

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
AUGUST 13, 2013 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
Approval of Settlement Agreement	✓ Resolution Ordinance Motion Discussion Only	Enza Petrarca Village Attorney

SYNOPSIS

A resolution has been prepared authorizing execution of an agreement to settle David Rosa's suit against the Village.

STRATEGIC PLAN ALIGNMENT

The goals for 2011 - 2018 identified *Steward of Financial Sustainability*.

FISCAL IMPACT

The settlement amount is \$132,000.00, which will be paid from the Risk Fund.

RECOMMENDATION

Approval on the August 13, 2013 Consent Agenda.

BACKGROUND

On August 12, 2011, David Rosa was driving a vehicle eastbound on Ogden Avenue in Downers Grove with William Keim as a passenger when a Village patrol car collided with his vehicle. Both Mr. Rosa and Mr. Keim sustained injuries as a result of that collision for which they received medical treatment and lost time from work. Both Mr. Rosa and Mr. Keim filed a lawsuit in the Circuit Court of DuPage County against the Village and the police officer, case number 12 L 1196, seeking recovery for said damages. As Mr. Rosa has completed his medical treatment, his claim can be settled at this time. Upon approval of the settlement agreement, Mr. Rosa's case against the Village and the officer will be dismissed. Mr. Keim's case will still be pending.

ATTACHMENTS

Resolution
 Settlement Agreement

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF A
SETTLEMENT AGREEMENT AND RELEASE BETWEEN
THE VILLAGE OF DOWNERS GROVE AND DAVID ROSA**

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 Settlement Agreement (the “Agreement”), between the Village of Downers Grove (the “Village”) and David Rosa (“Rosa”), for the settlement and release of his claim concerning Case No. 2012 L 1196, 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

SETTLEMENT AGREEMENT AND RELEASE

This Agreement is entered into this _____ day of August, 2013, by the undersigned parties, the Village of Downers Grove (hereinafter referred to as the "Village") and David Rosa (hereinafter referred to as "Rosa").

WHEREAS, on August 12, 2011, Rosa was driving a vehicle eastbound on Ogden Avenue in Downers Grove when a Village patrol car collided with his vehicle; and,

WHEREAS, Rosa sustained injuries as a result of that collision for which he received medical treatment and lost time from work; and,

WHEREAS, Rosa filed a lawsuit in the Circuit Court of DuPage County against the Village, case number 12 L 1196, seeking recovery for said damages; and

WHEREAS, Rosa and the Village desire to settle said lawsuit.

NOW THEREFORE, in consideration of the terms and conditions set forth below, the parties do hereby agree as follows:

1. The above recitals are hereby incorporated by reference as though fully set forth herein.
2. The Village agrees to pay to Rosa \$132,000.00 to settle the aforementioned lawsuit. Upon execution of this Settlement Agreement and Release, Rosa shall dismiss his lawsuit against the Village and Officer Craig Widlacki with prejudice.
3. For the sole consideration of \$132,000.00, the receipt of which is hereby acknowledged, Rosa, being of lawful age, hereby irrevocably and unconditionally releases and forever discharges the Village of Downers Grove, a Municipal Corporation, its officers, representatives, servants, agents and employees, or its successors, and all other persons, firms and corporations, of and from any and all claims, liabilities, demands, rights, causes of action of any kind, present or contingent, including costs and expenses of litigation, whether recoverable at common law or pursuant to statute, the undersigned now has, or hereafter may have on account of, or in any way growing out of personal injuries, loss of damage to property, constitutional deprivations, or any other action addressable under the Constitution, statutes or common law of the United States of America or State of Illinois, whether known or unknown to the undersigned at this present time, resulting from a motor vehicle accident which occurred on or about August 12, 2011 in the Village of Downers Grove, Illinois.
4. Rosa agrees that he has carefully read and fully understands the terms and effect of this Agreement, has consulted with his counsel and that he is voluntarily entering into this Agreement, for the consideration stated herein and for no other consideration.

5. This release expresses a full and complete settlement and satisfaction, regardless of the adequacy of the aforesaid consideration, of any and all damages so sustained by Rosa or his property resulting from said aforesaid occurrence. Rosa acknowledges and understands that there may be unknown or unanticipated injuries resulting from the above stated occurrence and in signing this Release he understands and agrees that this Release is intended to include such injuries.

6. The parties acknowledge that this settlement is the compromise of a disputed claim and that the payment is not to be construed as an admission of liability on the part of the Village, its representatives, officers, agents and employees.

7. Rosa further declares and represents that no promise, inducement or agreement not herein expressed has been made to him and that this Release contains the entire agreement.

David Rosa

David Rosa

David Fieldman, Village Manager