

ITEM RES 2014-6000

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
1/6/2015

SUBJECT:	SUBMITTED BY:
Approval of Settlement Agreement	Enza Petrarca Village Attorney

SYNOPSIS

A resolution has been prepared authorizing execution of a settlement agreement in the case of Roller v. Village of Downers Grove.

STRATEGIC PLAN ALIGNMENT

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

FISCAL IMPACT

The settlement amount is \$35,000, which will be paid from the Risk Fund.

RECOMMENDATION

Approval on the January 6, 2015 Consent Agenda.

BACKGROUND

On December 14, 2008, John Roller tripped and fell on a missing portion of a sidewalk at the corner of Main Street and Warren Avenue. Mr. Roller received medical treatment as a result of that trip and fall, and subsequently filed a lawsuit in the Circuit Court of DuPage County against the Village, Nicor and NPL (Nicor's sub-contractor) case number 09 L 1546, seeking recovery for said injury. All parties have agreed to settle this lawsuit and all have agreed to contribute \$35,000 towards the settlement.

Upon approval of the settlement agreement, Mr. Roller's case against the Village will be dismissed.

ATTACHMENTS

Resolution
Settlement Agreement

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF A
SETTLEMENT AGREEMENT AND RELEASE BETWEEN
THE VILLAGE OF DOWNERS GROVE AND JOHN ROLLER**

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 John Roller ("Roller"), for the settlement and release of his claim concerning Case No. 2009 L 1546, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Attorney, 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

Attorney Code # 6180161

IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS

JOHN P. ROLLER,)	
)	
)	
Plaintiff,)	
vs.)	NO. 09 L 1546
)	
VILLAGE OF DOWNERS GROVE, A)	
Municipal Entity,)	
)	
Defendant.)	

RELEASE OF ALL CLAIMS

THIS RELEASE OF ALL CLAIMS (“Release”) is hereby executed as of the 19th day of December, 2014 by Plaintiff, John P. Roller (“Plaintiff Roller”). (The Village of Downers Grove and Plaintiff Roller are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”)

RECITALS

WHEREAS, Plaintiff has filed a lawsuit in the 18th Judicial Circuit, DuPage County, Illinois, captioned as **JOHN P. ROLLER v VILLAGE OF DOWNERS GROVE** and docketed as **Case 09 L 1546**, alleging claims of negligence and seeking recovery for personal injuries sustained on December 14, 2008 while walking on or around the sidewalk located at or near the intersection of Warren Avenue and Main Street in the Village of Downers Grove; and

WHEREAS, the Parties are desirous of settling and dismissing, and hereby agree to the **dismissal with prejudice**, of Plaintiff Roller’s claims in Case 09 L 1546 and compromising all claims that were or could have been raised in said lawsuit, including, but not limited to, claims of negligence and any and all claims arising from injuries he sustained on December 14, 2008 on or

around the sidewalk located at or near the intersection of Warren Avenue and Main Street in the Village of Downers Grove.

NOW, THEREFORE, in consideration of the payment to Plaintiff Roller the sum of Thirty-five Thousand dollars (\$35,000.00) in total, to be paid within fourteen (14) days of the formal approval of this settlement by the Village Council of the Village of Downers Grove, the Plaintiff hereby agree as follows:

1. IT IS HEREBY AGREED that, in exchange for consideration recited herein, Plaintiff Roller shall **dismiss with prejudice** all claims against the Village of Downers Grove arising under Case 09 L 1546 and release and forever discharge the Village of Downers Grove, its officials, officers, agents, employees, former employees, directors, representatives, insurers, and attorneys and each of them (hereafter collectively "the Released Party") of and from any and all claims, debts, liabilities, demands, obligations, judgments, damages, punitive damages, costs, expenses, attorneys' fees, actions and causes of action, of every nature, character and description, known or unknown, which Plaintiff, her heirs, assigns, agents and representatives now own or hold or may have at any time heretofore owned or held up until the date of this agreement, or may at any time, excepting enforcement of this Agreement.

2. The Village of Downers Grove, its officials, officers, agents, employees, former employees, directors, and representatives expressly deny any and all liability to Plaintiff Roller for any and all claims that were or could have been brought in Case 09 L 1546, pending in the 18th Judicial Circuit, DuPage County, Illinois, including, but not limited to, claims of negligence and personal injury arising from injuries he sustained on December 14, 2008 on or around the sidewalk located at or near the intersection of Warren Avenue and Main Street in the Village of Downers Grove.

3. It is further agreed that in consideration of Thirty-five Thousand dollars (\$35,000.00), to be delivered to Plaintiff's counsel within fourteen (14) days of the formal approval of this settlement by the Village Council of the Village of Downers Grove, and subsequent to the execution of this Release by Plaintiff Roller, John P. Roller hereby generally and fully releases discharges and extinguishes any and all claims and parties referenced in this Release.

4. It is understood that the monetary compensation paid by or on behalf of the Released Party to Plaintiff Roller and his attorneys, as well as the other consideration referenced above, is the only consideration from the Released Party to Plaintiff, and is in full and complete satisfaction of any and all claims which Plaintiff has, had or may have against the Released Party arising from injuries he sustained on December 14, 2008 on or around the sidewalk located at or near the intersection of Warren Avenue and Main Street in the Village of Downers Grove.

5. The claims hereby released and forever discharged include, but are not limited to, state claims for negligence, personal injury, premises liability, emotional distress, lost wages, any wrongdoing of any kind, compensatory damages, punitive damages and attorneys fees and all suits, actions and causes of action, appeals, liabilities, damages, costs, losses, expenses, compensation, debts, claims, demands, agreements and controversies, and further including all attorney liens and/or medical liens and/or claims for reimbursement by any person or entity arising from injuries Plaintiff Roller sustained on December 14, 2008 on or around the sidewalk located at or near the intersection of Warren Avenue and Main Street in the Village of Downers Grove. Plaintiff Roller agrees to indemnify and hold harmless the Released Party, and its insurer, from any and all claims seeking payment of any lien and payment, recovery and/or

reimbursement for any medical treatment or other service rendered to Plaintiff arising from, or claimed to arise from injuries sustained on December 14, 2008 in the Village of Downers Grove.

6. This Release and the consideration from the Released Party to Plaintiff Roller as provided for herein, is contingent upon the **dismissal with prejudice** of all of Plaintiff Roller's claims against the Released Party in Case 09 L 1546, pending in the 18th Judicial Circuit, DuPage County, Illinois.

7. Inasmuch as all the damages and losses to Plaintiff Roller may not be fully known, and hence may be more numerous or more serious than is now understood or expected, Plaintiff understands, acknowledges and agrees that this Release applies regardless of whether the damages which Plaintiff alleges having suffered are known or unknown, anticipated or unanticipated and/or expected or unexpected or result in more serious damages and losses than presently anticipated.

8. Plaintiff Roller understands that the settlement giving rise to this Release is entered into for the purpose of avoiding the expense and burden of further litigation, and is not to be, and shall not be, construed as an admission or indication whatsoever of liability or wrongdoing on the part of any Released Party, including the Village of Downers Grove, its officials, officers, agents, employees, former employees, directors, representatives. The Released Party expressly denies that it has committed any wrong or is liable to Plaintiff Roller in any manner.

9. Plaintiff warrants that he has taken all necessary and appropriate actions to become fully informed of the contents and meaning of this Settlement and Release Agreement before signing it, and that he has executed this Settlement and Release Agreement with the full knowledge of its contents and meaning and with full authority to do so.

10. Plaintiff Roller warrants that he is signing this Release voluntarily and that no promise, representation or inducement has been made to him, and that he is not relying on any statement or representation made by any person or the Released Party, its agents or other representatives not herein expressed.

11. Each Party shall be responsible for their own respective costs and fees as a result of Case 09 L 1546, including attorneys' fees, expert witness fees and court costs, and waive any and all actual or potential claims related to Plaintiff Roller's costs in said litigation.

12. This Release is not subject to approval by the Court, and shall be effective on the date contained herein.

13. This Release shall be construed and interpreted in accordance with the laws of the State of Illinois and United States of America. The Parties hereto agree that the 18th Judicial Circuit Court of Illinois shall have jurisdiction to resolve any disputes regarding the rights, duties, obligations and other matters arising from this Release.

14. Plaintiff represents that he has not filed any complaints, charges or lawsuits against the Released Party, including the Village of Downers Grove, its officials, officers, agents, employees, former employees, directors and/or representatives with any governmental agency or any court since the inception of the instant lawsuit referenced herein.

15. The provisions of this Release are severable and if any of its provisions are found to be unenforceable, the other provisions shall remain fully valid and enforceable. This Release shall survive the termination of any arrangements contained herein.

16. By executing this Release the Undersigned does covenant to indemnify, defend and hold the Village of Downers Grove, its officials, officers, agents, employees, former employees, directors, and representatives from any and all claims for liability from any medical care

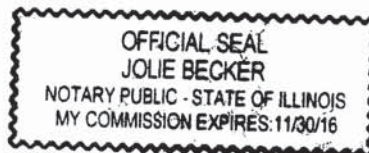
provider whatsoever, or dispenser and/or supplier of any medical services as a result of their treatment or care rendered, or for any lien asserted by, for, or on behalf of any attorney, representative, plan, or insurer including but not limited to Medicare, Medicaid, private health care insurer or plan, or any other contractual, statutory, or governmental lien holder relative to any care, services or treatment rendered or offered herein and for which demand could be made upon Releasee for discharge or payment by statute, contract, rule, or regulation.

17. The Releasee, the Village of Downers Grove, has sought to protect the future interests of Medicare, as required by federal law; therefore, it is not the intention of the Parties, or anyone else, to shift to Medicare responsibility for coverage or payment of medical services or expenses relating to injuries alleged. Based on a thorough review of relevant facts and circumstances, the Undersigned acknowledges that he is not currently receiving any Medicare benefits, he has not applied for Medicare benefits nor does he plan to apply for Medicare benefits within the next thirty (30) months. In the unexpected event that such expenses are incurred, the Undersigned agrees to not file any claim with Medicare for any future medical care or treatment that is or may be related to the injuries or medical conditions alleged. The Undersigned further agrees to be solely responsible for payment of any future medical expenses and not shift the responsibility to Medicare.

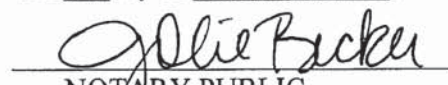
18. This Release is an instrument which consists of seven (7) typewritten pages, including the signature page.

IN WITNESS WHEREOF, the Plaintiff, John P. Roller, has agreed to the above terms and has authorized signature as set forth below.


JOHN P. ROLLER
Plaintiff



Subscribed and sworn to before me
this 11 day of December, 2014.


NOTARY PUBLIC