

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES  
FROM: Scott Niehaus, Village Manager  
DATE: May 8, 2019 (B of T) Date: May 16, 2019  
TITLE: An Agreement to Waive PSEBA Benefits in Exchange for Withdrawal of Pension Hearing Intervention

BACKGROUND/POLICY IMPLICATIONS:

Attached please find information regarding a proposed agreement to withdraw from a Lombard Police Pension Board hearing in exchange for an agreed waiver of Public Safety Employee Benefits Act (PSEBA) benefits.

Review (as necessary):

Village Attorney X \_\_\_\_\_ Date \_\_\_\_\_  
Finance Director X \_\_\_\_\_ Date \_\_\_\_\_  
Village Manager X   SAN   \_\_\_\_\_ Date   5/8/19  

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.



**AGREEMENT TO WAIVE PSEBA BENEFITS IN  
EXCHANGE FOR WITHDRAWAL OF PENSION HEARING INTERVENTION**

This Agreement to **Waive PSEBA Benefits In Exchange For Withdrawal Of Pension Hearing Intervention** (“**Agreement**”) is entered into by and between Francis Vivo and Vanessa Renello on behalf of themselves, their children, including but not limited to Bianca Rinchuso; (date of birth 12/08/2000), family, agents, representatives, attorneys, assigns, beneficiaries, heirs, executors and administrators and, Bianca Rinchuso, independently (individually referred to by each individual name, and collectively referred to as “**Releasers**”) and the Village of Lombard, on behalf of itself, its related entities, predecessors, successors, assigns, elected officials, officers, directors, attorneys, employees and agents (collectively referred to as “**Village**”). The Releasers and the Village are sometimes collectively referred to herein as the “**Parties**”.

**WHEREAS**, Francis Vivo alleges to have sustained an injury at work on March 4, 2015 which he alleges has led to his becoming disabled from continuing his employment with the Village as a Police Officer; and

**WHEREAS**, Francis Vivo filed an application for a line-of-duty disability pension on January 4, 2016; and

**WHEREAS**, the Village filed a motion to intervene in Mr. Francis Vivo’s pension benefits proceeding before the Board of Trustees of the Lombard Police Pension Fund (“**Pension Board**”), which was granted; and

**WHEREAS**, a favorable award to Francis Vivo by the Pension Board, granting line-of-duty disability benefits, is one of the prongs necessary to entitle the Releasers to receive continuing payment of basic group health insurance premiums under the terms of the Public Safety Employee Benefits Act (“**PSEBA**”), 820 ILCS 320/(1) *et seq.*; and

**WHEREAS**, the Village disputes that Releasers are entitled to receive PSEBA benefits because of the alleged injury sustained by Francis Vivo at work on March 4, 2015; and

**WHEREAS**, the Parties desire to amicably resolve Releasers’ potential entitlement to future group health insurance premium payments under PSEBA and to put all remaining litigation between them to rest, and avoid the inconvenience, uncertainty, and cost of continuing litigation; and

**WHEREAS**, the Parties desire to set forth their mutual understandings regarding the outstanding claims in this Agreement;

**NOW, THEREFORE**, in consideration of the monies, provisions, and mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

1. **Recitals.** The Recitals, as set forth above, are incorporated herein by reference.
2. **Agreement.** In exchange for the withdrawal of the Village as an intervening party from Francis Vivo's line-of-duty disability pension case before the Pension Board, Releasors agree to waive without condition any potential right to apply for and/or claim PSEBA benefits from the Village. In addition, Releasors agree not to initiate, and to waive the right to initiate, any lawsuits, claims, administrative charges for any action of any kind to obtain PSEBA benefits from the Village.

Releasors specifically waive any right, entitlement, or claim for the payment of health insurance benefits by the Village pursuant to the Public Safety Employee Benefits Act ("PSEBA"), 820 ILCS 320/1 *et seq.* The Village may introduce this Agreement in any subsequent proceeding to enforce the terms of this Agreement; this Agreement may be used if the Releasors attempt to assert a PSEBA claim in any forum and Releasors authorize a future administrative agency and/or court to treat this Agreement and provisions as follows: 1) as a judicial admission that Francis Vivo acknowledges that he is ineligible for benefits under PSEBA; 2) in a manner that such PSEBA benefits are barred under the terms of this Agreement; and 3) in a manner such that any equitable principles that might provide Releasors with PSEBA benefits should not apply to them and/or have been specifically considered by them and rejected as a part of this Agreement. Nothing in this Agreement shall constitute an admission by either party to the truth or accuracy of the position adopted by the other. Other than the use of this Agreement described above, this Agreement shall not be offered or used in any fashion in any other legal proceeding.

3. **Consideration.** Provided Releasors execute and comply with the terms of this Agreement, the Village agrees to withdraw as an intervening party in Francis Vivo's Pension Board proceeding for line-of-duty disability benefits arising out of the March 4, 2015, incident, including but not limited to waiving any right to file an Administrative Review contesting the decision of the Pension Fund Board with respect to Francis Vivo's line-of-duty disability Application. Releasors acknowledge the above withdrawal of the Village's intervention constitutes good and valuable consideration for the waiver of their potential PSEBA claim, and the withdrawal constitutes a forbearance by the Village to which it would have otherwise been entitled and constitutes good and valuable consideration for Releasors' acceptance of this Agreement.

4. **Additional Acknowledgments.** Releasors acknowledge that:
- (a) They are entering into this Agreement knowingly and voluntarily, and that the Agreement is written in language that they understand;
  - (b) They agree that Francis Vivo is not suffering from any workplace injuries or illnesses for which he has not already filed a claim.
  - (c) The Village has advised the Releasors to consult with an attorney before signing this Agreement, and that Releasors have done so;
  - (d) This Agreement waives and releases those PSEBA claims and rights arising prior to the date Releasors sign this Agreement as well as to any claims for PSEBA benefits that may arise after the date of this Agreement;
  - (e) The consideration provided in this Agreement represents consideration over and above that to which Releasors otherwise would be entitled, that the consideration would not have been provided had Releasors not signed this Agreement, and that the consideration is in exchange for the signing of this Agreement.

5. **Indemnification.** Releasors agree to indemnify and hold harmless the Village of Lombard and its elected officials, officers, agents, attorneys, employees and volunteers from any and all claims relating to Releasors efforts to apply for and obtain PSEBA benefits in violation of this Agreement, including the payment of costs incurred by the Village for health insurance premiums and claims if Releasors are successful in obtaining PSEBA benefits and attorneys' fees incurred by the Village in opposing any such claims before an administrative agency or court of competent jurisdiction, including all appeals thereof.

6. **Savings Clause.** To the extent that any portion of this Agreement may be held to be invalid or legally unenforceable by a court of competent jurisdiction, Releasors and the Village agree that the remaining portions of this Agreement shall not be affected and shall be given full force and effect.

7. **Choice of Law.** This Agreement is made and entered into in the State of Illinois and shall be governed by and under the laws of the State of Illinois.

8. **Entire Agreement.** This Agreement sets forth the entire understanding of the Parties and supersedes any and all prior agreements, oral or written relating to Francis Vivo's employment with the Village or separation from employment. This Agreement may not be modified except in writing, signed by all the Parties hereto.

9. **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original document, which together shall constitute one and the same instrument.

**WHEREFORE,** this Agreement shall be binding upon Releasors and the Village as well as their respective agents, representatives, heirs, successors and assigns, as referenced in the introductory paragraph as of the date that the last of the Parties hereto executes this Agreement. The Parties acknowledge and certify that they: have read and understand this Agreement; are entering into this Agreement freely and voluntarily; and understand and intend that this Agreement constitutes a legally binding and enforceable agreement.

AGREED

Francis Vivo

Francis Vivo

Date

3-29-19

Vanessa Renello

Vanessa Renello

Date

3-29-19

Bianca Rinchiuso

Bianca Rinchiuso

Date

3-29-19

Village of Lombard

By: \_\_\_\_\_

Date: \_\_\_\_\_

Keith Giagnorio, Village President

ATTEST:

\_\_\_\_\_  
Sharon Kuderna, Village Clerk

Date: \_\_\_\_\_

**ACKNOWLEDGMENT**

State of Illinois            )  
  ) SS  
County of DuPage         )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Keith Giagnorio and Sharon Kuderna , personally known to me to be the Village President and Village Clerk of the Village of Lombard, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Village President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Board of Trustees of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGMENT**

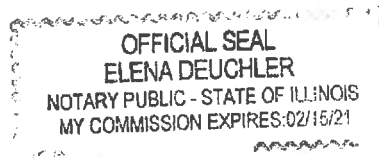
State of Illinois                    )  
  ) SS  
County of DuPage                 )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Francis Vivo personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act.

GIVEN under my hand and official seal, this 29 day of MARCH, 2019.



Notary Public







**ACKNOWLEDGMENT**

State of \_\_\_\_\_ )

) SS

County of \_\_\_\_\_ )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Bianca Rinchiuso personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her free and voluntary act.

GIVEN under my hand and official seal, this 29 day of MARCH, 2019  
