimant breach in any way the terms of this Agreement, the Bureau of Workers' Compensation Settlement Agreement shall be null and void and the Employer shall be entitled to all monies paid to the Claimant pursuant to the Bureau of Workers' Compensation Settlement Agreement and may further pursue any remedy the Employer may have under paragraph 3 below.

2. **Release of the Employer.** The Claimant, for, in consideration of, and pursuant to the terms of this Agreement, does hereby for him and for anyone claiming by, through or under him, and for his heirs or dependants, forever release and discharge the Employer, and each of them, their assigns, employees, companies and affiliates and all persons, firms or corporations from any and all claims, demands, actions or causes of action incurred on or prior to the date of this Agreement, arising out of or touching upon Claimant=s alleged employment with the Employer, or any other relationship with the Employer, O.R.C. Chapter 4123 and/or the injury including, but not limited to:

- (1) All rights and claims arising under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000-e *et seq.*;
- (2) All rights and claims arising under the Age Discrimination and Employment Act, 29 U.S.C. Section 621 *et seq.*;
- (3) All rights and claims arising under the Americans= with Disabilities Act, 42 U.S.C. Section 12101 *et seq.*;

- (4) All rights and claims arising under Ohio Revised Code Chapter 4112;
- (5) All rights and claims arising under United States Executive Orders 11246 and 11375;
- (6) All rights and claims arising under the Family and Medical Leave Act;
- (7) All rights and claims arising under any other federal, state or local law and ordinance pertaining to discrimination, retaliation and/or harassment;
- (8) Any and all claims for breach of contract, promissory estoppel, wrongful discharge, intentional infliction of emotional distress, or any other right or claim arising under common law;
- (9) All claims for attorney=s fees, expenses, and costs relating to the laws enumerated above in the claims released herein;
- (10) Any VSSR claim;
- (11) Any intentional tort claim;
- (12) Any orders for reimbursement and/or payment which may have been or could be declared as a result of the decision in *State ex rel. Russell v. Industrial Commission*, 82 Ohio St. 3d 516;
- (13) Any claims pursuant to *Coolidge v. Riverdale Local School District*, (2003), 100 Ohio St. 3d, 141;

or other claim for personal injury or workers' compensation benefits, which Claimant now has or which he may hereinafter claim to have, whether known or unknown, by reason of or in any manner growing out of his employment, or with separation from the Employer. This Release shall not diminish or any way effect the Release contained in the Bureau of Workers' Compensation Settlement Agreement. Rather, this Release is cumulative with said Settlement Agreement and is intended to release every possible claim the Claimant has against the Employer.

Further, the Claimant hereby resigns any rights he may have to employment with the Employer, if any, or any other aspect of Claimant's past alleged employment relationship

with the Employer. The Claimant further agrees never to apply for re-employment with the Employer in the future.

3. **Breach.** The Claimant further agrees that in the event that he breaches any of the terms of this Agreement or if any third party makes a claim against the Employer arising out of the injury, he will forfeit the settlement amount described in this Agreement, plus he will indemnify and hold harmless the Employer for any expenses or damages incurred as a result of said breach, including all costs incurred by the Employer, including reasonable attorneys' fees incurred in against any third party claims or incurred as a result of said breach.

4. **Effect of Provision Deemed Invalid/Unenforceable.** If any provision of this Agreement is declared invalid or unenforceable, the remaining portions of the Agreement shall not be affected thereby and shall be enforced.

5. **Waiver of Notice.** The Claimant and the Employer in these claims and their respective counsel hereby waive notice of hearing, if any, to be held by the Industrial Commission of Ohio, pursuant to the provisions of O.R.C. § 4123.65, upon the Final Settlement of claim filed in said claim.

6. **Other Documents.** Each Party shall execute and deliver any other documents which may be reasonably necessary to carry out the provisions of this Agreement including a Joint Application for Approval of Settlement Agreement, Dismissal Entry and Bureau of Workers' Compensation Settlement Agreement.

7. **Effect of Ambiguities.** This Agreement has been, and shall be construed to have been, drafted by all of the Parties so that the rule of construing ambiguities against the drafter shall have no force and/or effect.

8. Integration. This Agreement and the Bureau of Workers' Compensation Settlement Agreement contain the entire agreement of the Parties and supercedes any prior written or oral agreement or understanding. Any modification or correction of this Agreement must be made in a writing executed by both Parties.

IN WITNESS WHEREOF, the Parties have signed this Agreement on the respective dates indicated and agree that the effective date of this Agreement is the 22nd day of October, 2007.

Signed in the presence of:



Witness



Chester W. Smith



Witness

Date 10/22/07

Witness

For City of Centerville

Witness

Date _____