

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 AGREEMENT
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 a Lease Amendment Agreement (the "Lease Amendment"), between the Village of Downers Grove (the "Village") and the Downers Grove Sanitary District (the "District"), for the use of a District parcel located on Curtiss Street by the Village for a storage and staging area for wood chips processing, 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 16th day of July, 1990 for the use of a District parcel located on Curtiss Street by the Village for a storage and staging area and for woodchips processing; and

WHEREAS, the District and the Village have previously entered into an Amendment to said lease on the 11th day of September, 1995; and

WHEREAS, the District and the Village have previously entered into an Amendment to said lease on the 16th day of January, 2001; and

WHEREAS, the District and the Village have previously entered into an Amendment to said lease on the 17th day of May, 2005; 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 August 1, 2010 and expiring on July 31, 2020. The lease may be renewed thereafter upon the mutual consent of the parties.
2. All of the terms and conditions of the Lease dated July 16, 1990, and the Lease Amendment dated September 11, 1995, are incorporated herein by reference and except as expressly modified by this instrument, said terms and conditions shall remain in full force and effect.

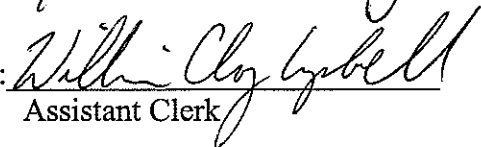
IN WITNESS WHEREOF, the parties hereto, by their respective officers thereunto duly authorized, have caused this Agreement to be executed on the day and year first above written.

DOWNERS GROVE SANITARY DISTRICT

VILLAGE OF DOWNERS GROVE

BY: 
General Manager

BY: _____

ATTEST: 
Assistant Clerk

ATTEST: _____

LEASE AMENDMENT

This Lease Amendment made this 17th day of May, 2005 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 16th day of July, 1990 for the use of a District parcel located on Curtiss Street by the Village for a storage and staging area and for woodchips processing; and

WHEREAS, the District and the Village have previously entered into an Amendment to said lease on the 11th day of September, 1995; and

WHEREAS, the District and the Village have previously entered into an Amendment to said lease on the 16th day of January, 2001; 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 five (5) years, commencing on August 1, 2005 and expiring on July 31, 2010. The lease may be renewed thereafter upon the mutual consent of the parties.
2. All of the terms and conditions of the Lease dated July 16, 1990, and the Lease Amendment dated September 11, 1995, 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.

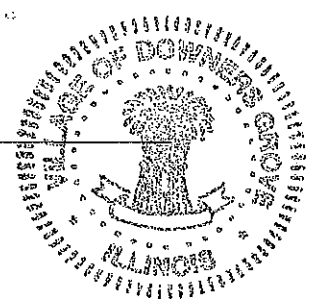
DOWNERS GROVE SANITARY DISTRICT VILLAGE OF DOWNERS GROVE

BY: Lawrence C. Cox
General Manager

BY: Ricardo J. Lopez

ATTEST: Michelle K. Oberhel
Assistant Clerk

ATTEST: Agnes H. Hill



LEASE AMENDMENT

This Lease Amendment made this 16th day of JANUARY, ~~2000~~ ²⁰⁰¹ 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 16th day of July, 1990 for the use of a District parcel located on Curtiss Street by the Village for a storage and staging area and for woodchips processing; and

WHEREAS, the District and the Village have previously entered into an Amendment to said lease on the 11th day of September, 1995; 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:

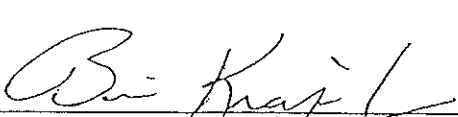
1. The term of said Lease is hereby extended for another five (5) years, commencing on August 1, 2000 and expiring on July 31, 2005. The lease may be renewed thereafter upon the mutual written consent of the parties.
2. All of the terms and conditions of the Lease dated July 16, 1990, and the Lease Amendment dated September 11, 1995, are incorporated herein by reference and except as expressly modified by this instrument, said terms and conditions shall remain in full force and effect.

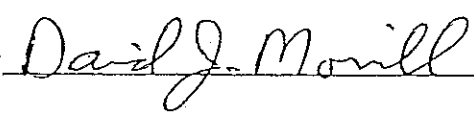
IN WITNESS WHEREOF, the parties hereto, by their respective officers thereunto duly authorized, have caused this Agreement to be executed on the day and year first above written.

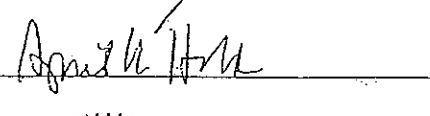
DOWNERS GROVE SANITARY DISTRICT

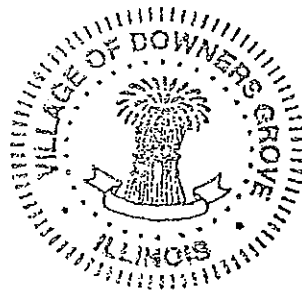
VILLAGE OF DOWNERS GROVE

BY: 

BY: 

ATTEST: 

ATTEST: 



LEASE AMENDMENT

This Lease Amendment made this 11TH day of SEPTEMBER, 1995 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 16th day of July, 1990 for the use of a District parcel located on Curtiss Street by the Village for a storage and staging area and for woodchips processing; and

WHEREAS, the District and the Village now desire to 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 five years, commencing on August 1, 1995 and expiring on July 31, 2000. The lease may be renewed thereafter upon the mutual written consent of the parties.
2. The following paragraph is hereby added as Paragraph 16 to said Lease:

16. 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 agreement, 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 agreement. 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.

3. All of the terms and conditions of the Lease dated July 16, 1990, 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: Lawrence C. Cox, GENERAL MANAGER

BY:

Kurt Bruner

ATTEST:

Shirley K. Herschel, ASSISTANT CLERK

ATTEST:

Barbara Waldner

LEASE

This lease is entered into this 16th day of July, 1990, 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 legally described in Exhibit A, attached hereto and made a part hereof, and hereinafter referred to as "Parcel".

2. District leases the Parcel herein described to Village for a term of approximately five years commencing July 16, 1990 and concluding July 31, 1995. The lease may be renewed annually thereafter, upon the mutual consent in writing 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, regulation, 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 180 days after receipt of such notice. While the District has no current plan to utilize the Parcel for District storage or facilities within the five year 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.

3. The Village may use the Parcel solely for the following activities:

- a. Temporary storage, for a period not to exceed 90 days, of dirt, cut trees, construction materials and construction debris prior to final disposal,
- b. Staging area for contractors doing public improvement and repair work for the Village,
- c. Processing of brush into woodchips, and
- d. Public pickup of processed woodchips or District sludge.

The Parcel may be used for no other purpose. The Village will prohibit any hazardous materials from being stored on the Parcel. Only those materials that are being stored by the Village, its employees and agents, may be stored on the Parcel, and no public dumping shall be permitted.

4. The Village is authorized to improve the Parcel, as its sole expense, with earthen berms, a roofed sludge pickup station, fences, asphalt and/or paving materials substantially in conformance with the plan attached hereto as Exhibit "B" and made a part hereof. The Village agrees, at its sole expense, to construct on the Parcel for the District a roofed structure for public pickup of District sludge.

5. 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.

6. 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.

7. 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.

8. 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 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 of 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 manager, Board of Trustees, 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.

9. 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.

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

11. 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.

12. No representations are made by the District to the Village that the Parcel is properly zoned for the proposed 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.

13. 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 as a storage/staging area.

14. District at all times shall have free and unrestricted access 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.

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

To the District:

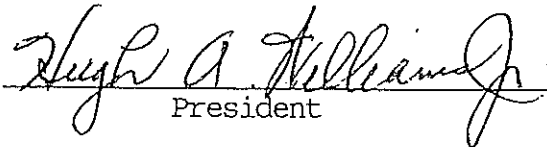
Downers Grove Sanitary District
2710 Curtiss Street
Downers Grove, Illinois 60515

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.

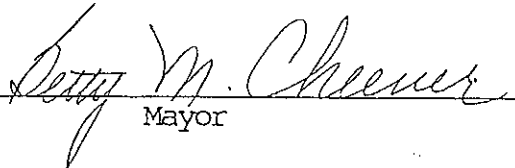
DOWNERS GROVE SANITARY DISTRICT,
a body politic in Downers Grove,
Illinois

By: 
President

Attest:


Clerk

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

By: 
Mayor

Attest:


Village Clerk

Exhibit 'A'

THAT PART OF THE WEST HALF OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF LOT 1 OF JAY C. BENNETT SR. COUNTY CLERK DYNAGEAR ASSESSMENT PLAT, RECORDED AS DOCUMENT R86-114040 AND RUNNING THENCE WEST, ALONG THE NORTH LINE OF CURTISS STREET, .154.79 FEET; THENCE NORTH $79^{\circ}31'18''$ WEST, ALONG THE NORTH LINE OF CURTISS PURSUANT TO THE PLAT OF DEDICATION RECORDED AS DOCUMENT 866593, A DISTANCE OF 226.60 FEET; THENCE NORTH $9^{\circ}20'55''$ EAST, 136.10 FEET; THENCE SOUTH $86^{\circ}40'20''$ EAST, 288.74 FEET; THENCE NORTH $5^{\circ}25'29''$ EAST, 259.33 FEET; THENCE SOUTH $84^{\circ}36'49''$ EAST, 63.31 FEET, TO THE WEST LINE OF SAID LOT 1; THENCE SOUTH $2^{\circ}49'39''$ WEST, ALONG THE SAID WEST LINE OF LOT 1, 411.46 FEET, MORE OR LESS, TO THE POINT OF BEGINNING, ALL IN DUPAGE COUNTY, ILLINOIS AND CONTAINING 1.7207 ACRES.

