

P/C 1-3-23 Legislative  
Prior CA 1-3-23  
1st R \_\_\_\_\_  
2nd R \_\_\_\_\_  
3rd R \_\_\_\_\_  
B/C \_\_\_\_\_

CITY OF BROOK PARK, OHIO

RESOLUTION NO. 1-2023

INTRODUCED BY: MAYOR ORCUTT

A RESOLUTION  
ACCEPTING A SEPARATION AGREEMENT AND RELEASE AND WAIVER, AND  
DECLARING AN EMERGENCY

WHEREAS, the City Council and a city employee desire to enter into a Separation Agreement.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Brook Park, State of Ohio that:

Section 1: During the Civil Service Commission appeals process, it was determined between the Ohio Patrolmen's Benevolent Association (OPBA), legal counsel and the City of Brook Park that a Separation Agreement has been reached with an employee.

SECTION 2: Council hereby accepts the Separation Agreement and the effective date shall be March 31, 2023.

SECTION 3: Mayor Orcutt is authorized to execute the separation agreement with a city employee upon the terms and conditions contained in the Separation Agreement and Release and Waiver attached hereto as Exhibit "A".

SECTION 4: It is found and determined that all formal actions of this Council concerning and relating to this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 5: This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City and to accept the separation agreement with a city employee; provided that this Resolution receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be

RECEIVED

DEC 29 2022

in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED:

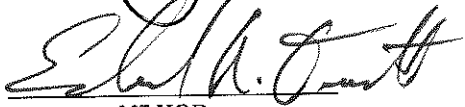
January 3, 2023

  
PRESIDENT OF COUNCIL

ATTEST:

  
CLERK OF COUNCIL


APPROVED:

  
MAYOR

CERTIFICATE

Carol Johnson, Clerk of Council, of the City of Brook Park, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ordinance / Resolution No. 1-2023


passed on the 3 day of January 20 23 by said council.

  
Clerk of Council

01/03/2023  
DATE


I, Carol Johnson, Clerk of Council for the City of Brook Park, State of Ohio, do hereby certify that there is no newspaper of general circulation in the municipality and that publication of the foregoing ordinances/resolutions was made by posting true copies at five of the most public places in said municipality as determined by Ordinance No. 4838-1975; location City Hall 6161 Engle Road, Police Station 17401 Holland Road, #2 Fire Station 22530 Ruple Parkway, #3 Fire Station 17401 Holland Road, Brook Park Library 6165 Engle Road, for a period of fifteen days.

commencing

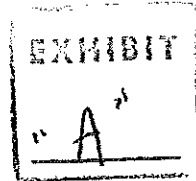
01/04/2023  
  
CAROL JOHNSON

	Yea	Nay
Troyer	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mencini	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Coyne	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Poindexter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Salvatore	<input checked="" type="checkbox"/>	<input type="checkbox"/>

I HEREBY APPROVE THE WITHIN INSTRUMENT AS TO LEGAL FORM AND CORRECTNESS

  
DIRECTOR OF LAW

**City of Brook Park, Ohio and Thomas Dickel  
Separation Agreement & Waiver and Release  
December 13, 2022**



**SEPARATION AGREEMENT AND RELEASE AND WAIVER**

This Separation Agreement and Release and Waiver (hereinafter "Agreement") is made and entered into by and between Thomas Dickel (hereinafter "Employee"), on behalf of himself, his heirs, executors, administrators, successors and assigns and The City of Brook Park, Ohio (hereinafter "Employer"). In consideration of the mutual promises and agreements set forth herein, and in full settlement, satisfaction, release and waiver of all matters, known and unknown, now and in the future relating to Employee's employment with Employer and separation. Therefore, the parties agree as follows:

1. Employee agrees to voluntarily resign his employment with Employer. Employee's voluntary resignation shall be irrevocable and shall be effective March 31, 2023.
2. Employee shall submit a letter of voluntary resignation for his personnel file. Employee's voluntary resignation shall also be denoted by his signature below. Further, by signing this Agreement the Employer accepts Employee's voluntary resignation.
3. Employee will return all Employer property in his possession or under his control within three (3) calendar days of signing this Agreement, including, but not limited to, his badge and any other uniforms or equipment in his possession. Employee will be provided any personal items that are in the possession of the Employer. Employee and Employer representatives will make arrangements for the return of property.
4. That in consideration of the mutual promises and agreements set forth herein, Employer agrees to convert accumulated unused vacation leave and other leave conversion as required by Employer's policies.
5. That in consideration of the mutual promises and agreements set forth herein, Employer agrees to pay Employee in the amount of \$4,490.00 which represents Employee's 2023 education payment.
6. That in consideration of the mutual promises and agreements set forth herein, Employee agrees to waive health care coverage for the months of January, February, and March 2023.
7. That in consideration of the mutual promises and agreements set forth herein, Employer agrees to give Employee the opportunity to purchase his service weapon for \$1.00 upon retirement.
8. By signing this Agreement, Employee acknowledges that he has, or will by terms of this Agreement have, received all wages, compensation, benefits, and reimbursements for expenses due and that nothing else of a financial nature is owed him.
9. By signing this Agreement, Employee acknowledges that he waives any right to appeal his separation by any means, including through the Civil Service Commission.

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10. That in consideration of the mutual promises and agreements set forth herein, the Employer agrees to place in the Employee's personnel file a copy of the letter of voluntary resignation and an employment history letter. The Employment history letter shall indicate the dates of the Employee's employment with the Employer, the classification and rate of pay at the date of resignation, and that inquiries are to be directed to the Safety Director of the Employer, who shall convey the reason for Employee's separation as a voluntary resignation and the employee's classification held, dates of employment, and rates of pay. All materials regarding the review of the Employee's conduct will be maintained in a separate file in the office of the Safety Director. The parties understand that, as a public employer, the Employer must also comply with records requests under Ohio's Public Records Act.
11. That in consideration of the mutual promises and agreements set forth herein, the Employee agrees that he shall not seek or reapply for employment with Employer after the execution of this Agreement.
12. That in consideration for the promises and agreements set forth herein, Employer and Employee mutually agree to release and forever discharge each other, elected officer holders, department heads, appointees, employees, managers, legal counsel, representatives, and any agents from, and waives their right to bring now or in the future, any and all claims, damages, demands, liabilities, equities and causes of action both known and unknown, anticipated or unanticipated, legal and equitable, accruing or accrued prior to or at the time of execution of the Agreement related to Employee's employment or separation from employment with Employer. This release and waiver encompasses claims based in tort or contract, whether based in statute, regulation, constitution, common law or public policy, including, but not limited to, laws concerning civil rights, discrimination (e.g. violations of Title VII, the Americans with Disabilities Act, the Family Medical Leave Act, Age Discrimination Act, violations of Ohio Rev. Code Chapter 4112, etc.) violations regarding Workers Compensation Retaliation, violation of Ohio Public Policy, and to any claims that may be asserted against Employer, its elected office holders, department heads, appointees, employees, managers, legal counsel, representatives and/or any agents, in either their official or individual capacities. This Agreement does not apply to or include any pending Workers' Compensation claims of Employee. This Agreement does not apply to any rights of Employer or Employee to defenses or indemnification under R.C. Chapter 2744.
13. Employee understands that the release he is giving includes claims that he does not have knowledge of at this time. Employee also understands that by signing this Agreement, he gives up his right to sue or pursue any claim or lawsuit against the Employer, for anything that occurred prior to the date that he executes this Agreement. Nothing in this Agreement shall be construed to impair Employee's ability to bring a lawsuit to enforce this Agreement.
14. Employer and Employee agree that this Agreement contains and comprises the entire Agreement and understanding between the parties and that no other representation,

**City of Brook Park, Ohio and Thomas Dickel  
Separation Agreement & Waiver and Release  
December 13, 2022**

promise, covenant or agreement of any kind whatsoever has been made to cause either party to execute this Agreement and that all agreements and understanding between the parties are embodied and expressed herein. The parties agree that the terms of this Agreement shall not be amended or altered except in writing and signed by the parties.

15. If any provision or clause of this Agreement is held to be invalid or unenforceable, then such provision or clause shall be severed without affecting any other provision or clause of this Agreement and the balance of said Agreement shall remain in full force and effect. Provided, however, that if such provision or clause may be modified or reformed so as to be valid as a matter of law, then the provision or clause shall be deemed to be so modified or reformed so as to be enforceable to the maximum extent permitted by law. Otherwise, this Agreement may not be waived, changed, modified, extended or discharged except by agreement in writing signed by the party against whom enforcement of any such waiver, change, modification, extension or discharge is sought.
16. The Employer's or Employee's insistence on performance or adherence to any provision in this Agreement, or failure to assert its rights under this Agreement, shall not be construed as a waiver of any other of its rights under this Agreement.
17. The parties have read this document in full, have had the opportunity to consult with an attorney of their choice about its terms, and fully understand the terms and provisions of this Agreement and the consequences of signing this Agreement, and that the each enter into the Agreement voluntarily.
18. Employer and Employee understand that the facts upon which this Agreement is based may hereafter prove to be other than the facts now known by or believed by either of them to be true. Each party expressly accepts and assumes the risk of the facts proving to be different, and each party agrees that the terms of this Agreement shall be effective and not subject to termination or rescission by reason of any such difference in facts.
19. This Agreement, its execution, and its implementation shall not in any respect be construed, and shall not be admissible in any proceeding, as evidence of (1) an admission by Employer of any unlawful practice under any federal, state or local statute, regulation, or order, or (2) any violation of any other law, regulation, or order, or the common law of the State of Ohio, or that of any other state.
20. This Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio and any action to enforce this Agreement must be brought in either the state court in Cuyahoga County, Ohio or in federal court in Cleveland, Ohio.
21. **THOMAS DICKEL – PLEASE READ CAREFULLY BEFORE SIGNING:**

PURSUANT TO THE AGE DISCRIMINATION IN EMPLOYMENT ACT, 29 U.S.C. § 621 *ET SEQ.*, A WAIVER OF RIGHTS CANNOT APPLY TO AGE DISCRIMINATION CLAIMS ARISING IN THE FUTURE. BY MY SIGNATURE BELOW, I, THOMAS DICKEL, ACKNOWLEDGE THAT:

**City of Brook Park, Ohio and Thomas Dickel  
Separation Agreement & Waiver and Release  
December 13, 2022**

- I HAVE READ THE FOREGOING AGREEMENT AND RELEASE, AND FULLY UNDERSTAND IT.
- I WAS GIVEN UP TO TWENTY-ONE (21) DAYS WITHIN WHICH TO CONSIDER THIS AGREEMENT. IF I ELECT TO EXECUTE THIS AGREEMENT PRIOR TO THE EXPIRATION OF THE TWENTY-ONE (21) DAY TIME PERIOD, I WARRANT THAT I HAVE DONE SO KNOWINGLY AND VOLUNTARILY.
- I HAVE BEEN ADVISED TO CONSULT WITH LEGAL COUNSEL PRIOR TO SIGNING THIS AGREEMENT.
- I HAVE THE RIGHT TO REVOKE THIS AGREEMENT, IN WRITING, FOR A PERIOD NOT TO EXCEED SEVEN (7) DAYS AFTER THE DATE ON WHICH IT IS SIGNED BY ME. I FURTHER ACKNOWLEDGE THAT IF I FAIL TO EXERCISE THIS RIGHT TO REVOKE, THIS AGREEMENT WILL BECOME A BINDING CONTRACT AS TO ITS TERM ON THE EIGHTH (8<sup>TH</sup>) DAY AFTER I SIGN THIS AGREEMENT. IF THIS AGREEMENT SHOULD BE REVOKED BY ME WITHIN THE TIME SET FORTH ABOVE, THIS AGREEMENT SHALL BE VOID AND EMPLOYER SHALL BE RELEASED FROM PERFORMANCE HEREUNDER.
- NO PAYMENTS SHALL BE MADE TO ME UNTIL THE SEVEN (7) DAY REVOCATION PERIOD HAS EXPIRED.
- ANY REVOCATION MUST BE MADE IN WRITING TO JONATHAN J. DOWNES, BROOK PARK'S COUNSEL (at [jjd@zrlaw.com](mailto:jjd@zrlaw.com)), AND MUST BE ACCOMPANIED BY MY ORIGINAL, SIGNED AGREEMENT.
- I NOW VOLUNTARILY SIGN THIS AGREEMENT AND RELEASE ON THE DATE INDICATED.

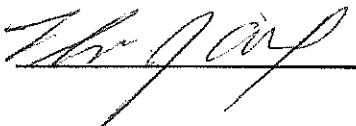
**DO NOT SIGN BELOW UNLESS YOU HAVE READ THIS ENTIRE  
DOCUMENT AND YOU UNDERSTAND THIS ENTIRE DOCUMENT AND  
AGREE TO BE BOUND BY IT.**

I have read this entire Agreement, and I understand it. I agree to be bound by these terms.

**IN WITNESS WHEREOF, the parties hereto have caused this Separation Agreement and Release and Waiver to be duly executed as of the last date set forth below.**


**Employee**

**Employer representative**

 12/15/22  
Date

\_\_\_\_\_  
Date

**Witness**

 12/15/22  
Date