

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: David A. Hulseberg, Village Manager *Dah*
DATE: September 8, 2009 (B of T) Date: September 17, 2009
TITLE: Voluntary Separation and Release Agreement
SUBMITTED BY: Carl S. Goldsmith, Director of Public Works

BACKGROUND/POLICY IMPLICATIONS:

The attached agreement is for the voluntary resignation of the Public Works Custodian, which is consistent with Village Board direction provided during the FY2010 budget process.

FISCAL IMPACT/FUNDING SOURCE

The Village will save approximately \$40,000 per fiscal year as a result of the elimination of the Custodian position.

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X *David A. Hulseberg* _____ Date 9/8/09

NOTE: Materials must be submitted to / approved by the Village Manager's Office by 12:00 pm, Wednesday, prior to the Agenda Distribution.



August 28, 2009

TO: Village President and Board of Trustees
THROUGH: David A. Hulseberg, Village Manager
FROM: Carl S. Goldsmith, Public Works Director *CS*
SUBJECT: Personnel Matter

Attached please find the Separation and Release Agreement for the voluntary resignation of Ronald Kesten. The terms and conditions of the resignation can be found in the agreement. This agreement is consistent with Village Board direction provided during the FY2010 budget process. The custodial services have been contracted out, which will result in a cost savings of approximately \$40,000 annually.

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 September 17, 2009 meeting.

RESOLUTION

R _____ 09

**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 Ronald Kesten 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 17th day of September, 2009.

Ayes: _____

Nays: _____

Absent: _____

Approved this 17th day of September, 2009.

William J. Mueller
Village President

ATTEST:

Brigette O'Brien
Village Clerk

APPROVAL AS TO FORM:

Thomas P. Bayer
Village Attorney

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 Ronald Kesten, on behalf of himself, his spouse, his agents, representatives, attorneys, assigns, heirs, executors and administrators (hereinafter collectively referred to as “Mr. Kesten”) and the Village of Lombard, Illinois, including the Village’s affiliates, predecessors, successors, representatives, elected officials, attorneys, officers and agents, individually and in their representative capacities, and each of them (hereinafter collectively referred to as the “Village”), and Mr. Kesten’s exclusive bargaining agent, the American Federation of State, County & Municipal Employees, AFL-CIO Council 31, Local 89 (hereinafter the “Union”).

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. Kesten hereby resigns his employment with the Village effective August 31, 2009, and the Village hereby accepts his resignation.
2. If Mr. Kesten signs this Agreement and does not revoke it pursuant to paragraph 6 (e) below, the Village agrees to pay 100% of the premium for insurance coverage for Mr. Kesten and his eligible dependents under the Blue Advantage HMO and HMO Dental plan offered by the Village for the 12 month period commencing October 1, 2009 and ending September 30, 2010. Mr. Kesten will be responsible for 100% of the premium for the insurance coverage at the conclusion of the twelve month period. Coverage is subject to the terms and conditions of the applicable policy or plan. Mr. Kesten hereby acknowledges that such payment by the Village is in addition to any consideration to which he would have otherwise been entitled, and constitutes consideration for Mr. Kesten’s acceptance of this Agreement.

In addition to the foregoing, Mr. Kesten will be paid for his earned but unused vacation at time of separation, *i.e.*, 232.21 hours of vacation time, and nine (9) weeks of severance pay pursuant to Section 17.10 of the existing collective bargaining agreement.

3. By signing this Agreement and receiving the valuable consideration described above, Mr. Kesten hereby fully releases and forever discharges the Village from any and all claims or liability of any kind arising out of or relating in any way to Mr. Kesten’s employment with and separation of employment from the Village, 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; the Illinois Human Rights Act, 775 ILCS 5; the 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.; 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.*; all claims under 42 U.S.C. §§ 1983, 1985, 1988; all claims under the Village Municipal Code and/or personnel policies and/or employee manuals; all grievances or other claims under any collective bargaining agreement; all tort claims; all claims for wrongful discharge; all claims based on any actual or implied contract, including, but not limited to, any employment agreement between the Village and Mr. Kesten; 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. Mr. Kesten waives any right to reinstatement as a Village employee. However, Mr. Kesten may apply for future employment with the Village of Lombard. It is the intention of Mr. Kesten and the Village that in executing this Agreement, Mr. Kesten 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 Village and its agents, jointly and separately, individually and in their representative capacities, for any actual or alleged injuries or damages suffered by Mr. Kesten 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. Also excluded from the release is Mr. Kesten's right to file a charge with an administrative agency or participate in any agency investigation. Mr. Kesten is, however, specifically waiving his right to recover any money in connection with such a charge or investigation. Mr. Kesten 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.

4. The Union hereby consents to this Agreement and agrees not to file any grievance or claim concerning Mr. Kesten's separation from employment. The Union and the Village further agree that this Agreement does not constitute a precedent with respect to other bargaining unit employees, and agree that it shall not be cited, offered or relied upon in any future proceeding involving any other employee.
5. 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 or wrongdoing on the part of the Village or Mr. Kesten. This Agreement resulted from the parties' mutual desire to resolve any and all matters or controversies between them, and to amicably effectuate Mr. Kesten's employment separation.
6. In compliance with the Older Workers Benefit Protection Act, 29 U.S.C. § 626(f), Mr. Kesten 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;

