

# CITY OF BATAVIA

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**DATE:** March 18, 2019  
**TO:** Mayor & City Council  
**FROM:** Wendy Bednarek, Director of Human Resources  
**SUBJECT:** Approval of the Voluntary Separation Agreement between the City of Batavia and Christopher Cudworth

Through mutual agreement between the City of Batavia and Christopher Cudworth, Mr. Cudworth resigned effective March 15, 2019. Attached for approval is the Voluntary Separation Agreement and Release of all Claims between the City and Mr. Cudworth.

Staff recommends to City Council approve RES 19-037-R, with Exhibit 1, as presented.

w/attachments: RES 19-037-R Voluntary Separation Agreement and Release of All Claims

cc: Laura Newman, City Administrator

**CITY OF BATAVIA, ILLINOIS  
RESOLUTION 19-037-R**

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN THE CITY  
OF BATAVIA AND CHRISTOPHER CUDWORTH**

**NOW THEREFORE**, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS, as follows:

**SECTION 1:** that the Mayor and City Clerk are hereby authorized to execute the Voluntary Separation Agreement between the City and Christopher Cudworth attached hereto as Exhibit 1.

**PRESENTED** to and **PASSED** by the City Council of the City of Batavia, this 18<sup>th</sup> day of March 2019.

**APPROVED** by me as Mayor of said City of Batavia, Illinois, this 18<sup>th</sup> day of March 2019.

\_\_\_\_\_  
Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Salvati				
2	Callahan					Wolff				
3	Meitzler					Chanzit				
4	Malay					Stark				
5	Uher					Thelin Atac				
6	Cerone					Russotto				
7	McFadden					Brown				
Mayor Schielke										
<b>VOTE:</b>		Ayes	Nays	Absent	Abstention(s) counted as _____					
Total holding office: Mayor and 14 aldermen										

ATTEST:

\_\_\_\_\_  
Ellen Posledni, City Clerk

**VOLUNTARY SEPARATION AGREEMENT AND RELEASE OF ALL CLAIMS**

This Voluntary Separation Agreement and Complete Release of All Claims (“Agreement”) is made and entered into on the date set forth below by and between Christopher L. Cudworth, on behalf of himself, his agents, representatives, assigns, heirs, executors and administrators (hereinafter collectively referred to as “Mr. Cudworth”) and the City of Batavia, Illinois, including the City’s affiliates, predecessors, successors, representatives, elected officials, attorneys, officers, agents and employees, individually and in their representative capacities, and each of them (hereinafter collectively referred to as the “City”).

In consideration of the monies and mutual promises herein contained and other good and valuable consideration, the sufficiency of which is acknowledged, the parties hereby agree as follows:

1. Mr. Cudworth hereby voluntarily and irrevocably resigns his employment with the City effective at the close of business on March 15, 2019, and the City hereby accepts Mr. Cudworth’s resignation. The City and Mr. Cudworth hereby terminate any and all prior employment agreements between them, without further recourse. Mr. Cudworth agrees not to seek or accept future employment by the City.
2. If Mr. Cudworth signs this Agreement and does not revoke it pursuant to paragraph 7(e) below, the City agrees to make the following payment to Mr. Cudworth: a one-time, lump sum payment in the gross amount of Nine Thousand Four Hundred One Dollars and Thirty One cents (\$9,401.31), less required deductions, which said amount is equal to thirty (30) work days of Mr. Cudworth’s current annual salary. Mr. Cudworth hereby acknowledges that such payment by the City is in addition to any consideration to which he would have otherwise been entitled, and constitutes consideration for Mr. Cudworth’s acceptance of this Agreement.
3. Mr. Cudworth shall also be paid for 189.00 hours earned but unused vacation time. The parties agree that Mr. Cudworth has otherwise been compensated for all accrued time, and shall not be entitled to any further wages or benefits upon separation from employment with the City.
4. Upon execution of this Agreement, Mr. Cudworth will make arrangements with the City Human Resources Director or her designee to turn in all City issued property and equipment, as well as all City identification cards, badges, passwords to City systems or equipment, keys and the like by the close of business on March 14, 2019.
5. By signing this Agreement and receiving the valuable consideration described above, Mr. Cudworth hereby fully releases and forever discharges the City from any and all claims or liability of any kind arising out of or relating in any way to Mr. Cudworth’s employment with and separation of employment from the City, as well as any other occurrence up to and including the date of this Agreement including, but not limited to, any claim arising under the Illinois Municipal Code, 65 ILCS 5/ et seq.; the Illinois Human Rights Act, 775 ILCS 5; the Illinois Wage Payment and Collection Act, 820 ILCS 115; Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621, et seq.; the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq.; the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.; the

Family and Medical Leave Act, 29 U.S.C. § 2601 et seq., all claims under 42 U.S.C. §§ 1983, 1985, 1988; all claims under the City Municipal Code and/or personnel policies; all tort claims; all claims for wrongful discharge; all claims based on any actual or implied contract; all claims for retaliatory discharge; all civil rights claims; all amendments to the foregoing statutes, federal common law and state common law; and claims under any other federal, state or local statute, law, ordinance, regulation or order. It is the intention of Mr. Cudworth and the City that in executing this Agreement, Mr. Cudworth is providing a general release and that it shall be an effective bar to each and every claim, grievance, demand, and cause of action, either known or unknown, for all acts or omissions of the City and its agents, jointly and separately, individually and in their representative capacities, for any injuries suffered by Mr. Cudworth occurring on or prior to the date this Agreement and Release is executed.

Excluded from the above release are any claims or rights which cannot be waived by law, and claims for accrued and fully vested employee benefits and unemployment and workers' compensation benefits. Also excluded from the release is Mr. Cudworth's right to file a charge with an administrative agency or participate in an agency investigation. Mr. Cudworth is, however, specifically waiving his right to recover any money in connection with such a charge or investigation. Mr. Cudworth is also waiving his right to recover money in connection with a charge filed by any other individual or by the Equal Employment Opportunity Commission or any other federal or state agency.

6. The parties agree and acknowledge that this Agreement and the consideration described herein does not constitute and shall not be interpreted as an admission of liability on the part of the City or Mr. Cudworth. This Agreement resulted from the parties' mutual desire to resolve any and all matters and controversies between them, and to amicably effectuate Mr. Cudworth's voluntary employment separation from the City.
7. In compliance with the Older Workers Benefit Protection Act, 29 U.S.C. § 626(f), Mr. Cudworth acknowledges that he has knowingly and voluntarily signed and entered into this Agreement, and that:
  - a) This Agreement is written in a manner calculated to be understood by him, and he understands all of the terms of this Agreement;
  - b) In addition to the waiver and release of all other claims, this Agreement results in the waiver of and release by him of all claims arising under the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621, et seq. ("ADEA");
  - c) In exchange for the waiver and release by him of all ADEA claims, Mr. Cudworth is receiving consideration in addition to anything of value to which he already is entitled;
  - d) The City hereby advises Mr. Cudworth to consult with his attorney regarding the subject matter of this release prior to executing this Agreement; and
  - e) Mr. Cudworth was afforded a period of twenty-one (21) days within which to consider this Agreement, and advised that he may revoke this Agreement within

seven (7) calendar days after he signs it by delivering written notice of his revocation to Ms. Wendy Bednarek, Human Resources Director for the City.

8. The City will not contest Mr. Cudworth's claim, if any, for unemployment benefits from the State of Illinois Department of Employment Security.
9. Mr. Cudworth agrees that he will not, directly or indirectly, say or do anything that would disparage, reflect negatively on or call into question the integrity of the City, its officials, operations or reputation. This includes, but is not limited to, intentional interference with relationships between the City and third parties. This paragraph shall not apply to communications authorized by law or lawful process.
10. Should the City Manager or Human Resources Director receive an inquiry from a prospective employer of Mr. Cudworth, the information provided shall be limited to: 1) the dates of his employment; 2) position held; and 3) final rate of pay. Additional information may be released with Mr. Cudworth's consent, or as otherwise required by law.
11. This Agreement constitutes the complete Agreement between Mr. Cudworth and the City. No other promises or agreements, either express or implied, shall be binding upon such parties unless hereinafter reduced to writing and signed by Mr. Cudworth and the City.
12. To the extent that any portion of this Agreement may be held to be invalid or legally unenforceable by a court of competent jurisdiction, Mr. Cudworth and the City agree that the remaining portions of this Agreement shall not be affected and shall be given full force and effect.
13. This Agreement shall be binding upon the City and Mr. Cudworth, as well as their respective agents, representatives, heirs, successors and assigns.
14. Mr. Cudworth acknowledges that he has knowingly and voluntarily signed and entered into this Agreement, and that he understands all of the terms of this Agreement.

AGREED:

**CHRISTOPHER L. CUDWORTH**

\_\_\_\_\_  
Christopher L. Cudworth

\_\_\_\_\_  
Date

**CITY OF BATAVIA, ILLINOIS, an  
Illinois Municipal Corporation**

By: \_\_\_\_\_

Date