

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

 X Resolution or Ordinance (Blue) X *Waiver of First Requested*
 Recommendations of Boards, Commissions & Committees (Green)
 Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES
FROM: Scott Niehaus, Village Manager
DATE: November 24, 2014 (B of T) Date: December 4, 2014
TITLE: Voluntary Separation and Release Agreement
SUBMITTED BY: Carl S. Goldsmith, Director of Public Works *CJ*

BACKGROUND/POLICY IMPLICATIONS:

The attached agreement is for the voluntary resignation of the Village Engineer.

FISCAL IMPACT/FUNDING SOURCE

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X _____ Date _____



November 24, 2014

TO: Village President and Board of Trustees
THROUGH: Scott Niehaus, Village Manager
FROM: Carl Goldsmith, Director of Public Works *CJ*
SUBJECT: Separation Agreement

Attached please find the Separation and Release Agreement for the voluntary resignation of David Dratnol. The terms and conditions of the resignation can be found in the attached agreement. The Village Engineer position will be outsourced. The outsourcing of the position will result in greater oversight of staff and projects.

Pursuant to State Statute, the agreement must be executed by the Corporate Authorities of the Village of Lombard. I respectfully request that this item be placed on the Village Board agenda for the December 4, 2014 meeting.

RESOLUTION

R _____ 14

**A RESOLUTION AUTHORIZING THE SIGNATURE OF
THE VILLAGE PRESIDENT ON AN AGREEMENT**

WHEREAS, the Corporate Authorities of the Village of Lombard have received an Agreement between the Village of Lombard and David Dratnol regarding a Volunatry Separation and Release as attached hereto and marked Exhibit "A"; and

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS as follows:

SECTION 1: That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said agreement as attached hereto.

Adopted this _____ day of _____, 2014.

Ayes: _____

Nays: _____

Absent: _____

Approved this _____ day of _____, 2014.

Keith Giagnorio
Village President

ATTEST:

Sharon Kuderna
Village Clerk

APPROVAL AS TO FORM:

Thomas P. Bayer
Village Attorney

SEPARATION AND RELEASE AGREEMENT

This Separation and Release Agreement ("Agreement") is between David Dratnol, on behalf of himself, his spouse, beneficiaries, heirs, agents, successors, assigns, dependents, and anyone acting on his behalf (collectively referred to throughout this Agreement as "DAVID DRATNOL"), and the Village of Lombard, including its related entities, predecessors, successors, assigns, trustees, directors, officers, fiduciaries, attorneys, employees and agents, individually and in their representative capacities, and each of them (collectively referred to throughout this Agreement as the "Village").

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. **Separation Benefits.** If DAVID DRATNOL signs and does not timely revoke this Agreement, the Village shall pay DAVID DRATNOL the gross sum of THIRTY THOUSAND TWO HUNDRED AND NINE DOLLARS AND ZERO CENTS (\$30,209.00). This amount shall be paid in a lump sum within approximately three (3) weeks after November 17, 2014 or the date on which DAVID DRATNOL signs (and does not revoke) this Agreement, whichever date occurs later.

Pursuant to the Human Resources Manual, Chapter 9, A-5, the Village of Lombard agrees to pay DAVID DRATNOL for NINETY EIGHT. TWENTY NINE (98.29) vacation hours at his hourly rate of pay effective November 17, 2014.

Pursuant to the Human Resources Manual, Chapter 9, A-3, the Village of Lombard agrees to pay DAVID DRATNOL the gross sum of SIXTEEN THOUSAND TWO HUNDRED AND SIXTY SIX DOLLAR AND FIFTEEN CENTS (\$16,266.15) for seven (7) weeks severance pay, less all legally required taxes, withholdings, and any sums owing the Village. The gross sum of \$16,266.15 for severance pay will be paid to DAVID DRATNOL in January 2015. The DAVID DRATNOL hereby acknowledges that said payment by the Village is in addition to any consideration to which he would have otherwise been entitled, and constitutes sufficient consideration for his acceptance of this Agreement.

2. **Health Insurance Continuation.** If DAVID DRATNOL signs and does not timely revoke this Agreement, the Village will continue to pay through December 31, 2014, the entire monthly premium for his Village group health and dental insurance. Such payments by the Village will coincide with DAVID DRATNOL'S timely election of COBRA health insurance continuation coverage for himself and/or his covered dependents, and these payments will not extend the COBRA eligibility period. After December 31, 2014, DAVID DRATNOL and/or his eligible dependents may continue Village group health insurance under the terms of COBRA, provided that timely payments of the full premiums are paid by DAVID DRATNOL.

3. **Resignation and Separation Date.** In consideration for the benefits summarized in paragraphs 1 and 2 above, DAVID DRATNOL hereby voluntarily and irrevocably resigns his employment with the Village, and the Village accepts his resignation. The resignation will take effect at the close of business on November 17, 2014.

4. **General Release.** In further consideration for the benefits summarized in paragraphs 1 and 2 above, DAVID DRATNOL waives and releases the Village, its elected and appointed officials, including current and former elected officials, employees, agents and anyone acting for it, past, present, and future, and each of its and their respective successors and assigns (hereinafter collectively referred to as "Releasees") from any and all known or unknown actions, causes of action, claims or liabilities of any kind which have or could be asserted against the Releasees arising out of or related to DAVID DRATNOL's employment with and/or separation from employment with the Village and/or any other occurrence up to and including the date of this Agreement, including but not limited to:

- any and all claims, actions, causes of action or liabilities arising under Title VII of the Civil Rights Act of 1964, as amended; 42 U.S.C. §§ 1981, 1983, 1985, 1988, and all amendments to the foregoing statutes; the Age Discrimination in Employment Act, as amended ("ADEA"); the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act, as amended; the Family and Medical Leave Act, as amended; the Illinois Human Rights Act, as amended; the Wage Payment and Collection Act, as amended; the Illinois Public Labor Relations Act, as amended; and/or any and all other federal, state, local, or municipal employment discrimination or personnel statutes, regulations, executive orders and/or ordinances (including, but not limited to, claims, actions, causes of action or liabilities based on race, color, age, sex (including sexual harassment), national origin, ancestry, disability, religion, sexual orientation, off-duty conduct, arrest or conviction record, marital status, parental status, military or veteran status, source of income, genetic background or predisposition, entitlement to benefits, attainment of benefit plan rights, union activities, harassment, retaliation, or any other status or conduct protected by local, state or federal laws, constitutions, regulations, ordinances or executive orders); and/or
- any and all claims, actions, causes of action or liabilities asserting the Village or the Releasees have violated Village personnel policies, procedures, handbooks, any covenant of good faith and fair dealing, or any express or implied contract of any kind; and/or
- any and all claims, actions, causes of action or liabilities whatsoever including, but not limited to, claims asserting the Releasees have violated public policy, statutory or common law, including claims for: severance pay, wrongful termination, personal injury; invasion of privacy; retaliatory discharge; negligent hiring, retention or supervision; defamation; intentional or negligent infliction of emotional distress and/or mental anguish; intentional interference with contract; negligence; detrimental reliance; loss of consortium to DAVID DRATNOL or any member of his family; promissory estoppel; claims based upon breach of contract; and/or
- claims, actions, causes of action or liabilities arising under any other common law; federal, state, or local statute, law, ordinance, or regulation; or other claim

whatsoever arising out of, or relating to, his employment with, and/or separation from, employment with the Village and/or any of the other Releasees; and/or

- any and all claims, actions, causes of action, or liabilities asserting the Releasees are in any way obligated for any reason to pay DAVID DRATNOL damages, expenses, litigation costs (including attorneys' fees), back pay, front pay, disability or other benefits (other than any accrued pension benefits), compensatory damages, punitive damages, and/or interest.

5. **Claims Excluded From Release.** Excluded from the Release in paragraph 3 above are any claims that cannot be waived by law, including future claims arising after the execution of this Agreement and the right to file a charge of discrimination with an administrative agency or to participate in an agency investigation. DAVID DRATNOL is waiving, however, any right to any monetary recovery in connection with such a charge or investigation.

6. **No Future Employment.** DAVID DRATNOL acknowledges that he has no right to reemployment with the Village, and he promises not to seek or accept reemployment with the Village in any position or capacity. DAVID DRATNOL also agrees that in the event he inadvertently accepts future employment with the Village in any position or capacity, the Village has the right to terminate such employment by virtue of his promises in this paragraph.

7. **Revocation of Agreement.** DAVID DRATNOL may revoke this Agreement within seven (7) days after its signing. Any revocation must be made in writing and submitted to Kathy Dunne within such seven day period at 255 E. Wilson Avenue, Lombard, Illinois, 60148-3969. DAVID DRATNOL understands that if he revokes this Agreement, he will not be entitled to the benefit provided in this Agreement.

8. **Additional Employee Acknowledgements.** Among the claims being waived and released by DAVID DRATNOL are any and all claims under the federal Age Discrimination in Employment Act ("ADEA"). Pursuant to the requirements of the ADEA, DAVID DRATNOL acknowledges that: (a) this waiver and release is written in a manner which is understood by DAVID DRATNOL, that he is entering into this Agreement knowingly and voluntarily, that he in fact understands the waiver and release, and that he understands the entire Agreement; (b) in addition to the waiver and release of all other possible claims, he expressly intends to waive and release claims under the ADEA; (c) he is not waiving rights or claims that may arise after the date this Agreement is executed; (d) he is receiving valuable benefits under this Agreement that he is not already entitled to receive; (e) he has been and is being advised in writing by the Village to consult with an attorney prior to executing this Agreement; (f) he has been given a period of at least twenty-one (21) days within which to consider this Agreement; (g) he has 7 days following the execution of this Agreement to revoke the Agreement; (h) he has been advised that this Agreement shall not become effective or enforceable until the 7-day revocation period has expired; (i) if he does not sign the Agreement or if he timely revokes this Agreement after signing, then he will not receive any benefits under this Agreement; and (j) he agrees that he has been paid for all hours worked including overtime, if applicable, that he has received all compensation to which he was entitled from the Village upon his separation from employment, and he has not suffered any on-the-job injury for which he has not already filed a claim.

DAVID DRATNOL FURTHER UNDERSTANDS THAT, EXCEPT TO THE LIMITED EXTENT SET FORTH HEREIN, THIS WAIVER AND RELEASE AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS AGAINST RELEASEES UP TO THE DATE THAT THIS AGREEMENT IS SIGNED.

9. **Modification of Agreement.** This Agreement may be amended only in writing signed by both parties, and shall be governed by the laws of the State of Illinois.

10. **Entire Agreement.** This Agreement reflects the parties' entire agreement regarding the terms of DAVID DRATNOL's separation from employment with the Village. This Agreement is the only Agreement between the Village and DAVID DRATNOL regarding the termination of DAVID DRATNOL's employment with the Village. Other than what is provided in this Agreement, the Village is not obligated to provide DAVID DRATNOL any other monetary or non-monetary benefit.

10. **Non-Admission of Liability.** 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 Village. This Agreement resulted from the parties' mutual desire to resolve any and all matters and controversies between them, and to amicably effectuate DAVID DRATNOL'S employment separation from the Village.

11. **Severability.** In the event that any portion of the Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such provision shall be severable from, and such invalidity or unenforceability shall not be construed to have any effect on the remaining provisions of the Agreement.

DAVID DRATNOL agrees that he is signing this Agreement knowingly, voluntarily, and with a complete understanding of its significance, that he has not been coerced, threatened or intimidated into signing this Agreement, that he has not been promised anything else in exchange for signing this Agreement, and that he has had reasonable and sufficient time to consider this Agreement.



DAVID DRATNOL

On Behalf of the Village of Lombard

Dated: 11/24/2014

Dated: _____