

RESOLUTION 2014-10

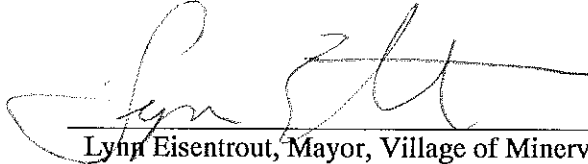
A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE DOCUMENTS NECESSARY TO END THE LITIGATION FILED BY JASON GROSS AND DECLARING AN EMERGENCY

WHEREAS, on December 7, 2011, Jason Gross filed a complaint in the Franklin County Court of Common Pleas captioned *Jason Gross v. Village of Minerva Park, et al.*, Case No. 11 CV 015177, which was removed to U.S. District Court for the Southern District of Ohio on January 6, 2012 and assigned Case No. 2:12-CV-0012; and


WHEREAS, Jason Gross and the Village of Minerva Park now desire, in good faith, and in the interest of full and final compromise, settlement and satisfaction of all claims between them, to resolve and settle their differences;

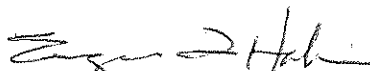
NOW, THEREFORE, be it ordained by the Council of the Village of Minerva Park, Franklin County, State of Ohio, that:

- Section 1. The Mayor is hereby authorized and directed to enter into and execute a Settlement Agreement and Release in substantially the same format and content as the document attached hereto as Exhibit A and incorporated herein by reference.
- Section 2. The Mayor is hereby authorized and directed to execute any other documents necessary to resolve and forever end the litigation filed by Jason Gross.
- Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of Council and that all deliberations of the Council and any of the decision making bodies of the Village of Minerva Park which resulted in formal actions were in meetings open to the public in compliance with all legal requirements of the State of Ohio.
- Section 4. All prior legislation, or any parts thereof, which is/are inconsistent with this Resolution is/are hereby repealed as to the inconsistent parts thereof.
- Section 5. That Council declares this to be an emergency measure immediately necessary for the preservation of the public peace, health, and safety of this municipality and the further reason that the Village must resolve this litigation as soon as possible to avoid additional and unnecessary costs, expenses, and fees. Wherefore, provided this Resolution received the required affirmative votes of Council, it shall take effect and be in full force immediately upon passage by Council.


Lynn Eisentrout, Mayor, Village of Minerva Park

First Reading: March 22, 2014
Second Reading: Waived
Third Reading: Waived
Passed: March 22, 2014


Attest Lynda Sudderberg, Fiscal Officer,
Village of Minerva Park


Reviewed by Counsel

GENERAL RELEASE AND WAIVER

This General Release and Waiver (“Release”) is entered into by Jason Gross (“Gross”) for the benefit of Lynn Eisentrout (Individually and as Mayor of the Village of Minerva Park), Kimberly Nuesse (Individually and as Chief of Police of the Village of Minerva Park), and the Village of Minerva Park Village Council (collectively referred to herein as “Minerva Park”) (all parties listed above to be collectively referred to herein as “the Parties”).

RECITALS

This Release is made with reference to the following facts:

A. WHEREAS, Gross filed a Complaint against Minerva Park that is currently pending in the United States District Court of Ohio, Case No. 2:12-CV-0012, (the “Lawsuit”);

B. WHEREAS, Minerva Park denies the validity of the Lawsuit and specifically denies that it is subject to any liability;

C. WHEREAS, the Parties wish to settle their differences without resort to further litigation; and

D. WHEREAS, Minerva Park is willing to provide Gross the consideration described below, which it is not ordinarily required to do, provided that Gross release Minerva Park from any and all claims he has made or might make against Minerva Park as of the Effective Date of the Release. The Effective Date is the date counsel for Minerva Park receives the signed General Release and Waiver.

NOW THEREFORE, in consideration of the promises contained herein, the sufficiency of which are hereby acknowledged by the Parties, the Parties agree to be legally bound to the following terms and conditions:

AGREEMENTS

1. **Recitals:** The Parties acknowledge the “Whereas” clauses preceding this document, and incorporate them herein as material parts of this Release.

2. **Settlement Amount:** In consideration for the promises and release of all claims specified herein, Minerva Park will pay, and Gross agrees to accept, the total sum of Twenty Two Thousand Five Hundred Dollars (\$22,500.00) in full and final settlement of all claims, to be paid as follows:

- a. Twenty Two Thousand Five Hundred Dollars (\$22,500.00) will be paid, via check, made payable to Gross and his lawyers, Hunter, Carnahan, Shoub, Byard & Harshman. Gross agrees and understands that it is his responsibility to pay all federal, state and local taxes owed by him in connection with these payments; and
- b. The payment required by this Paragraph shall be made via delivery to Hunter, Carnahan, Shoub, Byard & Harshman to be received no later than twenty one (21) days from the date counsel for Minerva Park receives the fully executed General Release and Waiver.

3. **Withdrawal of Lawsuit:** The parties agree that, upon receipt of the payments described in Paragraph 2, the Lawsuit shall be dismissed with prejudice, each party to bear his or its own costs, expenses, and attorney fees.

4. **Consideration:** Gross acknowledges that the consideration set forth in this Release is solely in exchange for the promises and release in this Release and is sufficient consideration to support this Release.

5. **Release**: Gross, for and in consideration of, and pursuant to the terms of this Release, does hereby for himself, his heirs, executors, administrators, assigns and for anyone else claiming by, through or under him, forever release and discharge Eisentrout, Nuesse and Minerva Park, any Minerva Park related entities, predecessors, successors and affiliated or related entities, and their respective elected officials, agents, insurers, employees, attorneys, representatives, assigns, officers, and directors (“the Released Parties”) of and from any and all claims, demands, damages, actions, judgments, liens, costs, causes of action and suits at law, statutory or common, and/or equity, of any kind, type or character arising out of or related to, directly or indirectly, known or unknown, Gross has against Eisentrout, Nuesse and/or Minerva Park, as of the Effective Date of the Release, including, but not limited to:

- (a) All rights and claims for all injuries, occupational diseases or disabilities, mental or physical, and all claims under all State or Federal statutes or regulations or at common law;
- (b) All rights and claims arising under the Americans with Disabilities Act, 42 U.S.C. Section 12101 *et seq.*;
- (c) All rights and claims arising under Ohio Revised Code Chapter 4112;
- (d) All claims for discrimination under Federal and State law, including, but not limited to, gender discrimination and sexual harassment;
- (e) All rights and claims arising under the Family and Medical Leave Act;
- (f) Any claim for refusal to hire in violation of public policy;
- (g) All rights and claims arising under any other federal, state or local law and ordinance pertaining to denial of Constitutional Rights, discrimination, retaliation and/or harassment including any 1983 claims;
- (h) Any and all claims for breach of contract, promissory estoppel, wrongful refusal to hire, intentional infliction of emotional distress, or any other right or claim arising under common law, statute, rule or regulation, or in equity;

- (i) All claims for attorney fees, expenses, and costs;
- (j) Any intentional tort claim;
- (k) Any claim for post-settlement interest; or
- (l) Any other claim which Gross has or may have as of the Effective Date of the Release, whether known or unknown, by reason of or in any manner growing out of the allegations in the Lawsuit or his employment with and/or separation of employment from Minerva Park.

Gross specifically retains and does not release Minerva Park or its insurers from the common law and/or statutory obligations, if any, to provide him with indemnification and a defense in claims which may be brought against Gross or arising out of his employment with Minerva Park.

6. Release of Gross: Nuesse, Eisentrout and Minerva Park individually, and collectively, for themselves and their heirs, executors, administrators, agents, successors and assigns, hereby release and forever discharge Gross, together with his respective current and former heirs, executors and administrators from any and all claims, relief, demands, rights, charges, actions, interests, debts, liabilities and damages, or causes of action of whatever nature and type, whether legal or equitable, which have accrued as to the date of this Agreement.

7. Tax Issues: Gross accepts full responsibility for the payment of any income, employment or other tax which Gross owes arising or resulting from the settlement payments specified in Paragraph 2 of this Release. The Released Parties make no representation regarding the tax consequences or liability arising from said payments. Gross understands and agrees that any and all tax liability that becomes due by him because of the payment referenced in Paragraph 2 is his sole responsibility. The Released Parties shall have no monetary liability or obligation regarding tax payment whatsoever.

8. **Assignment**: Gross represents and warrants that (a) no person other than Gross has any interest in the matters referred to in this Release; (b) Gross has a sole right and exclusive authority to execute this Release; and (c) Gross has not sold, signed, transferred, conveyed or otherwise disclosed of any claim, demand or legal right that is the subject of this Release.

9. **Governing Law and Jurisdiction**: This Release shall be governed by and interpreted in accordance with the laws of the State of Ohio.

10. **No Admission of Liability**: The Parties agree that neither this Release nor the furnishing of the consideration for this Release shall be deemed or construed at any time for any purpose as an admission by Minerva Park of any liability for unlawful or wrongful conduct of any kind, and it is understood by the Parties that liability is hereby expressly denied.

11. **Warrants**: Gross represents and warrants that there are no liens or subrogation interests that exist which are properly recoverable out of the settlement sum provided for in Paragraph 2. Gross agrees to indemnify and hold harmless Minerva Park from any and all claims, demands, deficiencies, levies, assessments, executions, judgments or recoveries, together with any interest or penalties thereon, reasonable attorney fees and costs, made by any third party against the Released Parties for any such amount claimed to be due on account of or arising out an existing lien or subrogation interest properly recoverable out of the settlement sum referenced above in Paragraph 2.

12. **Confidentiality**: The Parties agree that neither they nor their attorneys nor representatives shall reveal to anyone (other than as may be mutually agreed to in writing or required by law) any of the terms of this Settlement Agreement or any of the amounts, numbers or terms and conditions of any sums payable to Gross hereunder except as required for tax preparation purposes and/or corporate or government purposes. The Parties further agree that there

shall be no publication, in any way, of the terms of this Settlement Agreement or any of the amounts, numbers or terms and conditions of any sums payable to Gross hereunder. The parties may say that the Lawsuit has been settled. This paragraph is material inducement for Minerva Park to consent to this Release.

13. Non-Disparagement: Gross agrees not to make any disparaging comments against Minerva Park. Minerva Park agrees that its Officers and Directors and shall not make any disparaging comments concerning Gross. If asked for a reference for Gross, Minerva Park will provide a neutral reference indicating Ms. Gross' dates of employment and positions held.

14. Headings: The headings of the Paragraphs herein are intended for convenient reference only, and the headings shall not be, nor deemed to be, interpretive of the contents of any such provision.

15. Modification: This Release may not be amended, revoked, changed or modified in any way, except by a writing executed by all Parties.

16. Interpretation: This Release has been, and shall be construed to have been, drafted by all of the Parties so that the rule of construing ambiguities against the drafter shall have no force and/or effect.

17. Integration: This Release contains the entire Agreement of the Parties and supersedes any prior written or oral understanding or agreement.

18. Nature of the Release: This Release shall be binding upon each of the Parties and upon their respective heirs, administrators, representatives, executors, successors, and assigns, and shall enure to the benefit of each Party and their respective heirs, administrators, representatives, executors, successors, and assigns.

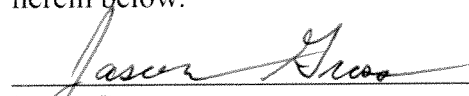
19. Selective Enforcement: The Parties agree that the failure of any Party to enforce or

exercise any right, condition, term or provision of this Release shall not be construed or deemed as a relinquishment or waiver thereof and the same shall continue in full force and effect.

Having elected to execute this Release, to fulfill the promises and to receive the sums and benefits as described herein, Gross, freely and knowingly, and after due consideration, enters into this Release intending to waive, settle, and release all claims as described in this Release against the other as of the Effective Date of the Release.

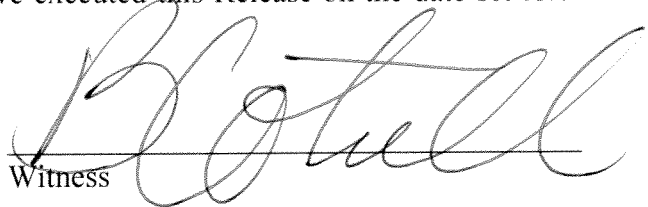
IN WITNESS WHEREOF, the Parties have executed this Release on the date set forth

herein below.



Jason Gross
3/27/14

Date



Witness

_____, Village of Minerva Park
Park

Date

Witness

Lynn Eisentrout

Date

Witness

Kimberly Nuesse

Date

Witness