

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: Scott R. Niehaus, Village Manager

DATE: November 13, 2017 (B of T) Date: November 16, 2017

TITLE: Voluntary Employment Separation Agreement

SUBMITTED BY: Kathleen Dunne, Director of Human Resources *KD*

BACKGROUND/POLICY IMPLICATIONS:

The attached agreement is for the voluntary retirement of Village Police Lieutenant.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____ Date _____

Finance Director X _____ Date _____

Village Manager X _____ Date _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.

RESOLUTION
R ___ 17

A RESOLUTION AUTHORIZING SIGNATURE OF
PRESIDENT AND CLERK ON AN AGREEMENT

WHEREAS, the Corporate Authorities of the Village of Lombard have received an Agreement between the Village of Lombard and John Lavery regarding an Employment Separation Agreement, 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.

SECTION 2: That the Village Clerk be and hereby is authorized to attest said agreement as attached hereto.

Adopted this ___ day of ___, 2017.

Ayes:

Nays:

Absent:

Approved this ___ day of ___, 2017.

Keith Giagnorio
Village President

ATTEST:

Sharon Kuderna
Village Clerk



EMPLOYMENT SEPARATION AGREEMENT

You get the following pay and benefits if you sign this Agreement:

Pay: 3 weeks of additional severance pay (\$7,105.34) in the form of a check with the necessary deductions taken out, provided you sign and do not timely revoke this Agreement.

Benefits: Full family health insurance for the first six months (through May 31, 2018), provided you sign and do not timely revoke this Agreement and you sign up for Village health insurance.

Employee Name: John Lavery

End of Employment: 11/17/17

Agreement Given to Employee: 11/07/2017

1. **Parties.** The parties to this Agreement are you, the employee (for yourself, your family, beneficiaries and anyone acting for you), and the Village of Lombard (the "Village").
2. **End of Employment.** Your employment with the Village ended on the date above as a result of your retirement. You further agree not to seek employment with the Village at any time in the future.
3. **Release.** You release the Village, its related entities and all of its and their past and present elected officials, officers, directors, supervisors, employees and anyone else acting for any of them. You release all of these entities and people from any known and unknown claims of any type to date arising out of anything to do with your employment or the end of your employment. This means you give up these claims, including but not limited to:
 - claims for any pay/compensation/benefits, including attorney fees, bonuses, commissions, costs, damages, expenses, incentive pay, insurance, interest, paid/unpaid leave/time off, salary, separation/severance pay/benefits, or wages;
 - claims concerning any express or implied employment contracts, covenants, promises or duties;
 - claims for assault; battery; defamation; detrimental reliance; false imprisonment; fiduciary duty breach; fraud; impairment/loss of business/economic opportunity; intentional/negligent infliction of emotional distress; interference with contractual or legal rights; invasion of privacy; libel, loss of consortium; misrepresentation; negligence including negligent hiring/retention/supervision; personal injury; promissory estoppel; public policy violation; retaliatory discharge; slander; termination/other notice violations; tortious interference; posting requirement violations; violations of the state or federal constitutions (including all claims which might be brought under 42 U.S.C. § 1983); claims under the Public Employee Disability Act and Public Safety Employee Benefits Act, records or information access/collection/release/use violations; reporting and disclosure violations; wrongful discharge; other unlawful action/inaction; or any other federal, state, local or common law matters;
 - claims of discrimination based on age (including the Age Discrimination in Employment Act) ("ADEA"), ancestry, benefit entitlement, citizenship, color, concerted activity, disability, failure to accommodate, gender, genetics, harassment, immigration status, income source, leave rights, marital status, military status, national origin, parental status, perception of a protected characteristic, political affiliation, race, religion, retaliation, sex, sexual orientation, union activity, veteran status, whistleblower activity, other legally protected status or activity; or a claim that any payment under this Agreement was affected by any such discrimination;
 - any right to be or remain a member of any class or collective action against the Village, to the fullest extent permitted by law.
4. **Release Exclusions.** The release section(s) of this Agreement exclude any claims which cannot be waived by law such as claims for unemployment/worker compensation. The release section(s) also

exclude your right to file, or participate in the investigation of, any administrative charge at any government agency. But you give up any right to any money or other personal benefit from any such charge.

5. Promise Not to Sue. You promise not to sue the Village for any claims covered by the release section(s) and not excluded by the release exclusions section of this Agreement. This promise not to sue is separate from, and in addition to, your promises in the release/release exclusions sections of this Agreement. This promise not to sue does not apply to an ADEA claim.

6. Other Benefits. Notwithstanding executing this Agreement, you will receive the benefits to which you are entitled under Village policies upon your November 17, 2017 separation. You agree that the Village will pay out the following amounts as payment in full for the benefits to which you are entitled, to be transferred to your RHS account:

Accrued but unused vacation: 336.6969 hrs x \$59.2111= \$19,936.19

Sick time (25% of anything over 800 hours): 1730.3721 hrs - 800 hrs = 930.3721 hrs x 25% = 232.593025 hrs x \$59.2111= \$13,771.91

Severance pay (as part of this agreement the Village will waive the notice requirement): 9 weeks severance pay \$2368.45 per week x 9 wks = \$21,316.01

TOTAL: \$55,024.11.

7. Letter of Reference. The Village has provided a letter of reference for your use as you see fit.

8. Withdrawal of Complaint. The Village will withdraw the internal complaint against you and close the internal investigation on the grounds that the underlying complaint was withdrawn

9. Return of Village Property. You are to promptly return any and all Village issued equipment, keys, identification and passwords.

10. Maintaining Confidential Information. You acknowledges that as a police lieutenant you were privy to confidential and proprietary information belonging to the Village, the unauthorized disclosure of which could cause serious and irreparable injury to the Village. This information includes, but is not limited to, the following: personnel issues, undisclosed Police Department plans and enforcement strategies, criminal investigations, other confidential information. You agree to hold and safeguard this confidential information in trust for Village, its successors and assigns, and agree that you will not, without the prior written consent of the Village or as otherwise required by law, disclose any of this confidential information at any time in the future. Nothing herein shall prohibit you from revealing information regarding the Village: (i) that is subject to disclosure under the Freedom of Information Act; (ii) that has already become public knowledge through other sources; or (iii) as otherwise is required by law.

11. Non-Disparagement. In further exchange for mutual consideration listed at the beginning of this Agreement, you and the Village (meaning the Village Manager, the Police Chief and the Human Resources Director), for four years from the date of execution of this Agreement, shall not (directly or indirectly, individually or with others) do anything calculated or likely to have the effect of undermining, disparaging or otherwise reflecting negatively upon either Party, its elected officials, or its employees.

12. Non-Admission. The Village's offer of this Agreement and/or any payment herein are not an admission that you have any claim of any kind against the Village or that the Village admits to any liability.

13. Agreement Enforcement. The prevailing party in any dispute regarding this Agreement will recover its reasonable attorney fees, court costs, other expenses and other available relief. If you violate any promise not to sue or any other post-employment obligations in this Agreement, the Village will have the option to require you to give back the pay/benefits (other than those in Section 6) the Village gave you for this Agreement (less \$1000); to not give you any of the remaining unpaid pay/benefits (other than those in Section 6); and to obtain any other available relief.

14. Individual Agreement. This Agreement has been negotiated individually and is not part of a group exit incentive or other termination program.

15. Time to Consider. To consider this Agreement, you have been given at least 21 days.

16. Time to Revoke. After you sign this Agreement, you have 7 days to revoke it by providing written notice to Kathleen Dunne. This Agreement is not effective or enforceable until the revocation period expires. If you revoke this Agreement, you will not receive the pay/benefits listed at the beginning of this Agreement.

17. Other Representations. You agree:

- You have received (or will have received by virtue of the payouts in Section 6) all compensation/benefits/leave/time off you are due, including for overtime or vacation;
- You have not suffered any on-the-job injury for which you have not already filed a claim;
- The pay and/or benefits listed at the beginning of this Agreement are more than what you otherwise would get at the end of your employment with the Village;
- This Agreement is the entire agreement, and replaces any other written or oral agreements, between you and the Village concerning any of the matters in this Agreement;
- You have not been promised anything besides what is in this Agreement;
- This Agreement only can be changed by a written document signed by you and the Village;
- You were advised in writing, by getting a copy of this Agreement, to consult with an attorney before signing below;
- You understand this Agreement and are signing this Agreement knowingly and voluntarily;
- You do not have any pending lawsuit against the Village or any other released person or entity;
- As long as Section 3 remains enforceable, the rest of this Agreement still will be enforceable if any other part of this Agreement is found to be invalid;
- You have not been coerced or threatened into signing this Agreement.

JOHN LAVERY

VILLAGE OF LOMBARD

(Date)

By: _____
(Date)