

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
AUGUST 2, 2011 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Resolutions approving Accord, Release and Satisfaction Agreements between the Village and the DuPage Water Commission and Certain Participating Companies	✓ Resolutions Ordinance Motion Discussion Only	Enza Petrarca Village Attorney

SYNOPSIS

Staff has prepared resolutions authorizing execution of an Accord, Release and Satisfaction Agreement between the Village of Downers Grove and the Dupage Water Commission, and an Accord, Release and Satisfaction Agreement between the Village of Downers Grove and Certain Participating Companies.

STRATEGIC PLAN ALIGNMENT

Strategic Plan Goals for 2011 - 2018 identified *Exceptional Municipal Services*.

FISCAL IMPACT

N/A

RECOMMENDATION

Approval on the August 2, 2011 Consent Agenda

BACKGROUND

In 2003, the State of Illinois, DuPage County, the United States Environmental Protection Agency, the DuPage Water Commission, the Village of Downers Grove and several businesses in the Ellsworth Business Park worked together to provide safe and reliable drinking water to over 700 residences in unincorporated DuPage County. The U.S. EPA determined that the private wells owned by the unincorporated residents had been contaminated and were no longer a safe supply of drinking water. The U.S. EPA also determined that certain businesses in Ellsworth Park were the potentially responsible parties (PRPs) for the contamination.

Instead of following the traditional process for completing a Remedial Investigation/Feasibility Study report to determine the ultimate responsibility for the contamination and required remedial actions, the U.S. EPA requested that the PRPs connect the affected homes to safe water prior to the completion of the investigation and their final report. The PRPs, a group of approximately a dozen long time businesses located in the Ellsworth Industrial Park, voluntarily agreed to fund the work required to hook up more than 700 homes to Lake Michigan water as the first step in the overall plan for addressing the contamination. This effort which was designed to bring safe water to the affected residents as soon as possible, at the expense of those parties believed to be responsible for the contamination, required the cooperative participation of many agencies.

This unprecedented effort was made possible using a series of many interrelated agreements that outlined the role of each participating agency. In May 2003, as part of the multi-agency effort, the Village entered into an Intergovernmental Agreement with the DuPage Water Commission (“Commission”), whereby the Commission agreed to loan the Village up to \$4,788,000 to fund the improvements to the Village’s water

system to extend water to an area unincorporated Downers Grove that was experiencing well water contamination. In turn, in July of 2003, the Village entered into an agreement with the Potentially Responsible Parties (the “PRPs”) and DuPage County that set forth the terms and conditions whereby the Village would borrow the funds from the Commission and the PRPs agreed to repay the loan on the Village’s behalf.

The execution of an Accord, Release and Satisfaction Agreement between the Village of Downers Grove and the Dupage Water Commission, and an Accord, Release and Satisfaction Agreement between the Village of Downers Grove and Certain Participating Companies would close out this project and would release the Village and the PRP’s from the obligations of the agreements. The releases require the PRP’s, using the Village as a conduit, to pay \$4,363,000 to the DuPage Water Commission by no later than July 30, 2011. The required payment has been made. The DuPage Water Commission approved the Accord, Release and Satisfaction Agreement at their July 21, 2011 meeting.

ATTACHMENTS

Resolutions

Agreements

2\word\memo11\mmdwcrelease

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN
ACCORD, SATISFACTION AND RELEASE
AGREEMENT AMONG THE VILLAGE OF DOWNERS GROVE
AND DUPAGE WATER COMMISSION**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Accord, Satisfaction and Release Agreement (the “Agreement”), between the Village of Downers Grove (the “Village”) and the DuPage Water Commission (the “DWC”), as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

ACCORD, SATISFACTION AND RELEASE AGREEMENT AMONG THE VILLAGE OF DOWNERS GROVE AND DUPAGE WATER COMMISSION

This **ACCORD, SATISFACTION AND RELEASE AGREEMENT** ("Agreement"), is entered into as of the 26 day of July, 2011, by and between the Village of Downers Grove, a municipal corporation created and existing under the laws of the State of Illinois (the "Village"), and the DuPage Water Commission, a county water commission created and existing under the laws of the State of Illinois (the "DWC").

WHEREAS, the Village and DWC entered into an Intergovernmental Agreement Concerning the Implementation of Water Service to the Downers Grove Service Area in DuPage County ("Intergovernmental Agreement"), dated May 7, 2003;

WHEREAS, the Intergovernmental Agreement set forth the terms and conditions whereby the DWC agreed to loan funds up to \$4.788 million to the Village to fund improvements to the water system;

WHEREAS, the DWC loaned the Village \$4.788 million to fund the improvements.

NOW THEREFORE, in consideration of the payment to the DWC of the amount set forth below and the release set forth herein, and in order to avoid controversy and resolve by compromise, the Village and the DWC agree as follows:

If and only if the DWC shall have received the full amount of \$4,363,000 on or before July 30, 2011, the obligations of the Village to the DWC under the Intergovernmental Agreement shall be deemed to be satisfied in full, and, in such event, the Village shall be released from and shall have no further obligations to the DWC under the Intergovernmental Agreement.

IN WITNESS WHEREOF, the Village and the DWC have caused this Agreement to be executed by their duly authorized officers, pursuant to the proper authorization of their respective governing bodies, as of the date first stated above.

DUPAGE WATER COMMISSION

VILLAGE OF DOWNERS GROVE

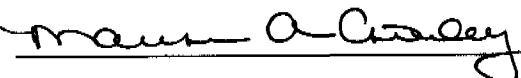
By: 

By: _____

Its: GENERAL MANAGER

Its: _____

ATTEST:

By: 

By: _____

Its: Clerk

Its: _____

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN
ACCORD, SATISFACTION AND RELEASE
AGREEMENT AMONG THE VILLAGE OF DOWNERS GROVE
AND CERTAIN PARTICIPATING COMPANIES**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Accord, Satisfaction and Release Agreement (the “Agreement”), between the Village of Downers Grove (the “Village”) and certain Participating Companies (the “PRPs”), as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

**ACCORD, SATISFACTION AND RELEASE AGREEMENT AMONG THE
VILLAGE OF DOWNERS GROVE AND CERTAIN PARTICIPATING
COMPANIES**

This **ACCORD, SATISFACTION AND RELEASE AGREEMENT** ("Agreement"), entered into as of the ___ day of _____, 2011, by and between the Village of Downers Grove, a municipal corporation created and existing under the laws of the State of Illinois (the "Village"), and each of the following Participating Companies ("PRPs"): Arrow Gear Company, Bison Gear & Engineering Corp., Fusibond Piping Systems, Inc., Lindy Manufacturing Co., Magnetrol International, Incorporated, The Morey Corporation, Precision Brand Products, Inc., Principal Mfg. Corp., Invensys, Inc./Rexnord Corporation n/k/a Rexnord Industries, LLC, Chemring Energetic devices, Inc., f/k/a Scot Incorporated, White Lake Building Corporation, and William F. Helwig, Jr.

WITNESSETH

WHEREAS, the Village and the DuPage Water Commission ("DWC") entered into an Intergovernmental Agreement Concerning the Implementation of Water Service to the Downers Grove Service Area in DuPage County ("Intergovernmental Agreement"), dated May 7, 2003;

WHEREAS, the Intergovernmental Agreement set forth the terms and conditions whereby the DWC agreed to loan funds up to \$4.788 million to the Village to fund improvements to the Village's water system;

WHEREAS, the Village, the County of DuPage and the PRPs entered into an agreement in July 2003 (the "Three-Party Agreement") that set forth the terms and conditions whereby the Village borrowed up to \$4.275 million from the DWC to fund the water system improvements and the PRPs and other companies agreed to repay the loan;

WHEREAS, the Village borrowed \$4.788 million in total from the DWC to fund the water system improvements, subject to the PRPs and other companies' agreement to repay the loan in the amount of \$4.788 million;

NOW THEREFORE, consideration of the foregoing recitals, and in order to avoid controversy and resolve by compromise, and in consideration of the payment to the Village of the amount set forth below, and the release set forth herein, the Village and the PRPs agree as follows:

If and only if the Village shall have received the full amount of \$4,363,000 on or before July 30, 2011, the obligations of the PRPs to the Village under that certain Three Party Agreement by and between the Village, the County of DuPage and the PRPs and dated as of July 2003,

shall be deemed to be satisfied in full, and, in such event, the PRPs shall be released from and shall have no further obligations to the Village under the Third Party Agreement.

IN WITNESS WHEREOF, the Village and PRPs have caused this Agreement to be executed by their duly authorized officers, pursuant to the proper authorization of their respective governing bodies, as of the date first stated above.

VILLAGE OF DOWNERS GROVE

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

Rexnord Industries, LLC

By: *Walter A. Boyd*

Date: *1/25/11*

Its: *Lawrence D.*

Precision Brand Products, Inc.

By: _____

Date: _____

Its: _____

William J. Helwig

By: _____

Date: _____

Its: _____

Arrow Gear Company

By: _____

Date: _____

Its: _____

Chemring Energetic Devices, Inc., f/k/a Scot, Incorporated

By: _____

Date: _____

Rexnord Industries, LLC

By: _____

Date: _____

Its: _____

Precision Brand Products, Inc.

By:  _____

Date: 7/25/11

Its: Andrew J. Ober

William J. Helwig

By: _____

Date: _____

Its: _____

Arrow Gear Company

By: _____

Date: _____

Its: _____

Chemring Energetic Devices, Inc., f/k/a Scot, Incorporated

By: _____

Date: _____

Rexnord Industries, LLC

By: _____

Date: _____

Its: _____

Precision Brand Products, Inc.

By: _____

Date: _____

Its: _____

William F. Helwig, Jr.

By: _____

Date: 7/25/11

Its: _____

Arrow Gear Company

By: _____

Date: _____

Its: _____

Chemring Energetic Devices, Inc., f/k/a Scot, Incorporated

By: _____

Date: _____

Rexnord Industries, LLC

By: _____

Date: _____

Its: _____

Precision Brand Products, Inc.

By: _____

Date: _____

Its: _____

William J. Helwig

By: _____

Date: _____

Its: _____

Arrow Gear Company

By: *Larry St. Lawrence*

Date: *7/26/11*

Its: *ATTORNEY*

Chemring Energetic Devices, Inc., f/k/a Scot, Incorporated

By: _____

Date: _____

Rexnord Industries, LLC

By: _____

Date: _____

Its: _____

Precision Brand Products, Inc.

By: _____

Date: _____

Its: _____

William J. Helwig

By: _____

Date: _____

Its: _____

Arrow Gear Company

By: _____

Date: _____

Its: _____

Chemring Energetic Devices, Inc., f/k/a Scot, Incorporated


By: BTW. V. K.

Date: 7/24/11

ITS: ATTORNEY

Its: _____

The Morey Corporation

By:  _____
Its: ATTORNEY _____

Date: July 25, 2011

Lindy Manufacturing Company

By: _____

Date: _____

Its: _____

Magnetrol International, Incorporated

By: _____

Date: _____

Its: _____

Fusibond Piping Systems, Inc.

By: _____

Date: _____

Its: _____

Its: _____

The Morey Corporation

By: _____

Date: _____

Its: _____

Lindy Manufacturing Company

By: Shelley J. Berlin

Date: 7/25/11

Its: Attorney

Magnetrol International, Incorporated

By: _____

Date: _____

Its: _____

Fusibond Piping Systems, Inc.

By: _____

Date: _____

Its: _____

Its: _____

The Morey Corporation

By: _____

Date: _____

Its: _____

Lindy Manufacturing Company

By: _____

Date: _____

Its: _____

Magnetrol International, Incorporated

By: E. John H.

Date: 7/26/11

Its: Vice Pres: ~~and~~ & COO

Fusibond Piping Systems, Inc.

By: _____

Date: _____

Its: _____

Its: _____

The Morey Corporation

By: _____

Date: _____

Its: _____

Lindy Manufacturing Company

By: _____

Date: _____

Its: _____

Magnetrol International, Incorporated

By: _____

Date: _____

Its: _____

Fusibond Piping Systems, Inc.

By: Bruce P. Hume

Date: 7/25/2011

Its: counsel

Bison Gear & Engineering Corporation

By: *Jeff Stutts*
Its: *Attorney*

Date: *7/25/11*

Principal Mfg. Corp.

By: _____
Its: _____

Date: _____

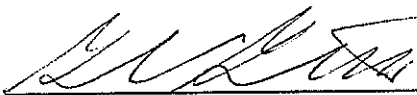
Bison Gear & Engineering Corporation

By: _____

Date: _____

Its: _____

Principal Mfg. Corp.

By: 

Date: 7/26/11

Its: Attorney