

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS GROVE AND SUBURBAN BUS DIVISION OF
THE REGIONAL TRANSPORTATION AUTHORITY (PACE)**

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 2009 Transit Grant Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and the Suburban Bus Division of the Regional Transportation Authority ("PACE"), for public transportation services, as set forth in the form of the Transit Grant 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 That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.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

2009 TRANSIT GRANT AGREEMENT

THIS AGREEMENT, made and entered into this ___ day of _____, 200___, to be effective as of January 1, 2009, by and between the **SUBURBAN BUS DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY**, operating under the name and hereinafter referred to as "Pace" and the Village of Downers Grove hereinafter referred to as the "Grantee".

WITNESSETH:

WHEREAS, the Regional Transportation Authority was created as a single authority to be responsible for providing, aiding and assisting public transportation in the northeastern area of the State of Illinois, including financial review and facilitation of public transportation and its providers, (70 ILCS 3615/1.02); and

WHEREAS, Pace was created as the Suburban Bus Division of the Regional Transportation Authority to be responsible for providing public transportation by bus, (70 ILCS 3615/3A.01); and

WHEREAS, Pace may enter into grant agreements with governmental and private sector entities to obtain public bus service and to provide for payment of operating and other expenses upon such terms and conditions as Pace shall provide in any such agreements; and

WHEREAS, Pace desires to have Grantee provide the Transportation Services as described in this Agreement and Grantee desires to provide such services;

NOW, THEREFORE, in consideration of the promises and agreements herein set forth, Pace and the Grantee **HEREBY AGREE** as follows:

ARTICLE I

DEFINITIONS

Agreement Term. The term specified in Section 11.1 of this Agreement, as such term may be reduced or extended pursuant to the provisions of this Agreement.

Approved Budget. The budget of approved expenses attached to this Agreement as Exhibit A, as the same may be revised from time-to-time pursuant to this Agreement.

Approved Grant Maximum. The amount shown on the Approved Budget for the line designated "Approved Grant Maximum," as such amount may be increased or decreased during the Agreement Term pursuant to the provisions of this Agreement.

Equipment. Grantee Equipment.

Grant Application. The submission of a proposed budget and related material in accordance with Section 10.6 shall be the Grantee's grant application to Pace.

Grant Amount. The total amount payable pursuant to Section 10.1 of this Agreement.

Line Item. A specific, separately identified category of expense listed on the Approved Budget.

Line Item Budget. The amount of the Approved Budget allocated to a specific Line Item.

Line Item Budget Maximum. The amount shown on the Approved Budget for each Line Item, as such amount may be increased or decreased during the Agreement Term pursuant to the provisions of this Agreement.

Monthly Report. The monthly report of revenue and expenses.

Operating Expenditure. This term shall mean all expenses properly classified as operating expenses incurred by the Grantee but in no event shall include:

- (a) any amount required to be paid by Grantee to Pace pursuant to this Agreement or pursuant to any other agreement between Pace and Grantee;
- (b) any expense not incidental to, or necessary for, the provision of the Transportation Services;
- (c) any excessive or unreasonable expense;
- (d) any expense for local government taxes, fees, licenses or other charges unless specifically included in the Approved Budget or its supporting documents or unless approved in writing by Pace;

Transportation Revenue. All amounts properly classified as revenue or income generated by, derived from, attributable to or related to the Transportation Services during the Agreement Term, regardless of the date of collection. This term shall not include any funds agreed to by Pace to be designated as local share in an Approved Budget.

Transportation Services. The services specified in Subsection 2.1A of this Agreement and Exhibit B as the same may be modified from time to time pursuant to the provisions of Subsection 2.1B of this Agreement.

Vehicle. Any means of transportation or conveyance such as, but not limited to, a bus, a truck, a van, or an automobile.

ARTICLE II

SCOPE AND DESCRIPTION OF SERVICES

Section 2.1. Transportation Services.

A. Transportation Services. Throughout the Agreement Term, Grantee, acting as an independent contractor for the benefit of Pace and not as an agent for Pace, agrees to provide the service as described in Exhibit B. As an integral part of providing such service, Grantee shall at all times:

- (1) comply with all of the other provisions of this Agreement;
- (2) take steps reasonably appropriate to promote safety and comfort and convenience of the public utilizing such service;
- (3) comply with all of the policies, practices, procedures, terms and conditions required by use of RTA funds;
- (4) conduct such services, and its business and operations as they relate to such services, in a safe, sound, economical and efficient manner;
- (5) comply with all applicable provisions of federal, state and local law.

B. Changes in Transportation Services.

- (1) Grantee Initiated Changes. Grantee shall notify Pace of changes made to their service.

Section 2.2. Force Majeure. Grantee shall not be in default in its obligation to provide Transportation Services as herein required to the extent that it is unable to provide such services as a result of abnormally severe weather or road conditions, strikes or other labor stoppages and other events and conditions that are beyond the reasonable ability of Grantee to control or remedy and that render provision of such service impossible or not reasonably feasible. In any such case, Grantee shall provide such modified or reduced services as are practicable under the circumstances and shall take steps reasonably appropriate to restore full services in accordance with this Agreement.

ARTICLE III

EQUIPMENT

Section 3.1. Grantee Vehicles.

A. Applicability of Section. Vehicles supplied by Grantee for use in connection with providing the Transportation Services must comply with the requirements of this section.

B. Duty to Maintain Grantee Vehicles. Grantee shall at all times maintain all Grantee

Equipment in good mechanical condition. Grantee shall keep both the exterior and interior of all Grantee Vehicles neat, clean and in first class condition at all times. Grantee shall be responsible to assure that all Grantee Vehicles are maintained at all times so as to meet the requirements of the Illinois Department of Transportation and to assure that all applicable Grantee Vehicles have valid Illinois Department of Transportation stickers affixed to them at all times.

ARTICLE IV

EMPLOYEES

Section 4.1. Compliance with Federal, State and Local Laws. Grantee agrees that with respect to persons employed by it to provide the Transportation Services and Other Services, it will comply with all applicable federal, state, and local labor laws including, but not limited to, any and all laws relating to the minimum wages to be paid to its employees, limitations upon the employment of minors, minimum fair wage standards for minors, the payment of wages due employees, and all applicable regulations established to protect the health and safety of employees, passengers, and the public-at-large.

Section 4.2 Employees. Grantee shall employ only such persons as are competent and qualified to provide the Transportation Services in accordance with the requirements of this Agreement and Pace policies, practices, procedures and standards. All employees shall meet all applicable qualifications established by federal, state and local laws and regulations. Drivers shall display proper courtesy toward passengers and maintain a neat and clean appearance. Grantee shall comply with all federal and Pace requirements relating to drug and alcohol testing. Notwithstanding any provision of this Agreement, Grantee's employees that are providing services under this Agreement are not employees of Pace.

ARTICLE V

NON-DISCRIMINATION, EQUAL EMPLOYMENT AND BUSINESS OPPORTUNITY

Section 5.1. Compliance With Federal, State and Local Laws. Grantee shall comply with all applicable federal, state and local anti-discrimination and equal employment and business opportunity laws and regulations, including, but not limited to, the Age Discrimination in Employment Act, as amended, 29 U.S.C. § 621 et seq., Title VII of the Civil Rights Acts of 1964, as amended, 42 U.S.C. § 2000e et seq., the Civil Rights Acts of 1866 and 1871, 42 U.S.C.

§ 1981 and 1983; and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq.

Section 5.2. Equal Employment Opportunity. Grantee shall comply with all of the affirmative action, equal employment opportunity and disadvantaged business enterprise requirements in Exhibit C.

Section 5.3. Failure to Comply. In the event Grantee's noncompliance with any provision set forth in Exhibit C or with any federal, state, or local anti-discrimination or equal employment or business opportunity law, including but not limited to those identified in Section 5.1 hereof, results in Grantee being declared non-responsible and, therefore, ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, this Agreement may be canceled or voided by Pace in whole or in part, and such other sanctions, penalties or remedies as may be provided by law or regulation may be imposed or invoked.

ARTICLE VI

REPORTS AND RECORDS

Section 6.1. Records. Grantee shall create and maintain accurate and complete records of all Transportation Services performed, all time spent, all materials, equipment and supplies purchased, and costs incurred in the performance of the Transportation Services pursuant to this Agreement, including all records required by this Agreement. Unless Pace shall consent in writing to the destruction of any such records, and except for records required to be delivered to Pace at the end of the Agreement Term, Grantee shall make said records available for review, inspection and audit in accordance with Section 6.2 below during the entire Agreement Term and for three years thereafter.

Section 6.2. Inspections and Audits. Pace shall have the right, with or without prior notice to Grantee, to review, inspect and audit all Transportation Services performed pursuant to this Agreement, and all information and records related thereto, at all reasonable times during and following the performance of the Transportation Services. The phrase "all information and records related thereto" as used in this Section shall mean all information and records under the control or supervision of, or reasonably available to, Grantee relating to this Agreement or the Transportation Services that are reasonably necessary for Pace to verify or audit Grantee's performance under this Agreement, or the accuracy or appropriateness of any Operating

Expenditure or portion thereof, ridership information, or Grantee's compliance with this Agreement or any portion thereof, including but not limited to all data, samples, records, reports, documents, memoranda, maps, estimates, specifications, notes, studies, tapes, photographs, film, computer programs or drawings, whether in preliminary, draft, final or other form. Pace shall perform such review, inspection or audit in a manner that will not unduly delay or interfere with Grantee's performance under this Agreement. Grantee shall cooperate with Pace, and provide reasonable facilities to Pace to assist Pace in any such review, inspection or audit. Pace may perform any such review, inspection or audit through an officer, employee, or other designated agent. Grantee shall promptly remit to Pace any overpayments identified as a result of inspection and audit.

ARTICLE VII

THIRD PARTY PROVIDERS

Section 7.1. Requirements. No third party providers are being used in the provision of this service.

ARTICLE VIII

RISK MANAGEMENT PROGRAM AND INSURANCE REQUIREMENTS

Section 8.1. Requirements. The Grantee shall provide (either through insurance company or through Grantee's self insurance program) the following insurance coverage for all Vehicles used in providing the Transportation Services:

- (1) For all taxicabs; the minimum Automobile Liability coverage, including Uninsured and Underinsured Motorists coverage, required by law, and
- (2) for all other vehicles; commercial Automobile Liability Insurance Coverage with a minimum Combined Single Limit (CSL) of \$5,000,000 Each Occurrence and \$5,000,000 Aggregate and Commercial General Liability Coverage with at least the following limits:
 - \$5,000,000 General Aggregate
 - \$5,000,000 Each Occurrence Limit
 - \$5,000,000 Products/Completed Operations Hazard Aggregate Limit
 - \$5,000,000 Personal & Advertising Injury Liability Limit
 - \$10,000 Medical Expense Limit (Per Person)

Each Insurance Company providing all Pace required coverage must have a minimum A.M. Best rating of A- VII using the most current data available from A.M. Best

Property/Casualty Rating Company.

Grantee, Third Party Provider or any subcontractor shall name Pace Suburban Bus Service as additional insured in its liability policies, as set forth below, and agrees to waive and will require its insurers to waive all rights against the other party, as relates to this Agreement on all of the insurance coverage required under this Agreement.

The insurance policies shall be endorsed to provide that the Suburban Bus Division of the Regional Transportation Authority d/b/a Pace, and the Regional Transportation Authority and their employees are named as additional insured for "liability for 'bodily injury', 'property damage', and 'personal injury' caused in whole or in part, by our acts or omissions or the acts or omissions of those acting on our behalf: (a) in the performance of our ongoing operations; or (b) for claims brought on behalf of our employees, agents, or subcontractors and their employees," in a form providing no less coverage than that provided by the Insurance Service Office's Owners, Lessees or Contractors - Form B [ISO 20 10], on a primary basis, without right of contribution from Pace, for any liability arising from the operation of non-Pace owned vehicles. The coverage shall contain no special limitations on the scope of its protection to the above listed insureds.

Grantee's insurance must contain the standard Separation of Insureds provision or an endorsement providing that, except with respect to limits, the insurance applies separately to each insured.

Grantee and any subcontractors shall provide that there will be no recourse against Pace Suburban Bus Service as additional insured for the payment of premiums, additional premiums or assessments, it being understood that these are obligations of the party providing such insurance pursuant to this Agreement.

Grantee's insurance shall be primary over any other insurance carried by Pace, including self-insurance. In the event the policies should be changed or canceled, said change or cancellation shall not be effective until 30 days after Pace has received notice of such change or cancellation from the Insurance company.

Within five days of execution of this Agreement, Grantee shall present certificates of insurance satisfactory to Pace, showing Pace and RTA (as described herein) as additional insureds, including certificates from any of its contractors. The Grantee shall comply with all Grantee accident and incident notification and reporting requirements including drug/alcohol testing requirements.

ARTICLE IX

INDEMNIFICATION

Section 9.1 General. Grantee agrees to assume liability for and to indemnify and hold harmless Pace and the Regional Transportation Authority, their board members, officers, employees, agents and attorneys from and against any and all liabilities, losses, damages, costs, payments and expenses of every kind and nature (including attorneys' fees and disbursements) ("liabilities") as a result of claims, demands, actions, suits, proceedings, judgments or settlements ("claims") arising out of or in any way relating to the negligence of Grantee, or the execution, performance, non-performance or enforcement of this Agreement, including the enforcement of this indemnification provision, upon notice from Pace of any such liability or claim that Pace believes to be covered by this Section. Grantee shall defend and accept Pace's tender of defense of all suits brought upon all such liabilities or claims and shall pay all costs and expenses incidental thereto, including attorneys' fees incurred by Pace, but Pace shall have the right, at its option, to participate in the defense of any suit, without relieving Grantee of any of its obligations hereunder. The indemnities contained in this Section shall survive termination of this Agreement.

Section 9.2. Grantee's Damages. Pace shall not be responsible to Grantee or to any of its officers, employees, agents or attorneys for any loss of business or other damage caused by an interruption of the Transportation Services, or for the time lost in repairing or replacing any Pace Equipment, or for any loss, injury, or damage arising out of or relating to Pace's failure to deliver Pace Equipment, or for any other losses or damages sustained by the Grantee hereunder. Pace assumes no liability or responsibility for any acts or omissions of Grantee, or of Grantee's officers, employees, agents or attorneys, or for any property of Grantee or any other person that is damaged, lost, or stolen in the performance, or as a result of the performance, of this Agreement.

ARTICLE X

PAYMENT, BUDGET AND ACCOUNTING

Section 10.1. Maximum Grant. Pace hereby agrees to pay the Grantee a grant (the "Grant") in an amount as limited by the Approved Budget.

Section 10.2. Payment of Grant. Pace shall make monthly payment installments of the Grant based on the receipt of a properly prepared Monthly Report and related required documentation. After all Monthly Reports have been received for the Agreement Term, a final calculation of the Grant amount shall be made. If a credit is due to either party, such party shall pay the amount of such credit to the other party within 30 days following demand therefore.

Section 10.3. Funding Availability. Notwithstanding anything to the contrary, including in particular (but not limited to the provisions of Section 10.1), it is expressly agreed that the obligation of Pace to pay the Grant shall be limited to the availability of funds from Pace's revenues and budget for Pace's fiscal year so that in the event Pace determines that funds are not available, Pace's obligations to pay any such unpaid part or parts of the Grant shall be terminated forthwith and Pace shall have no further obligations to make any payments to Grantee under the Agreement. In the event that Pace determines that no funds will be available to pay the Grant, the Grantee shall be given written notice thereof in accordance with Section 11.2. In the event that Pace can not and does not pay the grant money in any month and if the budget of the Village does not allow the Village to cover said unpaid grant monies, the Village may cancel and terminate this Agreement by providing thirty-five (35) days written notice to Pace of such cancellation of agreement. In the event this Agreement is cancelled or terminated, the Village is under no obligation to provide said services for transportation.

Section 10.4. Accounting and Reporting Standards. Grantee shall maintain its books and records, and shall prepare, maintain and file reports, relating to this Agreement and the Transportation Services in accordance with generally accepted governmental accounting principles.

Section 10.5. Budget Amendments. Pace shall have no obligation to revise the Approved Budget or to increase the Approved Grant Maximum or any Line Item Budget Maximum.

Section 10.6. Subsequent Grant. In order to permit Pace to evaluate the merits of entering into a new grant agreement for Transportation Services with Grantee following the end of the Agreement Term, Grantee shall, during the Agreement Term and pursuant to this Section, cooperate with Pace to develop a proposed budget for the calendar year following the Agreement Term. On or before July 1 of the Agreement Term, or such other date as Pace may specify in a grant application solicitation request, Grantee shall submit its formal grant application to Pace in the format specified by Pace. Nothing in this Section shall, however, obligate either Pace or Grantee to agree to any grant estimate or to enter into any new agreement.

ARTICLE XI

TERM

Section 11.1. Term. The term of this Agreement shall be one year commencing on the 1st day of January, 2009, and terminating after the last scheduled service on the 31st day of December, 2009.

Section 11.2. Termination for Impossibility of Performance. This Agreement may be terminated, in whole or in part, upon seven days written notice given by Pace to Grantee in the event that the Illinois General Assembly, the Regional Transportation Authority or any funding source fails in any fiscal year to appropriate or otherwise make available sufficient funds, as determined in the sole discretion of Pace, to cover payments to be made to Grantee pursuant to Article X hereof, or if any Vehicle(s) necessary to perform the Transportation Services hereunder (are) is unavailable for any reason, as determined in the sole discretion of Pace.

The termination of this Agreement shall not be in any manner prevented or affected by the fact that Grantee may have already partially or fully performed its obligations under this Agreement in respect to any unpaid part or parts of this Agreement by the time it is determined by Pace that it will be unable to pay the remaining unpaid part or parts of this Agreement.

Section 11.3 Termination for Grantee Default

A. Termination Following Failure To Cure. This Agreement shall be terminated, and the Agreement Term shall end, if the Grantee violates any other material obligation under this Agreement or fails to timely perform any other material obligation under this Agreement and such violation or failure shall continue for a period of 21 days after Grantee receives written notice from Pace describing in reasonable detail the nature of the violation or failure; provided, however, that in the event such violation or failure cannot be cured within said 21 day period notwithstanding diligent and continuous effort by Grantee and Grantee shall have promptly commenced to cure the violation or failure and shall have thereafter prosecuted the curing of same with diligence and continuity, then the period for curing such violation or failure shall be extended for such period as Pace may determine to be necessary for curing such violation with diligence and continuity.

B. Obligations Following Termination. Pace's obligations upon termination of this Agreement in any manner and for any purpose authorized by this Article XI shall be limited to

payment of grant obligations for services rendered by Grantee up to the date of said termination.

ARTICLE XII

COVENANTS AND REPRESENTATIONS

Section 12.1. General. Grantee hereby makes the covenants and representations with and to Pace as described in this Article and hereby agrees to abide by each and every one of them.

Section 12.2. Corporate Existence and Power. Grantee is duly organized, validly existing and in good standing under the laws of the State of Illinois, and has the legal power and authority to enter into this Agreement and to provide, engage in and carry out the Transportation Services. Grantee shall maintain its corporate identity and shall make no attempt to cause its corporate existence to be abolished during the Agreement Term.

Section 12.3. Authorization. Grantee has been duly authorized to execute this Agreement by its corporate authorities by ordinance duly adopted, and the execution and delivery of this Agreement by all of the parties signatory hereto shall constitute a valid and binding obligation of Grantee, enforceable in accordance with its terms, and the making of and compliance by Grantee with the terms and conditions of this Agreement will not result in any breach or violation of, or default under, any judgment, decree, mortgage, contract, agreement, indenture or other instrument applicable to Grantee.

Section 12.4. Approvals Received. All such approvals, consents, permits, licenses, authorizations, or modifications as may be required to permit the performance by Grantee of its obligations under this Agreement have been obtained from the appropriate governmental authorities or other persons or entities.

Section 12.5. No Material Litigation. No litigation, investigation or proceeding of or before any court, governmental authority or arbitrator is pending or, to the knowledge of Grantee, threatened by or against Grantee, or against any of its properties or revenues (1) with respect to this Agreement, or (2) which is reasonably likely to have a material adverse effect on the operations, property or financial condition of Grantee.

Section 12.6. No Default. Grantee is not in default under or with respect to any obligation in any respect that could be materially adverse to the business, operations, property or financial condition of Grantee or that is reasonably likely to materially adversely affect the ability of Grantee to perform its obligations under this Agreement.

Section 12.7. No Burdensome Restrictions. No obligation of Grantee and no requirement of law materially adversely affects, or insofar as Grantee Agency may reasonably foresee may so affect, the business, operations, property or financial condition of Grantee or the ability of Grantee to perform its obligations under this Agreement.

Section 12.8. No Sale, Lease or Encumbrance. Grantee will not sell, lease, loan, or in any manner dispose of any Pace Equipment during the Agreement Term.

Section 12.9. Payment of Obligations. Grantee shall pay and discharge all of its obligations and indebtednesses with respect to the Transportation Services and with respect to the Grantee Vehicles, if any; provided, however, that any such obligation or indebtedness need not be paid if the validity thereof shall currently be contested in good faith by appropriate proceedings and if Grantee shall have set aside on its books adequate reserves with respect thereto, except that all

such obligations and indebtednesses shall be paid forthwith upon an adverse decision in such proceedings and the exhaustion of available appellate relief with respect thereto.

Section 12.10. Compliance With Applicable Laws. Grantee shall comply with all federal, state and local statutes, laws, rules, regulations and orders applicable to the Transportation Services.

Section 12.11. No Bar From Public Contracts. Grantee warrants and represents that the statements contained in the Grantee's Certification in Exhibit E hereto are true and correct.

Section 12.12. Opinion of Counsel. Grantee shall provide to Pace, at or before the time Grantee executes this Agreement, an opinion of an attorney licensed to practice law in the State of Illinois in the form provided in Exhibit D.

ARTICLE XIII

GENERAL PROVISIONS

Section 13.1. Complete Agreement. This Agreement, including the Exhibits hereto constitutes the entire Agreement between the parties hereto, except as it may be amended as provided by this Article.

Section 13.2. Amendments. No modification, addition, deletion, revision, alteration or other change to this Agreement shall be effective unless and until such change is reduced to writing and executed and delivered by the authorized representatives of the parties hereto.

Section 13.3. Notices. All notices and other communications in connection with this Agreement shall be in writing, and any notice or other communication hereunder shall be deemed received by the addressee thereof when delivered in person at the address set forth below, or three business days after deposit thereof in any main or branch United States post office, certified or registered mail, return receipt requested, postage prepaid, properly addressed as follows:

Attention: Executive Director
Pace Suburban Bus
550 W. Algonquin Road
Arlington Heights, IL 60005-4412

Attn: Village Manager
Village of Downers Grove
801 Burlington Ave.
Downers Grove, IL 60515

Notices and communications to Grantee shall be addressed as shown on the cover page to this

Village of Downers Grove
2009 Transit Grant Agreement

Agreement. By notice complying with the foregoing requirements of this Section, each party shall have the right to change the address or addressee or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

Section 13.4. Calendar Days and Time. Any reference herein to "day" or "days" shall mean calendar and not business days. If the date for giving or receiving of any notice required to be given hereunder or the performance of any obligation hereunder falls on a Saturday, Sunday or federal or State of Illinois holiday, then said notice or obligation may be given or performed on the next business day after such Saturday, Sunday or federal or State of Illinois holiday. Any reference herein to time of day shall refer to local time for Arlington Heights, Illinois.

Section 13.5. Singular and Plural. The use of the singular or the plural herein shall be construed to be the plural or singular as the context requires.

Section 13.6. Governing Laws. This Agreement and the rights of the parties hereunder shall be interpreted and enforced in accordance with the laws of the State of Illinois.

Section 13.7. Changes in Laws. Unless otherwise explicitly provided in this Agreement, any reference to laws, ordinances, rules or regulations shall include such laws, ordinances, rules or regulations as they may be amended or modified from time to time.

Section 13.8. No Assignment. Grantee shall not assign either its rights or its obligations under this Agreement without the prior written consent of Pace, which consent may be granted or withheld at the sole discretion of Pace. Any attempted or purported assignment of such rights or obligations without the prior written consent of Pace shall be void and of no effect. Any successor to Grantee's rights under this Agreement shall be bound by, and shall comply with, all of the provisions, conditions and requirements of this Agreement.

Section 13.9. Headings. The section headings of this Agreement are for convenience and reference only and in no way define, extend, limit, or describe the scope or intent of this Agreement or the intent of any provision hereof.

Section 13.10. Prohibited Interests. No member of the Illinois General Assembly, no member of the Congress of the United States and no director or employee of Pace or of Grantee shall, during his or her tenure or for one year thereafter, have any interest, direct or indirect, in this Agreement or be admitted to any share or part of this Agreement or to any benefit arising therefrom or any proceeds thereof.

Section 13.11. Independent Contractor. In the performance of the Transportation Services and Other Services pursuant to this Agreement, Grantee is an independent contractor with the authority to control and direct the performance of the details of the Transportation Services and Other Services to be performed pursuant to this Agreement. All personnel necessary for Grantee's performance pursuant to this Agreement shall be employees of Grantee or of Grantee's subcontractors. None of the said personnel shall be deemed for any purpose to be employees, agents or representatives of Pace.

Section 13.12. Litigation Against Grantee. If, during the term of this Agreement, any lawsuits or proceedings are filed or initiated against Grantee or any subcontractor of Grantee, before any court, commission, board, bureau, agency, unit of government or sub-unit thereof, arbitrator, or other instrumentality, that may materially affect or inhibit the ability of Grantee to perform its obligations under, or otherwise to comply with, this Agreement, Grantee shall promptly deliver a copy of the complaint or charge related thereto to Pace and shall thereafter keep Pace fully informed concerning all aspects of such lawsuit or proceeding.

Section 13.13. Non-Waiver. Pace shall not be deemed to have waived any right under this Agreement unless such waiver is in writing and signed by an authorized officer or director of Pace. No delay or omission by Pace in exercising any right under this Agreement shall operate as a waiver of such right or any other right by Pace. All the rights and remedies of Pace under this Agreement shall be cumulative and not exclusive and may be exercised singly or concurrently by Pace. The waiver or exercise of any remedy by Pace shall not be construed as a waiver of any other remedy available under this Agreement or under general principles of law or equity.

Section 13.14. Time of Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.

Section 13.15. Survival Clause. If any provision of this Agreement is construed or held to be void, invalid or unenforceable in any respect, the remaining provisions of this Agreement shall not be affected thereby, but shall remain in full force and effect.

Section 13.16. No Third Party Beneficiaries. Nothing in this Agreement shall create, or be construed to create, any third party beneficiary rights in any person or entity not a signatory to this Agreement. In particular, and without limitation to the foregoing, this agreement does not and shall not be construed to impose any duty, liability or obligation of any kind on the Grantee

or Pace in favor of any third party not a signatory to this Agreement.

Section 13.17. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original.

Section 13.18. Other Agreements Not Prohibited. Nothing in this Agreement shall be deemed to prohibit Pace from entering into additional or alternative agreements or arrangements to provide replacement, additional, supplementary or duplicative service in the area served by Grantee.

Section 13.19. No Future Obligations. Nothing in this Agreement or the parties' performance thereof shall be construed to create any obligation to renew this Agreement after the Agreement Term or to enter into any other agreement of any kind or nature.

ARTICLE XIV

REMEDIES

Section 14.1. Remedies. In addition to Pace's right to terminate this Agreement pursuant to Article XI and any other rights otherwise provided in this Agreement, in the event of a breach or an alleged breach of this Agreement by either party, either party may, by suit, action, mandamus or any other proceeding, in law or in equity, including specific performance, enforce or compel the performance of this Agreement. Any cost or expense associated with pursuing any such remedy shall not be an Operating Expenditure under this Agreement.

Section 14.2. Notice and Cure. Neither party may exercise the right to bring any suit, action, mandamus or any other proceeding pursuant to Section 14.1 of this Agreement without first providing written notice to the other party of the breach or alleged breach and allowing a period of 15 days for the curing of said breach or alleged breach; provided, however, that in the event such violation or failure cannot be cured within said 15 day period notwithstanding diligent and continuous effort by the party receiving notice and said party shall have promptly commenced to cure the violation or failure and shall have thereafter prosecuted the curing of same with diligence and continuity, then the period for curing such violation or failure shall be extended for such period as may be necessary for curing such violation with diligence and continuity.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

VILLAGE OF DOWNERS GROVE

By: _____

Date: _____

Attest: _____

Title: _____

Date: _____

PACE


Thomas J. Ross, Executive Director

Date: 12-26-08

Attest: Beth Krue

Title: Board Secretary

Date: 12-26-08

EXHIBIT A
2009 GRANT AGREEMENT
VILLAGE OF DOWNERS GROVE

PROPOSED BUDGET

REVENUE	\$ <u>101,000</u>
TOTAL EXPENSE	\$ <u>504,000</u>
OPER. DEFICIT	\$ <u>394,000</u>
PACE SUBSIDY	\$ <u>50,400</u>
LOCAL SHARE	\$ <u>343,600</u>

EXHIBIT B
2009 GRANT AGREEMENT
VILLAGE OF DOWNERS GROVE

TRANSPORTATION SERVICES FUNDED BY PACE

TYPE OF SERVICE	Commuter Shuttle & Special Events
SERVICE OPERATED BY	Village of Downers Grove
SERVICE	Three fixed routes to Main Street; Belmont Street Metra Stations & other service as operated by Downers Grove special event services
SERVICE HOURS	Weekdays Service will <u>not</u> operate on the following holidays: <ul style="list-style-type: none">▶ New Year's Day▶ Memorial Day▶ Independence Day (observed Holiday)▶ Labor Day▶ Thanksgiving Day▶ Christmas Day
ONE-WAY FARE	\$2.00 per trip or by passes or tickets as determined by Village of Downers Grove

EXHIBIT C
2009 GRANT AGREEMENT
VILLAGE OF DOWNERS GROVE

AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY AND
DISADVANTAGED BUSINESS ENTERPRISES

- A. Affirmative Action. Grantee shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service. Such action shall include, but not be limited to, the following: employment, hiring, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Prior to the execution of this Agreement, Grantee shall furnish Pace with evidence that it has filed with the Illinois Department of Human Rights (the "Department") an affirmative action program covering the Grantee's employment practices, if a plan is required by the Department. Grantee shall promptly furnish Pace with a copy of any and all documents filed by it with the Department.
- B. Equal Employment Opportunity Clause. Grantee shall comply with the following provisions, collectively referred to as the "Equal Employment Opportunity Clause":
- (1) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
 - (2) That, if it hires additional employees in order to perform this Agreement or any portion hereof, it will determine the availability (in accordance with the Department's Rules and Regulations for Public Contracts) of minorities and women in the area(s) from which it may reasonably recruit and it will hire persons in such a way that minorities and women are not underutilized.
 - (3) That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.
 - (4) That it will send a notice to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding advising such labor organization or representative of its obligation under the Illinois

Human Rights Act and the Department's Rules and Regulations for Public Contracts. If any such labor organization or representative fails or refuses to cooperate with Grantee in its efforts to comply with such Act and Rules and Regulations, Grantee shall promptly so notify the Department, and Grantee shall recruit employees from other sources when necessary to fulfill its obligations thereunder.

(5) That it will submit reports as required by the Department's Rules and Regulations for Public Contracts, furnish all relevant information as may from time to time be requested by the Department or Pace, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations for Public Contracts.

(6) That it will permit access by Pace and the Department to all relevant books, records, accounts, and work sites for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations for Public Contracts.

- C. Subcontracts. Grantee shall insert the following provision in all subcontracts relating to the provision of Transportation Services and Other Services except subcontracts for standard commercial supplies or raw materials:

"No discrimination shall be made in any term or aspect of employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service, or political reasons or factors."

In addition, Grantee shall insert verbatim or by reference the provisions of the Equal Employment Opportunity Clause in every performance subcontract as defined in Section 1.1(17)(b) of the Department's Rules and Regulations so that such provisions will be binding upon every such subcontractor. In the same manner as with other provisions of this Agreement, Grantee will be liable for compliance by all its subcontractors with applicable provisions of this Section; and further it will promptly notify Pace and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, Grantee will not utilize any subcontractor declared by the Department to be nonresponsible and, therefore, ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

- D. Disadvantaged Business Enterprises. Grantee shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Grantee shall carry out application requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by Grantee to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as Pace deems appropriate.

EXHIBIT D
2009 GRANT AGREEMENT
VILLAGE OF DOWNERS GROVE

FORM OF OPINION OF GRANTEE'S COUNSEL

Attention: Executive Director
Pace Suburban Bus
550 W. Algonquin Road
Arlington Heights, IL 60005-4412

Please be advised that I represent the Village of Downers Grove, Illinois. Pursuant to Article XII of the Grant Agreement ("Agreement") this Opinion of Counsel is being provided:

1. The Village of Downers Grove is duly organized, validly existing and in good standing under the laws of the State of Illinois, and has the legal authority to engage in and carry on the public transportation services as described in said Agreement.
2. Said Agreement has been duly authorized by the Village Council of the Village of Downers Grove pursuant to Ordinance No. ____, and the execution and delivery of said Agreement by all of the parties hereto will constitute a valid and binding obligation of the Village of Downers Grove, enforceable in accordance with its terms, and the making of and compliance with the terms and conditions of said Agreement by the Village of Downers Grove will not result in any breach or violation of, or default under, any judgment, decree, mortgage, contract, agreement, indenture or other instrument applicable to the Village of Downers Grove known to this counsel.
3. All such approvals, consents, permits, licenses, authorizations or modifications as may be required to permit the performance by the Village of Downers Grove of its obligations under said Agreement have been obtained, whether from the appropriate governmental authorities or other persons or entities known to this counsel.
4. No litigation, investigation or proceeding of or before any court, governmental authority or arbitrator is pending or, to the knowledge of this counsel, threatened by or against the Grantee, or against any of its properties or revenues (a) with respect to said Agreement, or (b) which is reasonably likely to have a material adverse effect on the operations, property or financial condition of the Grantee.
5. The Grantee is not in default under or with respect to any obligation in any respect that could be materially adverse to the business, operations, property or financial condition of the Grantee, or that is reasonably likely to materially adversely affect the ability of the Grantee to perform its obligations under said Agreement.
6. No obligation of the Grantee and no requirement of law materially adversely affects, or insofar as Counsel may reasonably foresee based on facts known to Counsel may so affect, the business, operation, property or financial condition of the Grantee or the ability of the Grantee to perform its obligations under said Agreement.

