

VILLAGE OF LOMBARD  
REQUEST FOR BOARD OF TRUSTEES ACTION

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

TO: PRESIDENT AND BOARD OF TRUSTEES  
FROM: Scott Niehaus, Village Manager  
DATE: July 13, 2018 (B of T) Date: July 19, 2018  
TITLE: Voluntary Separation and Release Agreement

SUBMITTED BY: Kathleen Dunne, Director of Human Resources <sup>KD</sup>  
Carl S. Goldsmith, Director of Public Works <sup>CJ</sup>

BACKGROUND/POLICY IMPLICATIONS:

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

FISCAL IMPACT/FUNDING SOURCE:

Village Attorney \_\_\_\_\_ Date \_\_\_\_\_  
Finance Director *Matthew Sexta* \_\_\_\_\_ Date 7/13/18  
Village Manager *Scott Niehaus* \_\_\_\_\_ Date 7/14/18



July 5, 2018

TO: Village President and Board of Trustees

THROUGH: Scott Niehaus, Village Manager

FROM: Carl Goldsmith, Director of Public Works

A handwritten signature in black ink, appearing to be "CJ", is written over the name Carl Goldsmith.

SUBJECT: Separation Agreement

Attached please find the Separation and Release Agreement for the voluntary resignation of Ying Miao. The terms and conditions of the resignation can be found in the attached agreement. Per direction provided by the Village Board of Trustees, the Department of Public Works has eliminated one of the three full-time positions of Civil Engineer II.

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 consideration at the July 19, 2018 Village Board of Trustees meeting.

**RESOLUTION**

R \_\_\_\_\_ 18

**A RESOLUTION AUTHORIZING SIGNATURE OF THE VILLAGE  
PRESIDENT AND/OR DESIGNEES ON AN AGREEMENT**

**WHEREAS**, the Corporate Authorities of the Village of Lombard have received an Agreement between the Village of Lombard and Ying Miao regarding a Voluntary 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, DUPAGE COUNTY, ILLINOIS as follows:

**SECTION 1:** That the Village Manager and/or his designee(s) be and hereby is authorized to sign on behalf of the Village of Lombard said agreement.

Adopted this 19<sup>th</sup> day of July, 2018.

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Absent: \_\_\_\_\_

Approved this 19<sup>th</sup> day of July, 2018.

\_\_\_\_\_  
**Keith Giagnorio**  
**Village President**

ATTEST:

\_\_\_\_\_  
**Sharon Kuderna**  
**Village Clerk**

**SEPARATION AGREEMENT AND RELEASE OF ALL CLAIMS**

This Separation Agreement and Release of All Claims ("Agreement") is made and entered into on the date set forth below by and between Ying Miao, on behalf of herself, her spouse, her agents, representatives, attorneys, assigns, heirs, executors and administrators (hereinafter collectively referred to as "Ms. Miao") and the Village of Lombard, Illinois, including the Village'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 "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. **Ms. Miao's Termination Date.** Ms. Miao acknowledges that she was involuntarily terminated by the Village on August 3, 2018. The Village and Ms. Miao hereby terminate any and all prior employment agreements between them, without further recourse. Ms. Miao agrees that she has no reinstatement rights, and that she will not seek or accept future employment or reinstatement by the Village. The Village will not contest any application for unemployment insurance benefits filed by Ms. Miao.

2. **Severance Payment/Consideration.** If Ms. Miao signs and does not revoke this Agreement, the Village agrees to make the following severance payment to Ms. Miao within approximately twenty-one (21) calendar days after she signs and does not revoke this Agreement: a one-time, lump sum payment in the gross amount of **seven thousand four hundred and one dollars and sixty cents (\$7,401.04)**, less required withholdings or applicable deductions for federal, state and local taxes. Ms. Miao hereby acknowledges that said payment by the Village is in addition to any consideration to which she otherwise would have been entitled, and constitutes sufficient consideration for Ms. Miao's acceptance of this Agreement.

After your separation date, you also will receive payment for all accrued but unused vacation leave. You shall receive payments for the aforementioned vacation leave even if you do not sign this Agreement.

3. **General Release.** In consideration of the promises made by the Village as specified in this Agreement, Ms. Miao hereby releases the Village with respect to any and all claims of any type that Ms. Miao may have on the day she signs this Agreement, whether known or unknown, arising out of any aspect of her Village employment or arising out of any aspect of her separation from service, up to and including the date that she signs this Agreement. This release includes, but is not limited to, each and all of the following:

- (a) any and all claims of any kind premised upon violations of the Village's personnel policies, employee handbooks, job descriptions, collective bargaining agreements, or any actual or implied agreement, contract, promise, or statement of any kind whatsoever (whether written or oral) between Ms. Miao and the Village, or the alleged breach thereof;

- (b) any and all claims of entitlement to any pay or benefits, including, but not limited to, insurance, wages, salary, bonuses, commissions, sick leave, travel allowance, expense reimbursements, holiday and vacation pay;
- (c) any and all claims for wrongful termination of employment, violation of public policy, defamation, emotional distress, intentional interference with contract, invasion of privacy, loss of consortium, negligence, retaliatory discharge, detrimental reliance, promissory estoppel, other common law matters or any act of omission;
- (d) any and all claims of discrimination on the basis of race, color, sex, sexual harassment, national origin, age, ancestry, veteran status, disability, genetic information, religion, marital status, familial status, sexual orientation, concerted activity, or any other legally-protected group status;
- (e) any and all claims arising under, or based on any conduct that violates the following, as amended: Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act; the Civil Rights Act of 1991; 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988; the Equal Pay Act; the Americans with Disabilities Act; the Rehabilitation Act of 1973; the Family and Medical Leave Act; the Genetic Information Non-Discrimination Act, the Illinois Human Rights Act; the Illinois Wage Payment and Collection Act; the Illinois Public Labor Relations Act; the Constitutions of the United States and the State of Illinois; and/or any local, state or federal laws, regulations, ordinances, executive orders or common law; and
- (f) any and all claims of any kind for attorneys' fees or costs in connection with her employment or separation from employment. Ms. Miao expressly understands and agrees that she is solely responsible for any and all attorneys' fees and costs arising from the aforementioned.

4. **Exclusions from General Release.** Excluded from the above release are any claims which cannot be waived by law, including the filing of a discrimination charge with a government agency or the participation in an agency investigation. Ms. Miao agrees, however, to waive any right to any monetary recovery should any such government agency pursue any claims on her behalf.

5. **Employee Acknowledgments.** Ms. Miao agrees that she: (a) has been paid all monies owed for all work performed through the last payroll period ending before she signs this Agreement; and (b) has not suffered any on-the-job injury for which she has not already filed a claim.

6. **Additional Employee Acknowledgements.** In further consideration of the promises made by the Village in this Agreement, Ms. Miao specifically waives and releases the Village from all claims or rights that she might have as of the date she signs this Agreement arising under the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.* Ms. Miao further agrees that:

- (a) her waiver of rights under this Agreement is knowing and voluntary and in compliance with the Older Workers Benefit Protection Act of 1990;
- (b) she understands the terms of this Agreement;
- (c) the consideration provided in this Agreement represents payments over and above that to which she otherwise would be entitled, that the consideration would not have been provided had she not signed this Agreement, and that the consideration is in exchange for the signing of this Agreement;
- (d) the Village is hereby advising her to consult with an attorney prior to executing this Agreement;
- (e) the Village is giving her a period of twenty-one (21) days within which to consider this Agreement;
- (f) following the execution of this Agreement, she has seven (7) days in which to revoke this Agreement by written notice. If Ms. Miao wants to revoke the Agreement, she should deliver a written revocation to Director of Human Resources Kathleen Dunne, at 255 East Wilson Avenue, Lombard, Illinois 60148-3926. Alternatively, Ms. Miao may transmit her written revocation by facsimile to Ms. Dunne at (630) 873-4735 within seven (7) days after she signs the Agreement; and
- (g) this entire Agreement shall be void and of no force and effect if she chooses to so revoke, and if she chooses not to revoke, this Agreement shall then become effective and enforceable assuming all other parties have already executed it.

7. **Return of Village Property.** Ms. Miao will return to the Village all property that belongs to the Village, including any Village identification cards, uniforms, pagers, cell phone, documents and materials that belong to the Village and/or pertain to any Village files, property or business; building, facility or vehicle keys, key cards, files, computers, computer diskettes, passwords, codes, correspondence, background materials relating to Village matters, or any other documents or materials in her possession in either paper or electronic form that belong to the Village. Ms. Miao will return all Village property to the Village Manager within 24 hours of a demand for such by the Village Manager or his designee.

8. **Severability.** If any part of this Agreement is found to be invalid, the rest of the Agreement will remain in full force and effect.

9. **Modification of Agreement.** This Agreement may only be modified by the mutual consent of both parties and such modifications must be in writing and signed by both parties.

10. **Entire Agreement/Non-Admissions.** This Agreement resolves all matters between the Village and Ms. Miao arising out of any aspect of Ms. Miao's employment by the Village, or arising out of any aspect of her termination, and supersedes any other written or oral agreement between them. The Village expressly denies any wrongdoing in connection with Ms.

Miao's employment and subsequent separation, including any violation of any local, state or federal laws, constitutions, regulations, ordinances, executive orders, common law or employment contracts or labor agreements.

11. **Choice of Law.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, the parties have executed this Separation Agreement and Release on the dates set forth below.

  
\_\_\_\_\_  
Ying Miao

By: \_\_\_\_\_  
Village of Lombard  
By: Scott Niehaus

Dated: 7/12/13

Dated: \_\_\_\_\_