

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
JULY 17, 2012 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
Consent for Emergency Water Interconnect	<input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Ordinance <input type="checkbox"/> Motion <input type="checkbox"/> Discussion Only	Nan Newlon, P.E. Director of Public Works

SYNOPSIS

A resolution has been prepared authorizing execution of a Consent to Emergency Interconnection required by the DuPage Water Commission as a condition for the intergovernmental agreement for the emergency water service interconnection with the Village of Lisle.

STRATEGIC PLAN ALIGNMENT

The Goals for 2011-2018 identified *Top Quality Infrastructure*.

FISCAL IMPACT

N/A.

RECOMMENDATION

Approval on the July 17, 2012 consent agenda.

BACKGROUND

As a requirement of approval by the DuPage Water Commission for the intergovernmental agreement between Downers Grove and Lisle for the emergency water interconnection, the parties must execute a Consent to Emergency Interconnection. The Consent specifies conditions required by the Commission for the operation and maintenance of the interconnection.

The Consent has the following key terms:

- Notification, reporting and record keeping requirements in the event the emergency interconnection is utilized
- The right of the Commission to inspect the interconnection and its operation and maintenance
- The right of the Commission to order the use of the interconnection to be discontinued if the Commission determines the interconnection is not being used in accordance with policies established by the Commission with respect to emergency interconnections

ATTACHMENTS

Resolution
Consent

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF A
WATER INTERCONNECTION AGREEMENT BY AND BETWEEN
THE VILLAGE OF DOWNERS GROVE AND THE VILLAGE OF LISLE**

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 Water Interconnection Agreement (the “Agreement”), between the Village of Downers Grove (“Downers Grove”) and the Village of Lisle (“Lisle”), to establish an emergency water main interconnection between the water systems owned and operated by Downers Grove and Lisle, as set forth in the form of the Agreement and all exhibits submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Mayor, 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 and all attached exhibits and necessary documentation, 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 and all exhibits.

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

WATER INTERCONNECTION AGREEMENT

BY AND BETWEEN

VILLAGE OF DOWNERS GROVE AND VILLAGE OF LISLE

This Water Interconnection Agreement (“Agreement”) is made and entered into as of the last date set forth below, by and between the Village of Downers Grove, an Illinois Municipal Corporation, (hereinafter referred to as “Downers Grove”) and the Village of Lisle, an Illinois Municipal Corporation (hereinafter referred to as “Lisle”) (the parties are sometimes collectively referred to as “Parties”) to establish an emergency water main interconnection between the water systems owned and operated by Downers Grove and Lisle.

WITNESSETH:

WHEREAS, Article VII, Section 10 of the 1970 Constitution of the State of Illinois and the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) provide that units of local government may contract with one another to perform any activity authorized by law; and

WHEREAS, Downers Grove and Lisle operate independent water pumping, treatment and distribution systems, and

WHEREAS, in order to properly safeguard and promote the health, safety, welfare and well-being of their residents, Downers Grove and Lisle desire to establish a means to supply each other with a limited supply of water under emergency conditions when their normal source of supply is unavailable; and

WHEREAS, Downers Grove and Lisle are members of the DuPage Water Commission, (“DWC”) and this Agreement is subject to the Parties obtaining the consent of DWC.

NOW, THEREFORE, IN CONSIDERATION of the foregoing recitals and mutual covenants and promises set forth herein, Downers Grove and Lisle agree to furnish, and to pay for, water upon the terms and conditions set forth herein; to wit:

1. Recitals and Purpose. The foregoing recitals are incorporated as substantive provisions as though fully set forth herein. It is the intention of both Downers Grove and Lisle that they operate their water systems solely from their normal source of supply. However, should this normal source of supply be interrupted then it is the purpose of this Agreement to provide an alternate source of supply.

The water supplied under this Agreement is to be used in emergency conditions only and is to be provided primarily for the health and safety needs of one Party and may require the imposition of a total ban on outdoor water usage for residents of both the Supplier Party and Receiving Party during the period when emergency water is supplied.

2. Definitions. For the purpose of this Agreement “Emergency Conditions” shall mean the interruption of the normal source or supply of water for whatever reason, including but not limited to a force majeure event (as defined below), sudden failure of a portion of a Party’s water system, regular maintenance, replacement or repair of a Party’s respective water supply facilities such as tanks, reservoirs or pipelines, or a temporary spike in demand resulting from a large fire. Only the Mayor or Manager, or other person designated in writing, may declare when emergency conditions exist by giving notice of the Supplier Party of the conditions which give rise to the emergency, and the other Party’s Mayor or Manager, or other person designated in writing, must reasonably agree that such conditions exist prior to being required to supply any water.

3. Quantity of Water.

A. Subject to the provisions stated in this Agreement, the parties agree during the term of this Agreement to tender and make available to each other, for their own use and at delivery points hereinafter specified, such volume of water as is available at the normal operating pressure of the supplier system.

B. Each party shall use its best efforts to remain in a state of preparedness to furnish the maximum supply of water that can safely and legally be supplied as herein contracted to be sold, but each party's obligation shall be limited to the capacity of its respective system, and any limiting allocations of water which may be imposed by either party or any governmental authority, including but not limited to DWC.

C. In the event that either party, while supplying water to the other under emergency conditions, finds it necessary to limit the use of water by its water customers, by limiting the outdoor consumption of water or otherwise, the receiving party shall, upon notification by the supplier party, impose the same water use limitations and restrictions on water customers connected to its system, and shall make every reasonable effort to publicize and enforce such limitations and restrictions until notified by the supplier party that such limitations and restrictions may be removed, or at such time that the restrictions on the supplier party's resident water customers are removed. If the supplier party has a breakdown in its own system, this Agreement is suspended for the period during the continuance of such breakdown. Notice of the onset and termination of such condition shall be given to the other party as soon as possible.

4. Quality of Water. The water to be delivered by the supplier party and received by the receiving party hereunder, measured at the point of delivery between the Party's respective water systems, shall be of no less quality and pressure than the water supplied to the supplier party's resident customers.

5. Points of Delivery. The points of delivery for water between the two systems shall be at Walnut Avenue at Provence Court. Downers Grove and Lisle shall each have one key to open the lock in order to operate the valve on the interconnecting mains.

6. Quantity of Water. The parties agree to use historical data to quantify the amount of water used by the receiving party. Historical average daily flows for the area receiving water shall be used to calculate the amount of water utilized by the receiving party.

7. Unit of Measurement. The unit of measurement for determining compensation for water delivered hereunder shall be gallons of water.

8. Price and Payment.

A. Commencing on the date of the Agreement, each party agrees to pay the other for water delivered in either direction pursuant to the terms described herein at the rate which the DWC charges plus 5% per 1000 gallons of water delivered. The fees charged by each party to their respective residents shall not be assessed to each other.

B. Payment of the charge for water as set forth above shall be made within 45 days of receipt of an invoice from the supplier party.

9. Maintenance Costs. Maintenance costs for the interconnection valves shall be paid for by Lisle, except to the extent which such maintenance and repair is required as a result of the negligent act or omission of a Downer's Grove employee or officer.

10. Special Conditions.

A. After the installation of the designated points of delivery, each party shall, subject to the terms and conditions described herein, continually make itself ready, willing and able to supply water to the extent of the maximum amounts provided for herein.

B. The Receiving party shall save, indemnify, defend and hold the supplier party harmless from any and all claims, demands and causes of action, including attorneys' fees and costs, which may be asserted by anyone on account of the transportation, delivery, disposal or quality of the water supplied during emergency conditions hereunder, except for such claims arising out of the supplier's willful and wanton misconduct.

C. Inasmuch as obtaining water is an essential item of expense of a waterworks system, the receiving party represents and covenants that all payments to be made hereunder shall constitute "Operating Expenses" of its waterworks system and, in relation to any and all revenue bonds, G.O. Bonds, alternate bonds or double-barrel bonds issued by the receiving party which are supported in whole or in part by a pledge of the revenue of its waterworks system, all such payments shall have priority over the receiving party's obligations to make payments to the principal and interest on any such bonds, or any bonds which shall hereafter be issued for said purpose.

11. Force Majeure. In case by reason of a *force majeure* either party hereto shall be rendered unable to wholly or in part perform its obligations under this Agreement, then if such party shall give notice and full particulars of such *force majeure* in writing to the other party within a reasonable time after the onset of the event or cause relied on, the obligation of the party giving such notice to perform its duties hereunder, so far as affected by such *force majeure*, shall be suspended from the date of the onset of said occurrence or condition throughout the continuance of the inability so claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable diligence. The term *force majeure* shall mean acts of God, strikes, lockouts, other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States of America or the State of Illinois, or any civil or

military authority, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, restraint of Government and people.

12. Effect on Existing Agreements. This Agreement shall supersede all previous agreements made and entered into by and between Downers Grove and Lisle for the sale of water under emergency circumstances from Downers Grove to Lisle and from Lisle to Downers Grove. It is mutually understood and agreed between the Parties that all agreements which the Parties have previously entered into for the sale of water under emergency circumstances, whether written or oral, are hereby terminated and rendered null and void; provided, however, that any party which has outstanding any debts due and owing under previous contracts shall remain obligated to make such payments under the terms of such agreements.

13. Termination. This Agreement shall terminate if the interconnection mains are removed by mutual agreement, are rendered inoperable, or if the parties hereto agree in writing as to termination for any reason.

14. Notice. Any statement or writing to be presented to a party hereunder shall be so presented by personal delivery or by deposit in the United States mail, with postage properly prepaid, and properly addressed to the offices of the other Party, and shall be deemed presented on date of postmark.

15. Entire Agreement. This Agreement represents the entire agreement between the parties. This Agreement shall only be amended by a written instrument approved and signed by all parties hereto.

16. Severability. If any section, paragraph, clause or provision of this Agreement shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

VILLAGE OF LISLE

VILLAGE OF DOWNERS GROVE

By: _____
Its: Mayor

By: _____
Its: Mayor

Date: _____

Date: _____

ATTEST:

ATTEST:

Village Clerk

Village Clerk

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF A
CONSENT TO EMERGENCY WATER CONNECTION**

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 Consent (the "Agreement"), between the Village of Downers Grove ("Downers Grove"), the Village of Lisle ("Lisle") and DuPage Water Commission ("Commission"), required by the Commission for the operation and maintenance of an emergency interconnection, as set forth in the form of the Agreement and all exhibits submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Mayor, 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 and all attached exhibits and necessary documentation, 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 and all exhibits.

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

**DUPAGE WATER COMMISSION
CONSENT TO EMERGENCY INTERCONNECTION**

WHEREAS, the Village of Downers Grove, an Illinois municipal corporation, (“Downers Grove”) and the Village of Lisle, an Illinois municipal corporation (“Lisle”), each own and operate water distribution systems (the “Downers Grove Water System” or the “Lisle Water System” as the case may be), which systems are supplied with water by the DuPage Water Commission, a county water commission (the “Commission”), pursuant to the terms of that certain Water Purchase and Sale Contract dated as of June 11, 1986 (the “Charter Customer Contract”); and

WHEREAS, Downers Grove and Lisle have recently entered into a Water Interconnection Agreement dated as of _____ (the “Emergency Interconnection Agreement”) to establish an emergency water main interconnection between the Downers Grove Water System and the Lisle Water System (the “Emergency Interconnection”);

NOW, THEREFORE, upon execution and return of a duplicate copy of this Consent by an authorized representative of Downers Grove and by an authorized representative of Lisle, the Commission hereby agrees that it shall not object to the construction, operation, and maintenance of the Emergency Interconnection so long as the Emergency Interconnection is constructed, operated, and maintained in accordance with the following terms, conditions, and limitations:

1. Capitalized terms not otherwise defined in this Consent shall have the meanings ascribed to them in the Charter Customer Contract.
2. Downers Grove and Lisle shall submit to the Commission, for its review and approval, within 60 days following construction of the Emergency Interconnection, a report detailing the exact location of the Emergency Interconnection and the manner in which the Emergency Interconnection has been and will be operated and maintained, and the terms of any written or oral agreement for the operation and maintenance of the Emergency Interconnection. Such report shall include as-built drawings of the Emergency Interconnection and exact duplicates of any written agreement for the operation and maintenance of the Emergency Interconnection. The Emergency Interconnection shall not be operated unless and until the Commission shall have approved such report. No approval of such report shall be withheld unless the Emergency Interconnection, or any agreement for the operation and maintenance of the Emergency Interconnection, violate the Charter Customer Contract, the Chicago Contract, or applicable laws or regulations, or pose a threat to the Commission or the Commission Waterworks System.
3. The Emergency Interconnection shall be utilized only under emergency conditions unless otherwise approved, in writing, by the Commission. An emergency condition shall be defined to mean the inability to provide average day flow demands to regular, non-emergency supply customers during a limited period of time due to conditions beyond the control of the party requesting Lake Water. An emergency condition shall not mean any limitation imposed by the Commission on the supply of Lake Water to Downers Grove or Lisle specifically

related to Downers Grove or Lisle pursuant to the Charter Customer Contract, and the Emergency Interconnection shall not be utilized to circumvent the provisions Charter Customer Contract to maintain the Downers Grove Water System or the Lisle Water System, as the case may be, in good repair and working order.

4. The Emergency Interconnection shall be operated and maintained in such a manner as at no time to place or threaten to place the Commission or the Commission Waterworks System in jeopardy of failing to meet the terms of the Charter Customer Contract, the Chicago Contract, or the regulations of any agency or governmental authority having jurisdiction over the operation of a public water supply.
5. The party experiencing the emergency condition shall give telephonic notice to the Commission and to the other party of the emergency condition, the expected duration of the emergency condition, and the amount of Lake Water needed, prior to the operation of the Emergency Interconnection. The Emergency Interconnection shall not be operated unless and until the party experiencing the emergency condition shall have given said notice to the Commission.
6. The party receiving Lake Water through the Emergency Interconnection shall provide daily telephonic notice to the Commission and the party delivering Lake Water for so long as the emergency deliveries continue, and shall provide telephonic notice to the Commission before final shut-off of the emergency flow of Lake Water through the Emergency Interconnection for each such emergency condition.
7. Downers Grove and Lisle shall keep a joint record of the amount of Lake Water delivered through the Emergency Interconnection, a copy of which shall be provided to the Commission within five days following termination of the use of the Emergency Interconnection for each such emergency condition and, in any case, every five days where the Emergency Interconnection is in continuous operation for more than five days.
8. The amount of Lake Water delivered to the Downers Grove Water System or to the Lisle Water System through the Emergency Interconnection, as the case may be, shall be paid to the Commission directly by the party receiving Lake Water through the Emergency Interconnection at the rates applicable pursuant to, and in accordance with, that party's water purchase and sale contract with the Commission. In case of service curtailment, Downers Grove's flow of water through the Emergency Interconnection shall be considered as a portion of Downers Grove's allocation from the Commission. In case of service curtailment, Lisle's flow of water through the Emergency Interconnection shall be considered as a portion of Lisle's allocation from the Commission.

9. The Commission shall have the right to inspect the Emergency Interconnection, and its operation and maintenance. The Commission shall have the right to install seals or such other devices as the Commission, in its sole and absolute discretion, determines are necessary to determine the operation of the Emergency Interconnection, and all equipment required to be installed to allow the installation of the seals or such other devices shall be installed at Lisle's sole cost and expense.
10. The Commission shall bear no responsibility for, and Downers Grove and Lisle shall and, by executing the Acknowledgement and Acceptance set forth below, do hereby release the Commission from, and agree that the Commission shall not be liable for, and agree to indemnify and hold the Commission harmless from, any claims, damages, liabilities, and litigation that may be occasioned by, connected with, or in any way related to the construction, operation, and maintenance of the Emergency Interconnection. Downers Grove and Lisle shall and, by executing the Acknowledgement and Acceptance set forth below, do hereby agree to pay all fees, costs, and expenses, including legal and administrative fees, costs, and expenses, incurred by the Commission in defending itself with regard to any and all of the matters mentioned in this Consent.
11. The operation and maintenance of the Emergency Interconnection shall comply in all other respects with the Water Commission Act of 1985, the Charter Customer Contract, the Chicago Contract, and Commission Resolution No. R-13-90, entitled "A Resolution Expressing the Policy of the DuPage Water Commission Regarding Subsequent Customers," as clarified by Commission Resolution No. R-29-95, entitled "A Resolution Clarifying Resolution No. R-13-90, being A Resolution Expressing the Policy of the DuPage Water Commission Regarding Subsequent Customers," and the requirements of the Commission thereunder.
12. Notwithstanding anything to the contrary contained in any written or oral agreement for the operation and maintenance of the Emergency Interconnection, the Emergency Interconnection shall be operated and maintained only in accordance with this Consent and such additional or other terms, conditions, and limitations as the Commission shall impose pursuant to any policy established by the Commission with respect to emergency interconnections. No such agreement shall be amended, modified, or otherwise changed except upon the prior written approval of the Commission.
13. The Commission reserves the right to order all use of the Emergency Interconnection to be discontinued, and Downers Grove and Lisle shall and, by executing the Acknowledgement and Acceptance set forth below, do hereby agree to discontinue such use, at any time the terms, conditions, and limitations of this Consent and any such additional or other terms, conditions and limitations

imposed by the Commission pursuant to any policy established by the Commission with respect to emergency interconnections are not satisfied.

14. Downers Grove and Lisle shall and, by executing the Acknowledgement and Acceptance set forth below, do hereby acknowledge and agree that the provisions of this Consent are incorporated by reference into the Emergency Interconnection Agreement as substantive provisions of the Emergency Interconnection Agreement.
15. Downers Grove and Lisle shall and, by executing the Acknowledgement and Acceptance set forth below, do hereby acknowledge and agree that, in the event of a conflict between the provisions of this Consent and the other provisions of the Emergency Interconnection Agreement, the provisions of this Consent shall govern and control.
16. Downers Grove and Lisle shall and, by executing the Acknowledgement and Acceptance set forth below, do hereby agree to abide by and be bound to all of the terms and conditions of this Consent and the Commission's determinations hereunder.
17. Downers Grove and Lisle shall and, by executing the Acknowledgement and Acceptance set forth below, do hereby acknowledge and agree that, notwithstanding the fact that the Commission is not a party to the Emergency Interconnection Agreement, the Commission shall have the right, but not the obligation, to exercise all rights and remedies available to it under this consent and to enforce Emergency Interconnection Agreement.
18. This Consent will become effective upon, but not before, execution by an authorized representative of Downers Grove and by an authorized representative of Lisle of the Acknowledgement and Acceptance set forth below and receipt by the Commission of the executed Acknowledgements and Acceptances; otherwise, this Consent shall be null and void.

DUPAGE WATER COMMISSION

Chairman

ATTEST:

Clerk

ACKNOWLEDGEMENT AND ACCEPTANCE

The undersigned does hereby acknowledge that the undersigned is the duly authorized representative of the Village of Downers Grove or the Village of Lisle, as the case may be, and authorized to execute this Acknowledgement and Acceptance, that the undersigned has read and understood every term, condition, restriction, and limitation of the foregoing Consent, and the undersigned on behalf of the Village of Downers Grove or the Village of Lisle, as the case may be, does hereby agree with, accept, and agree to be bound by, each and every provision of the foregoing Consent.

VILLAGE OF LISLE

VILLAGE OF DOWNERS GROVE

By: _____
Its: Mayor

By: _____
Its: Mayor

Date: _____

Date: _____

ATTEST:

ATTEST:

Village Clerk

Village Clerk