

**VILLAGE OF DOWNERS GROVE**  
**REPORT FOR THE VILLAGE COUNCIL WORKSHOP**  
**AUGUST 17, 2010 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Renewal of Lease Agreements with Sanitary District	✓ Resolution Ordinance Motion Discussion Only	Michael Baker Deputy Village Manager

**SYNOPSIS**

Resolutions have been prepared to renew two lease agreements between the Village and the Downers Grove Sanitary District for property located 1) on Curtiss Street used for woodchip processing and 2) on the site of the Public Works facility.

**STRATEGIC PLAN ALIGNMENT**

The Five Year Plan and Goals include *Exceptional Municipal Organization*. A supporting objective of this statement is *Steward of Financial Sustainability*.

**FISCAL IMPACT**

Funding is provided in the General Fund for the lease payment associated with the property on which the Public Works facility is located. From the 12-month period that extends from October 2009 through October 2010, the Village will make lease payments totaling \$30,964.80. The monthly lease payment will adjust based on CPI in October 2010.

**RECOMMENDATION**

Approval on the August 17, 2010 consent agenda.

**BACKGROUND**

The Village has previously entered into leases with the Downers Grove Sanitary District for the use of two separate portions of Sanitary District property. The Sanitary District took formal action extending both agreements at their meeting in August. The general terms of each of the leases are described below.

1. Curtiss Street Property for Wood Chip Facility – The Village and Sanitary District first entered into this lease in 1990 to provide a location for temporary storage of materials, including woodchips to be picked up for use by the general public. There is no lease payment associated with the use of this property. The arrangement has served the Village and its residents well and for this reason, staff is seeking to extend it for a 10-year period ending on July 31, 2020.
2. Portion of Property occupied by Public Works Facility – The Village and Sanitary District first entered into this lease in 1996 to allow for the construction of the Public Works Facility at 5101 Walnut Avenue. The lease terms allow use of the property for parking, material and equipment storage and other uses ancillary to the Public Works facility. The property is currently used for parking, salt storage and stormwater detention. The annual costs of the lease when it first went into effect in 1996 were \$24,711.72. The current monthly costs total \$30,964.80 per month, which equates to an average annual increase of approximately 1.8%. The terms of the agreement continue to reflect an effective partnership between the Village and the Sanitary District and staff is seeking to extend the lease under the existing terms for a 10-year period ending on September 16, 2010. The Sanitary District requested the 10-year term extending from the expiration of the

most recent agreement and has already obtained formal approval from their board. Staff became aware of the expired lease at the time that the other lease was being considered for renewal and will ensure that it is monitored more closely in the future. All lease terms have been observed, include the least payments, since the most recent agreement expired.

**ATTACHMENTS**

Resolutions

Lease agreements

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING  
EXECUTION OF A LEASE AMENDMENT  
BETWEEN THE VILLAGE OF DOWNERS GROVE AND  
THE DOWNERS GROVE SANITARY DISTRICT**

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 Lease Amendment (the "Lease Amendment"), between the Village of Downers Grove (the "Village") and the Downers Grove Sanitary District (the "District"), for the use of District parcels in conjunction with the Downers Grove Public Works Facility located at 5101 Walnut Avenue, 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

LEASE AMENDMENT

This Lease Amendment made this \_\_\_\_\_ day of \_\_\_\_\_, 2010 between the Downers Grove Sanitary District, a body politic in DuPage County, Illinois (hereinafter referred to as "District"), and the Village of Downers Grove, a municipal corporation in DuPage County, Illinois (hereinafter referred to as "Village"):

WITNESSETH:

WHEREAS, the District and the Village have previously entered into a Lease on the 15<sup>th</sup> day of October, 1996 for the use of District parcels located east of Walnut Avenue utilized by the Village in conjunction with its public works facility at 5101 Walnut Avenue; and

WHEREAS, the District and the Village now desire to further amend said lease.

NOW, THEREFORE, it is mutually agreed between the District and the Village as follows:

1. The term of said Lease is hereby extended for another ten (10) years, commencing on September 17, 2006 and expiring on September 16, 2016. The lease may be renewed thereafter upon the mutual consent of the parties.
2. All of the terms and conditions of the Lease dated October 15, 1996 are incorporated herein by reference and except as expressly modified by this instrument, said terms and conditions shall remain in full force and effect.

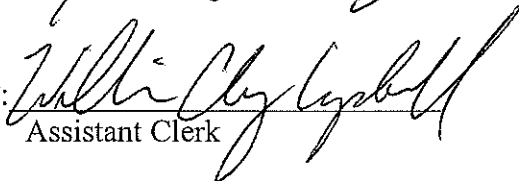
IN WITNESS WHEREOF, the parties hereto, by their respective officers thereunto duly authorized, have caused this Agreement to be executed on the day and year first above written.

DOWNERS GROVE SANITARY DISTRICT

VILLAGE OF DOWNERS GROVE

BY:   
General Manager

BY: \_\_\_\_\_

ATTEST:   
Assistant Clerk

ATTEST: \_\_\_\_\_

LEASE

This lease is entered into this 15th day of October, 1996, by and between the Downers Grove Sanitary District, a body politic in DuPage County, Illinois, (hereinafter referred to as "District"), and the Village of Downers Grove, a municipal corporation in DuPage County, Illinois (hereinafter referred to as "Village").

For and in consideration of the mutual covenants contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties agree as follows:

1. District is the owner of real estate depicted in Exhibit A entitled "Village of Downers Grove Public Works Facility, Downers Grove, Illinois, Lease Area", prepared by Rust Environment & Infrastructure dated September 17, 1996, and attached hereto and made a part hereof, and hereinafter referred to as "Parcel". Village is the owner of real estate legally described in Exhibit B, attached hereto and made a part hereof, and hereinafter referred to as "Village property".

2. District leases the Parcel herein described to Village for a term of ten (10) years commencing September 17, 1996, and concluding September 16, 2006, for use by Village in conjunction with the construction of a public works facility on Village property. The lease may be renewed thereafter, upon the mutual written consent of these parties. Provided, however, that if the District finds it necessary or convenient to utilize the Parcel for District facilities, storage or equipment required by any rule, regulations, permit, or order of the Federal or State E.P.A., their successors or assigns, or any court of competent

jurisdiction, the District shall so notify Village, and this lease shall terminate two (2) calendar years after receipt of such notice. While the District has no current plan to utilize the Parcel for District storage or facilities within the term of this lease, the parties mutually acknowledge that the District is subject to statutes, rules and regulations of both Federal and State governments and their regulatory agencies. The Village may terminate this lease upon thirty (30) days written notice to the District.

3. Beginning on October 1, 1996 and continuing for the term of this Lease, Village shall pay to District the computed lease payment each month. Each such payment shall be due on the 1st day of the calendar month. The initial lease payment shall be \$2,059.31 each month. At the annual anniversary of the date of the first lease payment, the computed lease payment shall be determined by multiplying the initial lease payment amount by a factor, which factor shall be computed by subtracting the CPI-U for August 1996 from the CPI-U for August in the year for which the calculation is being made, then dividing said remainder by the CPI-U for August 1996, then multiplying said quotient by 0.75 and then adding 1 to said product, as summarized in the following formula:

$$\left( \frac{\text{New CPI-U} - 1996 \text{ CPI-U}}{1996 \text{ CPI-U}} \times .75 \right) + 1$$

CPI-U shall mean the Consumer Price Index for all categories of goods for all urban consumers for the Chicago area as published by the U.S. Department of Labor. An example of the calculation of the computed lease payment is contained in the attached Appendix to Lease.

The monthly lease amount may be revised upon the mutual consent of both parties, no more frequently than once every five years.

The Parcel is currently exempt from the assessment of any real estate taxes. Both parties anticipate that said exemption will not be changed due to

this lease. In the event District is assessed any real estate taxes against the Parcel, Village hereby agrees to pay any and all said real estate taxes in addition to the lease amount contained herein. Payment of said taxes by the Village to the District shall be made prior to the due date(s) of said taxes.

4. The Village may use the Parcel solely for parking, material and equipment storage and other uses ancillary to the public works facility to be constructed on the Village parcel.

5. The Village is authorized to improve the Parcel, at its sole expense, substantially in conformance with the plan attached hereto as Exhibit "C" and made a part hereof.

6. Upon termination of this lease for any reason the Village agrees to promptly restore the Parcel to a condition substantially similar to the condition of the area prior to the Village entering into this lease, if so requested by the District. In the event the Village is unable or unwilling to restore the Parcel, Village hereby gives District full authority so to do, without any liability on the District's behalf, and Village hereby agrees to reimburse District promptly for any and all expenses reasonably incurred in connection therewith upon presentation of a bill therefor.

7. Village has examined the Parcel and knows its condition. No representations as to the condition and repair thereof and no agreement to make any alterations, repairs or improvements in or about the subject premises has been made by the District.

8. Village shall maintain all landscaped areas and shall keep the Parcel in a clean, neat, orderly and sightly condition to District's satisfaction at all times during the term of this lease, and shall promptly remove from the

properties adjacent to the Parcel any materials which may be thereon as a result of Village's use of the Parcel.

9. Options to Purchase

- a. If, during the term of this agreement, the Village determines to sell all or part of the Village property, it shall first offer the property to the District at its then fair market value. In such event, the Village shall cause an appraisal to be prepared, using an MAI certified appraiser, which shall set the fair market value for the property. The Village shall serve notice of such intent to sell, including a form contract setting forth the terms and conditions of sale, along with the appraisal upon the District which shall have sixty (60) days following receipt to accept or reject such purchase. Within such sixty (60) day period, the parties may negotiate alternative terms and conditions of sale, including alteration in price. In the event the District rejects the purchase, the District shall have no further interest in the property. In the event the District takes no action within such sixty (60) day period, or in the event the parties conduct negotiations but are unable to agree upon acceptable alternative provisions, the purchase shall be deemed rejected by the District. In the event the purchase is rejected, the Village may proceed to sell the property to any other person on terms and conditions, including price, no more favorable, from the purchasers perspective, than those offered the District. The District may waive its rights under this paragraph. The District's



interest shall, however, survive failed attempts to sell the Village property.

- b. If, during the term of this agreement, the District determines to sell all or part of the District Parcel, it shall first offer the Parcel to the Village at its then fair market value. In such event, the District shall cause an appraisal to be prepared, using an MAI certified appraiser, which shall set the fair market value for the Parcel. The District shall serve notice of such intent to sell, including a form contract setting forth the terms and conditions of sale, along with the appraisal upon the Village which shall have sixty (60) days following receipt to accept or reject such purchase. Within such sixty (60) day period, the parties may negotiate alternative terms and conditions of sale, including alteration in price. In the event the Village rejects the purchase, the Village shall have no further interest in the Parcel. In the event the Village takes no action within such sixty (60) day period, or in the event the parties conduct negotiations but are unable to agree upon acceptable alternative provisions, the purchase shall be deemed rejected by the Village. In the event the purchase is rejected, the District may proceed to sell the Parcel to any other person on terms and conditions, including price, no more favorable, from the purchasers perspective, than those offered the Village. The Village may waive its rights under this paragraph. The Village's interest

shall, however, survive failed attempts to sell the District parcel.

10. The Village shall defend and hold the District harmless and indemnified against any suit, action, cause of action or claim that may arise from the planning, design, construction, inspection, maintenance or repair of the facilities to be constructed under this agreement. The Village further agrees to defend, indemnify and hold harmless the District, its General Manager, members of the Board of Trustees, members of the Board of Local Improvements, officers, employees and agents thereof, individually from any claim, suit, demand, set-off or other action against any of the foregoing described parties arising out of the subject matter of this agreement or the District's performance of its obligations hereunder, provided, however, that the obligation of the Village hereunder shall not extend to negligent acts or omissions of the District, the General Manager, Board of Trustees, members of the Board of Local Improvements, officers, employees or agents thereof. The obligation of the Village hereunder shall include and extend to payment of reasonable attorney's fees for representation of the District, its trustees, officers, employees and agents in such litigation and includes expenses, court costs and fees. The District shall provide the Village with prompt, written notice of any possible claim, demand or suit with respect to which the District may seek indemnity from the Village pursuant to the terms of this paragraph.

11. District shall not be liable or responsible for any damage to any vehicle, equipment, merchandise or personal property on the Parcel at any time during the term of this lease, except such resulting from the negligence of District, its agents, servants or employees.

12. Village shall reimburse District for any damage to District land, facilities or equipment caused by anyone using the leased premises with Village authorization.

13. Village may not assign this lease or sublet the leased premises or any part thereof. Village shall not permit any transfer by operation of law of its interests herein.

14. No representations are made by the District to the Village that the Parcel is properly zoned for the purposed use. Village assumes all obligations and responsibilities for compliance with zoning laws and ordinances and all other environmental regulations, all rules, statutes and regulations of any governmental body having jurisdiction.

15. Village hereby acknowledges that District operates a wastewater treatment facility on property adjoining the Parcel and Village further agrees not to object to the odors, noise, dust and other activities which result from the operation and maintenance of such a facility.

16. The rights of the District to utilize all properties surrounding the Parcel in its business as a sanitary district will, at all times, be and remain paramount to the rights herein granted to Village, and nothing stated herein is to be construed as restricting District from granting rights to other parties or persons, to use property adjacent to the subject premises, providing those rights and access do not interfere with the Village's access to and use of the Parcel.

17. District shall have access, at reasonable times and upon reasonable notice, for its employees, agents, representatives, assigns or grantees to come upon the leased Premises, either by vehicle or on foot, for any purpose of the District in constructing, installing, operating, maintaining, repairing,

replacing or patrolling any or all of the District facilities and equipment now or later located in the vicinity of the leased Premises.

18. The Village shall comply with all applicable environmental statutes, ordinances, rules, regulations, and orders (hereinafter referred to as "Standards") issued by any federal, state or local environmental agency relating to the Village's use of District's property hereunder. Such Standards encompass, but are not limited to, those concerning air, water, noise, solid wastes, hazardous substances, and hazardous wastes. The Village shall reimburse the District for all costs incurred by the District including, without limitation, fines and penalties imposed for violation of Standards and the actual expense of correcting the actual or alleged violation. The Village shall assume liability for and shall defend, indemnify and hold the District harmless from any claim or violation of Standards which results from the Village's use of District's parcel.

The Village, at its cost, shall assume the defense of all claims of violation of the Standards, regardless of whether they are asserted against the Village or the District. Notwithstanding the expiration or termination of this Lease, the Village shall remain liable for all costs provided for herein, and shall further remain obligated to defend, indemnify and hold the District harmless for any and all violations or alleged violations of Standards which occurred or were caused during the actual term of this Lease. In the event that any claim is finally determined to be caused by the sole negligence of the District, the District shall reimburse for such costs, reasonably incurred by the Village.

19. In the event the Village fails to make the monthly payments provided in Paragraph 3 or Village fails to fulfill any obligation of this lease

agreement, District may unilaterally terminate this lease upon sixty (60) days written notice to Village.

20. All notices to the parties shall be mailed, postage prepaid, and sent as follows:

To the District:

Downers Grove Sanitary District  
2710 Curtiss Street  
Downers Grove, IL 60515

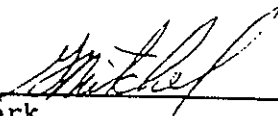
To the Village:

Village of Downers Grove  
801 Burlington Avenue  
•Downers Grove, IL 60515

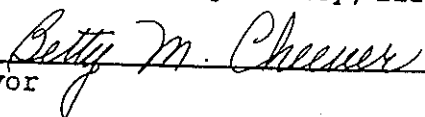
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day and year first above written.

DOWNERS GROVE SANITARY DISTRICT,  
a body politic in Downers Grove,  
Illinois

BY:   
President

Attest:   
Clerk

VILLAGE OF DOWNERS GROVE, a municipal  
corporation in DuPage County, Illinois

BY:   
Mayor

:Attest:   
Village Clerk

EXHIBIT B - VILLAGE PROPERTY

LOTS 1, 2, 3, AND 4 IN THE SCHUMACHER'S ASSESSMENT PLAT OF LOT 14 OF A. T. MCINTOSH'S FIRST ADDITION TO BELMONT, TOGETHER WITH A 40.0 FOOT ROADWAY, DESIGNATED AS "PRIVATE ROAD", IN SAID SCHUMACHER'S ASSESSMENT PLAT OF LOT 14 OF A. T. MCINTOSH'S FIRST ADDITION TO BELMONT, TAKEN AS A TRACT, (EXCEPTING THEREFROM THE EASTERLY 250.0 FEET, AS MEASURED PERPENDICULARLY FROM THE EASTERLY LINE THEREOF), BEING A SUBDIVISION IN PARTS OF SECTIONS 1, 2, 11, AND 12, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID SCHUMACHER'S ASSESSMENT PLAT RECORDED MAY 21, 1954 AS DOCUMENT 717547, IN DUPAGE COUNTY, ILLINOIS.

P.I.N. #      08-12-300-001  
                 08-12-300-002  
                 08-12-300-003  
                 08-12-300-007

APPENDIX TO LEASE

SAMPLE MONTHLY LEASE ESCALATION

The sample provided below is intended to illustrate the escalation clause contained in paragraph 3. For purposes of this illustration, the beginning monthly lease amount is assumed to be \$2000 and the monthly lease payments are assumed to have begun on October 1, 1991. Actual CPI-U values are as follows:

August 1991	137.6
August 1992	141.9
August 1993	146.1
August 1994	149.8
August 1995	153.8
August 1996	158.1

First year monthly lease payment  
(10/1/91 through 9/1/92) \$2,000.00

Second year monthly lease payment  
(10/1/92 through 9/1/93) \$2,046.80

$$\left[ \frac{141.9 - 137.6}{137.6} \times .75 \right] + 1 = 1.0234$$

$$\$2,000 \times 1.0234 = \$2,046.80$$

Third year monthly lease payment  
(10/1/93 through 9/1/94) \$2,092.60

$$\left[ \frac{146.1 - 137.6}{137.6} \times .75 \right] + 1 = 1.0463$$

$$\$2,000 \times 1.0463 = \$2,092.60$$

Fourth year monthly lease payment  
(10/1/94 through 9/1/95) \$2,133.00

$$\left[ \frac{149.8 - 137.6}{137.6} \times .75 \right] + 1 = 1.0665$$

$$\$2,000 \times 1.0665 = \$2,133.00$$

Fifth year monthly lease payment  
(10/1/95 through 9/1/96) \$2,176.60

$$\left[ \frac{153.8 - 137.6}{137.6} \times .75 \right] + 1 = 1.0883$$

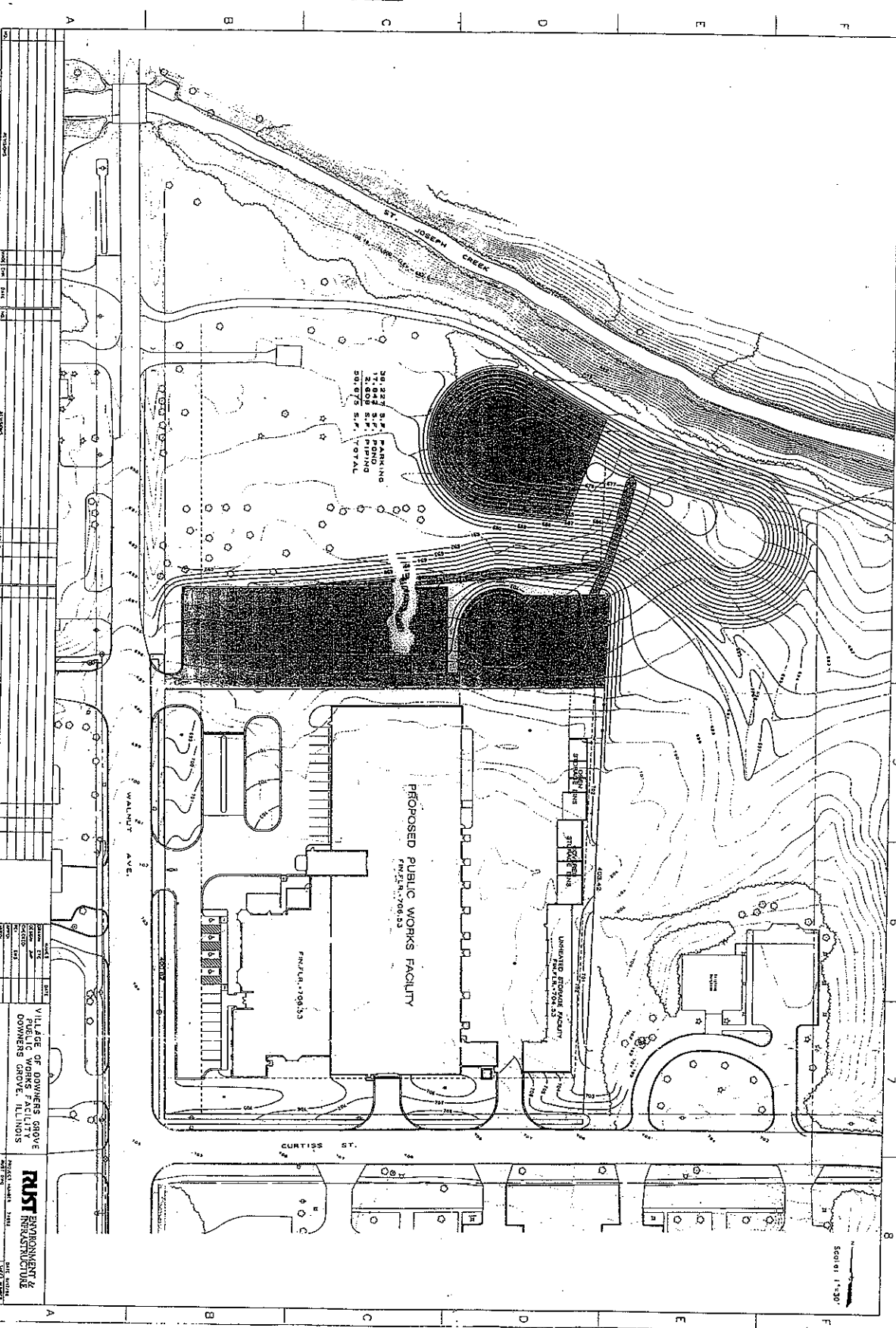
$$\$2,000 \times 1.0883 = \$2,176.60$$

NOTES:  
 1. ALL DIMENSIONS ARE IN FEET AND INCHES.  
 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.  
 3. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.  
 4. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.  
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NO.	DATE	BY	REVISION
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VILLAGE OF DOWNERS GROVE  
 PUBLIC WORKS FACILITY  
 DOWNERS GROVE, ILLINOIS  
 EXIST. AREA

**RUST** ENVIRONMENT & INFRASTRUCTURE  
 PROJECT: VILLAGE OF DOWNERS GROVE  
 SHEET: 100-100-33  
 DATE: 08/11/2011



Scale: 1" = 30'