

RESOLUTION NO. 09-123

A RESOLUTION APPROVING A RESIGNATION AND SEVERANCE AGREEMENT AND RELEASE OF ALL CLAIMS

WHEREAS, the Village of Wheeling, Cook and Lake Counties, Illinois is a home rule unit of local government pursuant to Article 7, Section 6 of the Constitution of the State of Illinois; and

WHEREAS, the President and Board of Trustees and J. Mark Rooney have agreed to the terms of a Resignation and Severance Agreement and Release of All Claims as contained in the Agreement attached hereto.

NOW, THEREFORE BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WHEELING, COOK AND LAKE COUNTIES, ILLINOIS, that the Resignation and Severance Agreement and Release of All Claims between the Village of Wheeling and J. mark Rooney, attached hereto, is hereby approved and the Village President is hereby authorized to execute the Resignation and Severance Agreement and Release of All Claims, on behalf of the Village of Wheeling.

BE IT FURTHER RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WHEELING, ILLINOIS, COUNTIES OF COOK AND LAKE that the President and Board of Trustees shall make such appropriations as are necessary to carry out the terms of the Resignation and Severance Agreement and Release of All Claims, attached hereto.

Trustee Argiris moved, seconded by Trustee Vogel, that Resolution No. 09 - 123, be adopted.

President Abruscato	<u>Aye</u>	Trustee Heer	<u>Aye</u>
Trustee Argiris	<u>Aye</u>	Trustee R. Lang	<u>Aye</u>
Trustee Brady	<u>Aye</u>	Trustee P. Horcher	<u>Aye</u>
		Trustee D. Vogel	<u>Aye</u>

Adopted this 29th day of September, 2009.

Judy Abruscato
Judy Abruscato
Village President

ATTEST:

Elaine E. Simpson
Elaine E. Simpson
Village Clerk



RESIGNATION AND SEVERANCE AGREEMENT AND RELEASE OF ALL CLAIMS

This Resignation and Severance Agreement and Release of Claims (the "Agreement") is entered into between the Village of Wheeling (the "VILLAGE") and J. Mark Rooney ("ROONEY") this 29th day of September, 2009 .

PREAMBLE

WHEREAS, it is the desire of the VILLAGE and ROONEY to settle and resolve all the terms of ROONEY'S separation from employment with the VILLAGE and to fix and determine the rights of each party with regard to ROONEY'S resignation from said employment, as Village Manager, and all related matters, including but not limited to payment of severance and temporary continuation of certain benefits provided for under an Employment Agreement entered into between the parties on February 26, 2007, any disputes existing between them as of the effective date of this Agreement, any claims that could be brought by ROONEY against the VILLAGE, and/or any claims that the VILLAGE could bring against ROONEY, in relation to the at-will-employment relationship between ROONEY and the VILLAGE and the severance of that relationship; and

WHEREAS, the considerations exchanged herein do not constitute and shall not be interpreted as an admission of liability or of any sort of wrongdoing on the part of ROONEY or the VILLAGE, or as any violation of any federal, state, or local statute, ordinance, regulation, order or common law; and

WHEREAS, it is in the best interests of both parties to enter into this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the payment of money, and the making of mutual promises and covenants hereinafter contained, the receipt and sufficiency of which is acknowledged, the VILLAGE and ROONEY agree as follows:

1. The initial statements contained in the Preamble are incorporated into this Section 1 as if fully set forth herein and are material terms of this Agreement. ROONEY and the VILLAGE acknowledge and agree that this Agreement supersedes any and all prior agreements, representations or understandings between the parties, whether written or oral, specifically including without limitation all terms, conditions and provisions contained in a document made between ROONEY and the VILLAGE entitled

"Employment Agreement" which is dated February 26, 2007, and which was approved by the Corporate Authorities of the VILLAGE pursuant to Resolution on the same date and amended from time to time.

2. ROONEY acknowledges and agrees that this Agreement constitutes his voluntary, unconditional and irrevocable resignation of his employment with the VILLAGE, which resignation of employment shall become effective on September 29, 2009 ("resignation date"), provided the VILLAGE approves of this Agreement on September 29, 2009 ROONEY agrees to execute this Agreement and deliver it to the Village President prior to September 25, 2009. Under the terms of this Agreement, ROONEY relinquishes any and all rights to employment or re-employment with the VILLAGE in any capacity or position. ROONEY shall remain on the payroll as a Village employee until September 29, 2009. ROONEY shall also immediately relinquish his seat on the Board of Directors of the Chicago Executive Airport Commission.

3. ROONEY agrees to return his Village phone to the Acting Manager on or before October 20, 2009.

4. The VILLAGE agrees to allow ROONEY access to his former office in the presence of the Acting Manager and any storage area or filing cabinets within the Village Hall which contain his personal property or nonconfidential public records from September 29, 2009 to October 2, 2009, to collect and pack up his personal property and to identify and/or make copies of said public records. ROONEY shall identify the public records that he desires copies of prior to October 2, 2009, and he along with the assistance of his assistant shall make copies of said records. On or before October 2, 2009, ROONEY will remove his personal property from the Village Hall during normal business hours or after business hours (if preferred) and will obtain copies only of those public records that have been reviewed and determined by the Acting Manager and the Village Attorney, in their discretion, to be nonconfidential and/or nonexempt under the Freedom of Information Act (5 ILCS 140/1 et seq.) ("FOIA"). The Acting Manager and the Village Attorney shall timely review all of the copies of such public records, prior to their release, to ensure compliance with the terms of this Agreement. ROONEY shall not remove any public record (as defined under FOIA) or any other document or information that is deemed to be confidential (under any legal principle or privilege) or deemed exempt from disclosure under any of the exceptions set

forth in Section 7 of the FOIA, as determined by the Acting Manager and the Village Attorney, in their discretion. The Acting Manager shall be present during ROONEY's removal of his personal property and copies of any nonconfidential or nonexempt public records to ensure compliance with the terms of this Agreement.

5. In accordance with the Illinois Personnel Record Review Act (820 ILCS 40/1 et seq.), the VILLAGE shall provide ROONEY with a complete and accurate copy of his personnel file by October 2, 2009.

6. The VILLAGE shall provide ROONEY with nine months ("Severance Period") of severance pay, the payment of COBRA benefits in an amount sufficient to allow ROONEY, his spouse and dependents to remain covered under the Village's health care coverage for nine months ("COBRA Payment"), and any accrued employee benefits that ROONEY is entitled to as of September 29, 2009. The severance pay shall be at his base rate of pay as of the date of this Agreement and shall be paid in a lump sum to ROONEY during the week of September 28, 2009, which is after the seven (7) calendar day revocation period for revoking a severance and release of claims agreement as set forth in the Age Discrimination in Employment Act, as amended.

7. The severance payment and COBRA payment made pursuant to this Agreement is subject to all applicable payroll and withholding taxes and deductions required by any law, rule or regulation of Federal, Illinois or local authority. Rooney agrees that he shall be responsible for the payment of his share of such Federal, Illinois and local taxes.

8. Provided the VILLAGE satisfies its payment obligations in Paragraph 7 of this Agreement, the following release shall be effective: ROONEY releases and forever discharges, for himself and his spouse, past, current, or future, if any, his children living or unborn, if any, his heirs, successors, assigns, transferees, executors and representatives of any kind, the VILLAGE, its former, current and future appointed and elected officials, officers, trustees, employees, attorneys, and agents, its successors in interest, transferees and assigns, and any other person acting or purporting to act in or on behalf of the VILLAGE of and from any and all claims, grievances, demands, rights, liabilities, duties, debts, sums of money, back pay, compensation of any kind, contracts, agreements, suits, controversies, reckonings,

responsibilities, accounts, promises, damages, actions and causes of action of any kind, nature or description, whether known or unknown, foreseen or unforeseen, direct or indirect, whether contract, tort, or otherwise, whether legal, administrative, or equitable, that ROONEY has or may have against the VILLAGE, arising or accruing at or before the time and date of payment of the lump sum severance payment and the employee benefits provided for under this Agreement and arising out of his employment with the VILLAGE or the resignation of his employment with the VILLAGE, including but not limited to claims under the Age Discrimination in Employment Act, as amended, the Illinois Human Rights Act, as amended, the Civil Rights Act of 1964, as amended, the Employee Retirement Income Security Act, as amended, the Americans with Disabilities Act, as amended, the Family and Medical Leave Act, as amended, the Illinois Wage Payment and Collection Act, as amended, the Constitution of the United States, as amended, the Constitution of the State of Illinois of 1970, as amended, or any other federal or State of Illinois statute, regulation, or local ordinance or the common law of any state, including, without limiting the generality of the foregoing, any and all direct or indirect claims, including additional claims for costs, sanctions, or attorneys' fees.

9. This release shall not apply to any claims of either party arising or accruing after the effective date of this Agreement, or any COBRA benefits sought by ROONEY, and shall not be construed so as to bar any actions by either party to enforce the terms of this Agreement. The Village agrees to defend, indemnify and hold harmless ROONEY in any litigation that has been filed against ROONEY or is filed against ROONEY in the future arising out of actions taken by ROONEY while acting in the course of his employment as Village Manager.

10. ROONEY agrees that after the execution of this Agreement, that he will not take any actions or make any statements to the public, future employers, current, former or future VILLAGE employees, or any third party whatsoever that disparage or reflect negatively on the VILLAGE its affiliates, its officers, directors, elected officials or employees. The VILLAGE's officers, department heads and elected officials also agree not to take any actions or make any statements to the public that disparage ROONEY. It is recognized and agreed that damages in the event of a violation of this provision by ROONEY are difficult to ascertain, and though great and irreparable, the remedy for a violation of this provision by ROONEY

shall include ,but not be limited to, liquidated damages in the form of a return by ROONEY of six months of the severance payment to the VILLAGE. This agreement with respect to liquidated damages will in no event prevent the VILLAGE, from obtaining injunctive or other appropriate relief.

11. Subject to any applicable exception set forth in FOIA, as amended, ROONEY and the VILLAGE acknowledge that this Agreement is a public record, as that term is defined under the current FOIA, and therefore is subject to inspection and copying by the public if requested pursuant to a FOIA request.

12. ROONEY agrees that his portion of the tax liability which may result from the payment of money as set forth in this Agreement rests with him alone.

13. The parties agree that this Agreement shall be admissible in evidence in any action in which the terms of this Agreement are sought to be enforced.

14. ROONEY and the VILLAGE agree that the provisions of this Agreement are severable, and if any part is found unenforceable or illegal, the remaining terms and provisions shall be valid and enforceable.

15. The language of this Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against either of the parties to this Agreement. This Agreement, and all questions of construction, interpretation, and enforcement, and all controversies hereunder, shall be governed by the applicable statutory and common law of the State of Illinois. The parties agree that for the purpose of any litigation or proceeding in regard to this Agreement and its enforcement, venue shall be in the Circuit Court of Cook County, Illinois, and the parties agree to submit to the jurisdiction of said court for the purpose of any such litigation or proceeding.

16. This Agreement shall be binding upon, and inure to the benefit of, ROONEY, his heirs, executors, administrators, representatives, successors, transferees, and assigns, and the VILLAGE and its former, current and future elected and appointed officers, officials, trustees, employees, agents, attorneys, transferees, assigns, and successors-in-interest.

17. Pursuant to the Age Discrimination in Employment Act, as amended, this Agreement shall become effective and enforceable seven (7) calendar days after it is executed by ROONEY, which shall be the "effective date" of this Agreement, provided that the VILLAGE executes this Agreement within said seven (7) calendar day period. ROONEY may revoke his acceptance of this Agreement anytime within

the period of seven (7) calendar days following the date of his execution of this Agreement. If any of the signatories to this Agreement shall fail to execute this Agreement, or if ROONEY revokes his acceptance within the aforesaid seven (7) calendar day period, the Agreement it shall be null and void in its entirety.

18. ROONEY acknowledges that he fully understands all of the terms, conditions, provisions, and obligations of this Agreement, that he was not coerced into signing it, that he was represented by an attorney of his own choosing during the negotiation of this Agreement, and that he executed this Agreement voluntarily and with full knowledge and understanding of the meaning and significance of its terms, conditions, provisions, and obligations. ROONEY voluntarily agrees and consents to waive the twenty-one (21) day review period for this Agreement as provided for under the Age Discrimination in Employment Act, as amended.

IN WITNESS WHEREOF, the Village of Wheeling, pursuant to the authority granted by the passage of a Resolution by its Board of Trustees, has caused this Severance Agreement and Release of all Claims to be executed by the Village President and attested by the Village Clerk and J. Mark Rooney has voluntarily executed the Agreement (and his signature has been verified by a Notary Public) on the respective dates set forth below.

J. MARK ROONEY

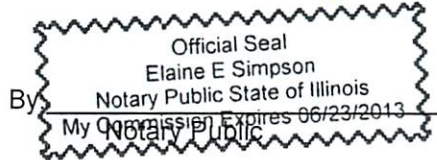
VILLAGE OF WHEELING

By: J. Mark Rooney
J. Mark Rooney

By: Judy Abruscato
Village President

Date: 23 sept 2009

Date: 9/29/09



ATTEST:
By: Elaine E Simpson
Village Clerk

Commission expires: 6/23/13

Date: _____

Date: 9/29/09

**VILLAGE OF WHEELING
LEGISLATIVE COVER MEMORANDUM**

AGENDA ITEM NO(S): 11.A
(To be inserted by Deputy Clerk)

DATE OF BOARD MEETING: September 29, 2009

TITLE OF ITEM SUBMITTED: Resolution Approving a Resignation and Severance Agreement and Release of All Claims

SUBMITTED BY: James V. Ferolo

BASIC DESCRIPTION OF ITEM:

The attached Resolution authorizes the Village President and Clerk to execute a Resignation and Severance Agreement and Release of All Claims with Mr. Rooney. The Agreement sets forth the terms discussed which include nine months of severance pay and health insurance benefits.

EXHIBIT(S) ATTACHED: Resolution, Agreement

RECOMMENDATION: Approval

SUBMITTED FOR BOARD APPROVAL: Village Manager

