

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
DECEMBER 18, 2012 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
Third Addendum to the Commuter Parking Facility Improvement Grant Agreement with Metra	✓ Resolution Ordinance Motion Discussion Only	Enza Petrarca Village Attorney

SYNOPSIS

A resolution has been prepared to approve a Third Addendum to the Commuter Parking Facility Improvement Grant Agreement (IGA) between the Village of Downers Grove and Metra. This Third Addendum amends the IGA to extend the amount of time to use the funds for parking lot reconstruction until October of 2014.

STRATEGIC PLAN ALIGNMENT

Strategic Plan Goals for 2011 - 2018 identified *Top Quality Infrastructure* and *Steward of Financial and Environmental Sustainability*.

FISCAL IMPACT

N/A.

BACKGROUND

The Village and Metra entered into a grant agreement dated May 1, 2005 to assist in funding for the reconstruction of commuter parking lots. This grant agreement provided for funding in four phases. Exhibit B of the grant agreement details the available funding per phase. Each phase required a modified Exhibit B in order to provide funding for the next phase.

In 2005, the Village reconstructed Lot B pursuant to this grant agreement (Phase 1). In 2006, the Village approved the first addendum to the grant agreement with Metra for the reconstruction of Lot D (Phase 2). In 2007, the Village approved the second addendum to the grant agreement with Metra which increased the amount of funding to \$1,035,000 for the reconstruction of Lot H and Lot I. The Village completed Lot I in 2007/2008 and was awarded \$110,000 in grant funding (Phase 3). The Lot H reconstruction was delayed due to the construction of the Belmont Underpass and is currently scheduled for 2014 (Phase 4).

ATTACHMENTS

Resolution
Addendum

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF THIRD ADDENDUM
TO AN AGREEMENT BETWEEN THE VILLAGE OF
DOWNERS GROVE AND THE COMMUTER RAIL
DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY**

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 Agreement (the “Agreement”), between the Village of Downers Grove (the “Village”) and the Commuter Rail Division of Regional Transportation Authority (“CRD”), for a second addendum to the Commuter Parking Facility Improvement Grant Agreement, 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

**THIRD ADDENDUM TO COMMUTER PARKING FACILITY
IMPROVEMENT GRANT AGREEMENT**

THIS ADDENDUM, dated this _____ day of _____ 20____, shall amend and modify the Commuter Parking Facility Improvement Grant Agreement (“**Agreement**”) entered into on May 1, 2005, by and between the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation (“**CRD**”) and the Village of Downers Grove, an Illinois municipal corporation (“**Municipality**”). CRD and Municipality are hereafter sometimes jointly referred to as the “**Parties**.”

RECITALS

A. The Parties have diligently been executing their respective responsibilities under the Agreement and are cooperating fully.

B. Reconstruction of the Municipality’s Belmont Road, Lot H, was delayed to facilitate the Belmont Road grade separation project.

C. The Parties desire to amend the Agreement to extend the time allowed to use the funds allocated by the Agreement.

NOW, THEREFORE, for and in consideration of the foregoing recitals, which by this reference are hereby incorporated into this Addendum, the mutual agreements set forth herein and other good and valuable consideration, the receipt, and sufficiency of which are hereby acknowledged by the Parties, the Parties agree to amend the Agreement as follows:

1. Section 42 of Part II, entitled, “EXPENDITURE OF GRANT FUNDS,” is hereby deleted in its entirety and replace with the following Section 42:

42. EXPENDITURE OF GRANT FUNDS. Municipality agrees that the Grant Funds for this Project must be expended upon approved Project elements within 114 months of the execution of the Agreement. Unless otherwise specified in writing by CRD, all unexpended Grant Funds may revert to CRD, at CRD’s sole discretion, upon the expiration of this 114-month time period.

2. To the extent the provisions of the Agreement are in conflict with the provisions of this Addendum, the provisions of this Addendum shall control.

3. Terms, not otherwise defined herein, shall have the same meanings ascribed to them in the Agreement. The remaining terms, covenants, provisions and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Addendum as of the day and year first above written.

**COMMUTER RAIL DIVISION OF
THE REGIONAL TRANSPORTATION
AUTHORITY:**

VILLAGE OF DOWNERS GROVE:

By: _____
Alexander D. Clifford
Executive Director/CEO

By: _____

Name: _____

Title: _____

COMMUTER PARKING FACILITY IMPROVEMENT GRANT AGREEMENT

PART I

Between

**THE COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION AUTHORITY**

and

THE VILLAGE OF DOWNERS GROVE

CONTRACT NO. K00454

PROJECT NO. 3872

This Agreement is made as of the date set forth below by and between the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation ("CRD"), created under the Regional Transportation Authority Act, 70 ILCS 3615/1.01 et seq., and the Village of Downers Grove, a municipal corporation created under the laws of Illinois ("Municipality").

PRELIMINARY STATEMENT

The Municipality desires to undertake a public transportation capital project, as more fully defined herein, ("**Project**") and has made letter application to the CRD for a grant for the Project.

The Project has been approved for funding by the CRD Board of Directors.

In consideration of the mutual covenants hereinafter set forth, this Agreement is made to establish the amount of financial assistance to be provided to the Municipality in the form of a capital grant ("**Grant**"), as set forth in Part I of this Agreement, to set forth the terms and conditions upon which the Grant will be made, as set forth in Part II of this Agreement, and to set forth the agreement of the Parties as to the manner in which the Project will be undertaken, completed and used, as set forth in Exhibit A of this Agreement.

ITEM 1. DEFINITIONS

As used in this Commuter Parking Facility Improvement Grant Agreement, the following terms, when capitalized, shall have the following meanings:

Agreement -- Parts I and II of this Commuter Parking Facility Improvement Grant Agreement and all exhibits and appendices hereto as from time to time modified or amended pursuant to the terms hereof.

Approved Project Budget -- As defined in Section 8 of Part II.

Commuter Service -- Public Transportation Services by rail within the Metropolitan Region as defined in the Regional Transportation Authority Act.

CRD B The Commuter Rail Division of the Regional Transportation Authority as established by amendments to the Regional Transportation Authority Act, November 9, 1983.

Eligible Costs -- Expenditures made by Municipality in carrying out the Project, which are reimbursable under the terms of Section 10 of Part II.

FTA -- Federal Transit Administration

Grant-- Capital grant funded, in part, by CRD for the Project.

Grant Close-out-- As defined in Section 17 of Part II.

Indemnitees-- The Commuter Rail Division of the Regional Transportation Authority (Metra), the Regional Transportation Authority (RTA), Northeast Illinois Regional Commuter Railroad Corporation (NIRCRC), and any federal and/or state agency providing grant funds to this project, and all of their respective directors, administrators, officers, employees, agents, successors, and assigns.

Metropolitan Region -- As defined in the Illinois RTA Act.

Municipality -- An Illinois municipal corporation as named in Part I.

NIRCRC-- The Northeast Illinois Regional Commuter Rail Corporation (d/b/a "Metropolitan Rail/Metra")

Net Project Cost -- The sum of the Eligible Costs (as set forth in Section 10 of Part II) incurred in performance of the Work on the Project, including Work done by Municipality, less refunds, rebates, or other items of value received by Municipality which have the effect of reducing the cost actually incurred, and proceeds, if any, from the sale of scrap and replaced facilities.

Plans -- As defined in Section 3 of Part II.

Premises -- Property upon which the Project Facilities shall be constructed and maintained.

Project Account -- As defined in Section 9 of Part II.

Project Facilities -- Any facilities, equipment, or real property purchased, acquired, constructed, improved, installed renovated or refurbished as part of the Project and funded with the Project Funds. *Project Facilities* are also referred to as *Improvements*.

Project Funds -- An amount not to exceed the sum set forth in Item 3 of Part I.

Revenue -- As defined in Section 14 of Exhibit A.

Routine Maintenance -- As defined in Section 4 of Exhibit A.

RTA -- The Regional Transportation Authority.

Standard Maintenance-- As defined in Section 4 of Exhibit A.

Total Project Cost -- The total of all line items shown in Exhibit B of Part II.

Use Term -- As defined in Section 1 of Exhibit A of Part II. *Use Term* is also referred to as *Use Period*.

Work -- The work to be performed under this Project as described in Part I, Item 2 hereof.

ITEM 2. THE PROJECT

The Municipality agrees to undertake and complete the Project in accordance with the Plans and to provide for the use of Project Facilities and equipment as described in the Approved Project Budget and in accordance with this Agreement and all applicable laws. The Project, which is to be more particularly described in the plans, specifications and schedules set forth in Part II is generally described as:

The reconstruction of the Municipality's Main Street Lot B (Meta Lot 8); Main Street Lot D (Metra Lot 12), Phases I and II of Belmont Road Lot H (Metra Lot 4), and Fairview Avenue Lot I (Metra Lot 4).

The scope of work will include new drainage facilities, curb and gutter pavement, guard rails, sidewalks, striping, lighting, and landscaping. The new facilities will meet the requirements of the Americans with Disabilities Act (ADA).

ITEM 3. AMOUNT OF GRANT

Subject to the terms and conditions set forth in this Agreement, CRD agrees to make a Grant to the Municipality for the Project in an amount not to exceed \$1,500,000, including \$140,000 in contingencies, in four (4) phases as follows:

- | | |
|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Phase 1 | FY 2004 Grant in the amount of \$220,000, including \$20,000 in contingencies to cover the reconstruction of Municipality's Main Street Lot B (Metra Lot 8) |
| Phase 2 | FY 2005 Grant in the amount of \$250,000 to cover the reconstruction of Municipality's Main Street Lot D (Metra Lot 12) plus contingencies as authorized. Said funds shall not be obligated nor spent before receipt from CRD of a revised Exhibit "B," Approved Project Budget, executed by the Executive Director, reflecting the authorization of this funding by FTA. FTA authorization for these funds is anticipated in the second half of 2005. |

- Phase 3 FY 2007 Grant in the amount of \$510,000 including \$400,000 to cover the phase I reconstruction of Municipality's Belmont Road Lot H (Metra Lot 4) and \$110,000 to cover the reconstruction of Municipality's Fairview Avenue Lot I (Metra Lot 4) plus contingencies as authorized. Said funds shall not be obligated nor spent before receipt from CRD of a revised Exhibit "B," Approved Project Budget, executed by the Executive Director, reflecting the authorization of this funding by FTA. FTA authorization for these funds is anticipated in the second half of 2007.
- Phase 4 FY 2008 Grant in the amount of \$400,000 to cover the phase II reconstruction of Municipality's Belmont Avenue Lot H (Metra Lot 4) plus contingencies as authorized. Said funds shall not be obligated nor spent before receipt from CRD of a revised Exhibit "B," Approved Project Budget, executed by the Executive Director, reflecting the authorization of this funding by FTA. FTA authorization for these funds is anticipated in the second half of 2008.

In no event shall the total amount provided by the CRD under this Agreement exceed the actual Net Project Cost. CRD is not liable for any amount in excess of the amount of the Grant.

The Municipality agrees that it will provide, or cause to be provided, the cost of project elements which are not approved for CRD participation as shown in "Exhibit B, Approved Project Budget." All or part of this local share to be contributed by the Municipality may, with the express written prior approval of the CRD, be provided by the Municipality in the form of contributions of professional, technical, or other services.

ITEM 4. DOCUMENTS FORMING THIS AGREEMENT


The Parties agree that this Agreement with all of its Parts and Exhibits constitutes the entire Agreement between the Parties hereto, that there are no agreements or understandings, implied or expressed, except as specifically set forth in the Agreement and that all prior arrangements and understandings in this connection are merged into and contained in this Agreement. This Agreement may only be amended in writing, signed by both parties. The Parties hereto further agree that this Agreement consists of Part I, entitled "Commuter Parking Facility Improvement Grant Agreement", together with Part II, entitled "Commuter Parking Facility Improvement Grant Agreement --General Terms and Conditions", Exhibit A, entitled "Agreement for Construction and Operation of Commuter Parking Facility in the Village of Downers Grove, Illinois", Exhibit B, entitled "Approved Project Budget", Exhibit C, entitled "Project Sign", all of which are by this reference specifically incorporated herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be made effective May 1st, 2005 by their respective duly authorized officials.

COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION
AUTHORITY:

VILLAGE OF DOWNERS GROVE

By: 

By: 

Title: Executive Director

Title: Mayor

ATTEST:

ATTEST:

By: 

By: 

Title: Assistant Secretary

Title: Village Clerk

CERTIFICATE OF MUNICIPALITY'S ATTORNEY

I, Enza Petrarca, acting as Attorney for the Municipality, do hereby certify that I have examined this Agreement and the proceedings taken by the Municipality relating thereto, and that the execution of the Agreement by the Municipality has been duly authorized by the Municipality's action dated July 9, 2005 (certified copy of which is attached), and that the execution of this Agreement is in all respects due and proper and in accordance with applicable Federal, State, and local laws, grant conditions and regulations pertaining to this Agreement and further that, in my opinion, said Agreement constitutes a legal and binding obligation of the Municipality in accordance with the terms thereof. I further certify that to the best of my knowledge, there is no legislation or litigation pending or threatened, which might affect the performance of the Project in accordance with the terms of this Agreement.

Dated this 9th day of July, 2005

Enza Petrarca
Signature

Village Attorney
Village of Downers Grove

COMMUTER PARKING FACILITY IMPROVEMENT GRANT AGREEMENT

PART II

GENERAL TERMS AND CONDITIONS

Between

**THE COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION AUTHORITY**

and

THE VILLAGE OF DOWNERS GROVE, ILLINOIS

CONTRACT NO. K00454

PROJECT NO. 3872

1. **DEFINITIONS.** The terms capitalized in Part II of this Commuter Parking Facility Improvement Grant Agreement General Terms and Conditions shall have the same definitions as found in Part I, Item 1.

2. **GENERAL REQUIREMENTS.** Municipality shall commence, carry on and complete the Project with all practicable dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions of this Agreement.

3. **SUBMISSION OF PROCEEDINGS, CONTRACTS AND OTHER DOCUMENTS.** Municipality and CRD hereby agree that the documents governing the Work shall be the approved designs, surveys, plans, estimates, working drawings, schedules, and specifications hereinafter called "Plans". Municipality shall submit all requests for proposals, bid documents, contracts and Plans necessary for the completion of the Work to CRD for approval. After CRD approval is received, no change shall be made in such documents without the prior written consent of CRD.

4. **CHANGED CONDITIONS AFFECTING PERFORMANCE.** Municipality shall immediately notify CRD of any change in conditions or local law, or of any other event, which may significantly affect its ability to perform or complete the Project in accordance with the provisions of this Agreement.

5. **NO OBLIGATIONS TO THIRD PARTIES.** Neither CRD nor any state or federal funding agency shall be subject to any obligations or liabilities of contractors of the Municipality or their subcontractors or any other person not a party to this Agreement without CRD's specific consent. This limitation shall apply despite the fact that CRD concurred in or approved of the award of any contract, subcontract or the solicitation thereof. Unless expressly authorized in writing by CRD, the Municipality agrees to refrain from executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation that in any way would affect CRD's interest in any Project Facilities or obligating itself in any manner to any third party with respect to Project Facilities

6. **PURSUANT TO FEDERAL, STATE, AND LOCAL LAW.**

(a) In the performance of its obligations pursuant to this Agreement, the Municipality and its contractors shall comply with all applicable provisions of federal, state and local law, including without limitation the applicable grant provisions of any Master Grant Agreement signed between CRD and a state or federal funding agency. All limits and standards set forth in this Agreement that are to be observed in the performance of the Project are minimum requirements and shall not affect the application of more restrictive standards. Specifically, if funding is provided, in whole or in part, by the Illinois Department of Transportation ("IDOT"), this Agreement is a Cooperative Agreement as defined in the IDOT Public Transportation Capital Improvement Grant Manual, dated September, 1982, and is subject to IDOT review and concurrence procedures applicable to such agreements, including the applicability of third-party contract requirements to

subcontractors of Municipality and CRD.

(b) The Municipality agrees that the most recent of such state and federal requirements will govern the administration of this Agreement at any particular time, except if there is sufficient evidence in the Agreement of a contrary intent. Such contrary intent shall be evidenced by a letter signed by CRD, the language of which modifies or otherwise conditions the text of a particular provision of this Agreement. Likewise, new state and federal laws, regulations, policies and administrative practices may be established after the date the Agreement has been executed and may apply to this Agreement. To achieve compliance with changing government requirements, the Municipality agrees to include in all third party contracts financed with government assistance specific notice that government requirements may change and the changed requirements will apply to the Project as required. Specifically, the Municipality and its contractors agree to administer the Project in accordance with the most recent federal and state provisions, including all applicable OMB or USDOT Circulars and regulations.

7. **PERMITS.** Municipality shall obtain all necessary permits, licenses, consents and other approvals for the performance of the Work.

8. **APPROVED PROJECT BUDGET.** A budget shall be prepared by CRD and submitted to Municipality for approval. Municipality shall carry out the Project and shall incur obligations against and make disbursements of Project Funds only in conformity with the latest Approved Project Budget shown in Exhibit B ("**Project Budget**"). The Project Budget may be revised in writing from time to time with the approval of Metra's Executive Director and in accordance with the terms and provisions of this Agreement.

9. **PROJECT ACCOUNTS.** (a) Municipality shall establish and maintain as a separate set of accounts, or as an integral part of its current accounting scheme, accounts for the Project ("**Project Account**").

(b) Municipality shall appropriately record in the Project Account and deposit in a bank or trust company, which is a member of the Federal Deposit Insurance Corporation, all grant payments received by it from CRD pursuant to this Agreement and all other funds provided for, accruing to, or otherwise received on account of the Project. CRD payments and other funds are herein collectively referred to as "Project Funds".

10. **ELIGIBLE COSTS.**

(a) Expenditures incurred by Municipality shall be reimbursable under the Project as Eligible Costs to the extent they meet all of the requirements set forth below. They must:

1. Be made in conformance with the final Project Budget and all other provisions of this Agreement;
2. Be necessary in order to accomplish the Project;

3. Be reasonable in amount for the goods or services purchased;
4. Be actual net costs to Municipality (i.e., the price paid minus any refunds, rebates, or other items of value received by Municipality which have the effect of reducing the cost actually incurred). Local fees, which would normally be applicable to the Work, shall be waived by Municipality and shall not be considered Eligible Costs hereunder;
5. Be incurred (and be for work performed) after the date of this Agreement, unless specific written authorization from the CRD to the contrary is received;
6. Be satisfactorily documented; and
7. Be treated uniformly and consistently under accounting principles and procedures approved or prescribed by the CRD for Municipality and those approved or prescribed by Municipality for its contractors.

(b) In the event that it may be impractical to determine exact costs of indirect or service functions, Eligible Costs will include such allowances for these costs as may be approved in writing by the CRD.

11. **REQUESTS FOR PAYMENT BY MUNICIPALITY.** In order to receive CRD Grant payments of Eligible Costs, Municipality must:

- (a) Completely execute and submit to CRD a requisition approved by CRD;
- (b) Submit to CRD an explanation of the purposes and copies of invoices for which costs have been incurred to date;
- (c) Have submitted all financial and progress reports currently required by CRD; and
- (d) Have received approval by CRD for all budget revisions required to cover all costs to be incurred by the end of the requisition period.

12. **PAYMENT BY THE CRD.** Upon receipt of the completed requisition form and the accompanying information in satisfactory form, the CRD shall process the requisition and the CRD shall then reimburse Eligible Costs incurred by Municipality within 60 days of the date upon which such payment requisition form was timely received by it, if Municipality is in compliance with its obligations pursuant to the Agreement. If all obligations have been met, CRD shall reimburse apparent allowable costs incurred by Municipality up to the maximum amount of the CRD Grant payable. Municipality shall submit invoices for actual costs incurred within 45 days after completion of the Project. Reimbursement of any cost pursuant to this Section shall not constitute a final determination by the CRD of the allowability of such cost and shall not constitute a waiver of

any violation of the terms of this Agreement committed by Municipality. The CRD will make a final determination as to the allowability only after a final audit of the Project has been conducted.

13. **DOCUMENTATION OF PROJECT COSTS.** All costs charged to the Project, including any approved services contributed by Municipality or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and property of the charges.

14. **AUDIT AND INSPECTION.** Municipality shall permit, and shall require its contractors to permit, CRD, RTA, or any other state or federal agency providing grant funds, or their designated agents, authorized to perform such audit and inspection, to inspect all work, materials, payrolls, and other data and records with regard to the Project, and to audit the books, records, and accounts of Municipality and its contractors with regard to the Project. CRD also may require the Municipality to furnish, at any time prior to close-out of the Project, audit reports prepared according to generally accepted accounting principles at Municipality's expense. Municipality agrees to promptly comply with recommendations contained in CRD's final audit report.

15. **DISALLOWED COSTS.** In determining the amount of the CRD Grant, CRD will exclude all Project costs incurred by Municipality prior to the effective date of this Agreement, or another date specifically authorized by CRD; costs incurred by Municipality which are not provided for in the Project Budget except as otherwise provided under Section 10(b); and costs attributable to goods or services received under a contract or other arrangement which has not been concurred in or approved in writing by the CRD.

16. **RIGHT OF CRD TO TERMINATE.** Upon written notice to Municipality, CRD reserves the right to suspend or terminate all or part of the financial assistance herein provided if the financial assistance is suspended or terminated, in full or in part, by the funding source or if Municipality is, or has been, in violation of the terms of this Agreement. Any failure to make progress, which significantly endangers substantial performance of the Project within a reasonable time, shall be deemed to be a violation of the terms of this Agreement. Termination of any part of the Grant will not invalidate obligations properly incurred by Municipality and concurred in by CRD prior to the date of termination, to the extent they are noncancellable. The acceptance of a remittance by CRD of any or all Project Funds previously received by Municipality or the closing out of CRD financial participation in the Project shall not constitute a waiver of any claim which CRD may otherwise have arising out of this Agreement. In the event of termination of this Agreement during the construction phase for reasons other than violation of the terms hereof by Municipality, CRD shall determine the most appropriate course of action to be taken with respect to the Project.

17. **PROJECT SETTLEMENT AND CLOSE-OUT.** Upon receipt of notice of successful completion of the Project or upon termination by CRD, Municipality shall cause a final audit to be performed of the Project to determine the allowability of costs incurred and make

settlement of the CRD Grant. If CRD has made payments to Municipality in excess of the Total Project Cost of such CRD Grant or if CRD has advanced funds pursuant to the requisition made under Section 12, which exceed the Net Project Cost, Municipality shall promptly remit such excess funds to CRD. Project close-out occurs when CRD notifies Municipality and forwards the final grant payment or when an appropriate refund of CRD Grant funds has been received from Municipality and acknowledged by CRD. Grant funds, which have not been dispersed to the Municipality, will automatically revert to CRD upon completion of the Project.

Closeout shall be subject to any continuing obligations imposed on Municipality by this agreement or contained in the final notification or acknowledgment from CRD.

18. **CONTRACTS AND PROJECT MANAGEMENT.** Municipality shall execute all contracts and perform all project management activities in accordance with the terms of this Agreement and Municipality's Grant application.

19. **COMPETITIVE BIDDING.** Municipality agrees to give full opportunity for free, open, and competitive bidding in accordance with federal and state statutes, as applicable, and the Municipality's established rules, regulations and ordinances for each contract to be let by Municipality that requires constructing or furnishing of any materials, supplies, or equipment to be paid for with Project Funds and Municipality shall give such publicity in its advertisements or calls for bids for each contract as will provide adequate competition. The award for each such contract shall be made by Municipality as soon as practicable to the lowest responsive and qualified bidder or as otherwise specifically approved by CRD. Contracts for the purchase of land, real estate, transit property, or other real or personal property not normally acquired through competitive bidding are specifically excluded from the requirements of this Section, except that contracts for professional and consulting services shall be awarded only after competitive solicitation of proposals.

20. **SETTLEMENT OF THIRD PARTY CONTRACT DISPUTES OR BREACHES.** CRD has a vested interest in the settlement of disputes, defaults, or breaches involving any CRD-assisted third party contracts. CRD retains a right to a proportionate share, based on the percentage of the CRD share committed to the Project, of any proceeds derived from any third party recovery. Therefore, Municipality shall avail itself of all legal rights available under any third party contract. Municipality shall notify CRD of any current or prospective litigation pertaining to any compromise or settlement of the Municipality's claim(s) involving any third party contract, before making CRD assistance available to support that settlement. If the third party contract contains a liquidated damages provision, any liquidated damages recovered shall be credited to the project account involved unless CRD permits otherwise.

21. **ASSIGNMENT OF CONTRACT - SUBCONTRACTORS.** The Municipality agrees that no contract for construction work or professional or consulting services of any kind in connection with the Project shall be assigned, transferred, conveyed, sublet, or otherwise disposed of without the prior written consent of CRD.

22. **CONSTRUCTION PROJECTS - SIGNS.** When a Project involves construction work, the Municipality shall cause to be erected and maintained at the construction site, signs satisfactory to CRD during construction and in accordance with the specifications set forth on Exhibit "C" attached to and made a part of this Agreement identifying the Project and indicating that CRD is participating in the development of the Project.

23. **LABOR LAW COMPLIANCE.** Municipality agrees to comply with all applicable federal laws, state laws and regulations including, but not limited to, such laws and regulations relating to minimum wages to be paid to employees, limitations upon the employment of minors, minimum fair wage standards for minors, payment of wages due employees, and health and safety of employees. Municipality also agrees to require any contractor doing construction work or performing professional or consulting service in connection with the Project to agree to adhere to the requirements of this Section. Municipality agrees to pay its employees, if any, all rightful salaries, medical benefits, pensions and social security benefits pursuant to applicable labor agreements and federal and state statutes, and Municipality further agrees to make all required withholdings and deposits therefor. In addition, Municipality agrees to require all contractors and subcontractors for this project to pay their employees all their rightful salaries, medical benefits, pensions and social security benefits pursuant to applicable labor agreements and federal and state statutes and to further require withholdings and deposits therefor. Such requirements shall be included by the Municipality in all its contracts and agreements with contractors and subcontractors for this Project. CRD reserves the right to withhold final payment for this Project in the event that it is notified that the Municipality or any contractor and subcontractor has refused to pay any employee his/her salary, medical benefits, pension or social security benefits or to make the required withholdings and deposits therefor, until such time as the CRD is satisfied that the Municipality, its contractors and subcontractors have made all such payments, withholdings, or deposits. Upon request, Municipality shall provide CRD, and cause any or all of its contractors and subcontractors to provide CRD, access to all books and records pertaining to payments, withholdings, or deposits of the Municipality or the Municipality's contractors or subcontractors relating to employees' salaries, medical benefits, and pension or social security benefits. Any such inspection by the CRD shall occur on regular business days and during normal working hours.

24. **PREMISES.** The Municipality warrants that the property upon which the Project is to be constructed ("Premises") is owned or leased by the Municipality and is provided at no cost to the CRD. Municipality shall immediately give CRD written notice of any notice of default of any lease ("Lease") affecting the Premises and CRD shall have the right, but not the obligation, to cure such defaults and, in said event, the municipality shall indemnify CRD for all costs and expenses incurred by CRD in curing said default. If the Municipality defaults on its obligations under the Lease, then the Municipality shall have the obligation, with the approval of the lessor, to assign the Lease to CRD for the remaining Term of the Lease. CRD shall agree to assume all of the remaining rights and obligations under the Lease. All leases for the location of the Project are subject to CRD review and approval.

25. **EQUAL EMPLOYMENT OPPORTUNITY.** Municipality shall comply with 775 ILCS 5/2-101 et seq.

26. **ACCEPTANCE OF PROJECT FACILITIES.** Upon completion of the Work, Municipality and CRD shall conduct a joint inspection of the Project Facilities.

27. **MAINTENANCE, USE AND OPERATION OF PROJECT FACILITIES.** Municipality shall maintain the Project Facilities, or cause them to be maintained, in a safe and operable condition throughout the term of this Agreement. The specific maintenance, use and operation requirements for the Project Facilities shall be in accordance with the provisions of Exhibit "A."

28. **CONTINUANCE OF SERVICES.** Municipality agrees to continue to provide, either directly or by contract, as the case may be, the administrative and maintenance services described in Exhibit A for 40 years.

29. **RETENTION OF RECORDS AND INSPECTION.** Municipality shall keep satisfactory records with regard to the use of the Project Facilities for three years after project close-out, or longer if required by state or federal agencies providing grant funds. Specifically, if state funds are used, Municipality shall fully comply with the Five Year Record Retention requirements and the burdens of proof specified in the Grant Agreement executed between CRD and the Illinois Department of Transportation. Such requirements are specifically incorporated herein by reference if required. Municipality shall submit to CRD upon request such information as is required in order to assure compliance with the terms of this Agreement and shall immediately notify CRD in all cases where Project Facilities are used in a manner substantially different from that intended by this Agreement. CRD and Municipality shall conduct a yearly joint inspection of the Project Facilities to assure compliance with the terms of this Agreement.

30. **INDEMNIFICATION AND WAIVER.** To the extent permitted by law, Municipality agrees to protect, indemnify, defend and forever save and keep harmless the Indemnitees as provided in Exhibit "A."

31. **OWNERSHIP.** Project Facilities located on the Premises shall belong to CRD subject to the terms and conditions of Exhibit "A," if any. Municipality shall not cause any of the Project Facilities to become subject to liens or encumbrances of any kind. If any such lien shall be filed on property of CRD by Municipality or any contractor, subcontractor or supplier of Municipality, the Municipality shall promptly take such steps as may be required to have the lien released and shall provide evidence thereof to CRD. CRD agrees to notify the Municipality of any lien of which CRD may become aware.

32. **NON-COLLUSION.** Municipality warrants that it has not paid and agrees not to pay any bonus, commission, fee, or gratuity for the purpose of obtaining any approval of its application for any grant pursuant to this Agreement. No CRD officer or employee, or member of any unit of

local government which contributes to the Project Funds shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

33. **MUNICIPALITY'S WARRANTIES.** Municipality agrees to initiate and consummate all actions necessary to enable it to enter into this Agreement, including, without limitation, the consent and approval of the titleholder to the Premises, as evidenced by its "Certificate of Municipality's Attorney" attached to and made a part of Part I of this Agreement.

34. **SEVERABILITY.** CRD and Municipality agree that if any provision of this Agreement is held invalid for any reason whatsoever, the remaining provisions shall not be affected thereby if such remainder would then continue to conform to the purposes, terms and requirements of applicable law.

35. **ASSIGNMENT OF AGREEMENT.** Municipality agrees that this Agreement shall not be assigned, transferred, conveyed, sublet or otherwise disposed of without the prior written consent of CRD.

36. **AMENDMENT.** CRD and Municipality agree that no change or modification to this Agreement or any Exhibits or Attachments hereto, shall be of any force or effect unless such amendment is dated, reduced to writing, executed by both parties, and attached to and made a part of this Agreement. No work shall be commenced and no costs or obligations incurred in consequence of any amendment to this Agreement or any attachments hereto unless and until such amendment has been executed and made a part of this Agreement and the Project Budget has been amended to conform thereto.

37. **TITLES.** Municipality and CRD agree that the titles of the items of this Agreement, hereinabove set forth, are inserted for convenience of identification only and shall not be considered for any other purpose.

38. **AGREEMENT PERIOD.** The terms of this Agreement shall begin as of the date hereof and shall end upon the completion of all obligations hereunder.

39. **GOVERNING LAW.** This Agreement shall be construed in accordance with the internal laws of the State of Illinois.

40. **NOTICES.** All notices, demands, elections, and other instruments required or permitted to be given or made by either Party upon the other under the terms of this Agreement or any statute shall be in writing. Such communications shall be deemed to have been sufficiently served if sent by certified or registered mail with proper postage prepaid, hand delivered or sent by facsimile transmission, with proof of successful transmission sent by regular mail by CRD or Municipality at the respective addresses shown below or to such other party or address as either Party may from time to time furnish to the other in writing.

- (a) Notices to Metra shall be sent to:
Commuter Rail Division
547 W. Jackson Boulevard
Chicago, Illinois 60661
Attn: Director, Real Estate & Contract Management
Phone: (312) 322-8010
Fax: (312) 322-7098
- (b) Notices to Municipality shall be sent to:
Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515
Attn: Village Clerk
Phone: (630) 434-5500
Fax: (630) 434-5571

Such notices, demands, elections and other instruments shall be considered delivered to recipient on the second business day after deposit in the U.S. Mail, on the day of delivery if hand delivered or on the first business day after successful transmission if sent by facsimile transmission.

41. **COUNTERPARTS.** This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

42. **EXPENDITURE OF GRANT FUNDS.** Municipality agrees that the Grant Funds for this Project must be expended upon approved Project elements within 18 months of execution of the Grant contract. Unless otherwise specified in writing by CRD, all unexpended Grant Funds will automatically revert to CRD upon the expiration of this 18-month time period.

EXHIBIT "A"

**AGREEMENT FOR CONSTRUCTION, MAINTENANCE, AND OPERATION
OF COMMUTER PARKING FACILITIES IN DOWNERS GROVE, ILLINOIS**

This Agreement made this 1st day of May, 2005, between the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation, ("CRD" or "Metra"), and the Village of Downers Grove, Illinois, an Illinois municipal corporation, ("Municipality").

RECITALS

A. CRD and Municipality desire to have the commuter rail parking facilities and related improvements delineated on **Exhibit A-1**, attached to and made a part of this Agreement ("**Improvements**") constructed in Municipality;

B. Funding has been obtained from CRD, Municipality, state and/or federal funding sources for such Improvements;

C. Municipality has agreed to construct, operate and maintain said Improvements;

D. Municipality has agreed to maintain the completed Improvements as set forth in this Agreement; and

E. Municipality owns or leases the property on which the Improvements are to be constructed.

NOW, THEREFORE, in consideration of the covenants contained in this Agreement, and the foregoing Recitals which are hereby incorporated into this Agreement, the parties hereto agree as follows:

1. **TERM.** Municipality agrees that the property upon which the Improvements are constructed ("**Premises**") shall be used as commuter railway parking facilities and for related improvements. Municipality's obligations and right to use the Premises under the terms and provisions of this Agreement shall commence on the date this Agreement is executed by all the Parties and shall continue in force and effect for a period of forty (40) years from said execution date ("**Use Term**") unless otherwise terminated as provided under the terms and conditions of this Agreement. Subject to Section 13 of this Agreement, either Party may at any time terminate this Agreement by giving the other Party at least one hundred eighty (180) days prior written notice of its intention to so terminate. The Parties shall, upon written agreement, extend the Term for an additional twenty (20) years at the end of the initial Term.

The parties to this Agreement recognize Metra's right to require Municipality to assign this Agreement, or transfer title to any of the Improvements constructed pursuant to this Agreement, or to directly dispose of any Improvements financed with Federal assistance funds, in accordance with applicable federal circulars and regulations, as may be appropriate in the event the Improvements are no longer used for their intended purpose.

2. CONSTRUCTION.

(a) Municipality will construct, or cause to be constructed, the Improvements in accordance with all established state and federal grant guidelines for construction projects, if applicable, and Parts I and II of the Commuter Parking Facility Improvement Agreement to which this Agreement is attached and dated the same date of this Agreement and plans and specifications delivered to CRD for approval prior to the commencement of construction of the Improvements.

(b) CRD, its contractors, subcontractors and agents, are hereby granted an irrevocable right-of-entry on the Premises to oversee and inspect the Improvements during the Term.

(c) Municipality and its contractors, subcontractors and agents shall not use nor occupy said Premises for any purpose other than to erect, locate, construct and inspect the Improvements and to use and maintain the Premises and Improvements for commuter rail parking facility purposes. Prior to commencement of construction, all plans and specifications for the said Improvements must be approved in writing by both parties hereto. No other buildings, structures, additions, alterations or improvements shall be erected on or made to the Improvements by Municipality or CRD without the prior express permission in writing by the other party.

(d) In all contracts executed by Municipality for maintenance of the Improvements (including snow removal) or for the construction, rehabilitation, improvement, repair or maintenance of the Improvements, Municipality will require appropriate clauses to be inserted requiring contractors to indemnify, hold harmless and defend the CRD, the Regional Transportation Authority ("RTA"), and the Northeast Illinois Regional Commuter Railroad Corporation ("NIRCRC"), their respective directors, administrators, officers, employees, agents, successors, assigns and all other persons, firms and corporations acting on behalf of or with the authority of Metra, from and against any and all risks, liabilities, claims, demands, losses, and judgments, including court costs and attorneys' fees, arising from, growing out of, or related in any way to work performed by such contractor(s), or their officers, employees, agents or subcontractors, and their agents or employees.

3. **USE OF PREMISES.** Municipality hereby grants to CRD, its successors and assigns, for the benefit of CRD and the general public, an irrevocable right-of-entry to use the Premises and any adjoining property owned by Municipality necessary to provide normal and reasonable means of access to the Premises for the provision and use of commuter railway services for the Term.

If the Project includes commuter rail parking, Municipality shall use its best efforts to insure that the Premises and all of its other commuter rail parking is available to both residents of Municipality and nonresidents for parking. Daily fee parking lot fees, if any, set and collected by Municipality shall be standardized for all patrons of the Premises and Municipality shall under no circumstances discriminate against nonresidents of the Municipality in setting parking fees. The Improvement shall be operated as a daily fee parking lot with spaces available on a first come-first served basis after 8:15 a.m. The Municipality shall not increase the parking fees in effect with respect to the Premises without having first received the prior written consent of Metra's Executive Director. Metra reserves the right, at any time, to review and approve the amount of the parking fees charged by Municipality.

4. MAINTENANCE:

(a) Municipality, at its own cost and expense, shall manage the Improvement and shall be responsible for the performance of "**Routine Maintenance**" throughout the Use Term. Routine Maintenance shall include but shall not be limited to snow removal, insurance, lighting upkeep, sealing and patching pavement, patrolling the Premises and payment of utility expenses associated with the operation of the Improvement. Municipality shall also be responsible for capital improvements to the Improvement including but not limited to major rehabilitation, excavation, demolition of structures, new construction, light standard placement, or replacement necessitated by damage to a structure. In the event Municipality fails to manage, operate, or maintain the Premises and the Improvement in accordance with the terms and provisions of this Agreement, Metra shall send written notice of such noncompliance and allow Municipality a reasonable period of time to comply. In the event the Municipality fails to comply as set forth above, Metra may provide, or cause to be provided, such management, operation and maintenance services and Municipality shall reimburse Metra for the cost of said management, operation and maintenance services within thirty (30) days of Municipality's receipt of a written demand for payment from Metra. If any damage to the Improvements results, the Municipality agrees that CRD may require the Municipality to restore the Improvements to their original condition or refund CRD's interest in the Improvements in accordance with Section 13 of this Agreement.

(b) Municipality agrees to provide access to the Premises to Metra and the public over and through the existing roadways and easements should such access be deemed necessary by Metra. Municipality further agrees that Metra shall not be responsible for the care or maintenance (including snow removal) of said roadways.

(c) Municipality, at its own cost and expense, shall be responsible for the "**Standard Maintenance**" of all landscaping, if any, on and along the Improvements. For purposes of this Agreement, Standard Maintenance shall mean watering, weeding, mowing, trimming, and mulching as dictated by the specific plantings on the Premises.

(d) Metra reserves the right to relocate the Improvement or any portion thereof, at its own

cost and expense, in the vicinity of the Premises with no liability for damages to Municipality's interest in the Improvement resulting from such relocation; provided, however, that Metra shall give Municipality sixty (60) days prior written notice of its intention to relocate the existing Improvement or portion thereof.

5. **REPORTING.** If during the Use Period the Improvements are not used in mass transportation service, whether by planned withdrawal, misuse or casualty loss, Municipality shall immediately notify CRD in writing.

6. **COMPLIANCE (LEGAL AND INSURANCE).**

(a) Municipality shall not use or permit upon the Premises anything that will invalidate any policies of insurance held by Metra or Municipality now or hereinafter carried on or covering the Premises or any improvements thereon. Municipality shall manage, operate, maintain and use the Premises and Improvements thereon in compliance with the requirements of all local, state and federal ordinances, laws, rules and regulations in effect during the Term.

(b) With respect to the Improvements on the Premises, Municipality agrees to furnish insurance in form and in such amounts as required by Metra's Risk Management Department (312-322-6991) and shall deliver to Metra's Risk Management Department certificates of insurance or such other documentation acceptable to Metra's Risk Management Department evidencing the acquisition of the required insurance. Such policies of insurance or self-insurance shall include commercial general liability, automobile, workers compensation, and when required, railroad's protective liability insurance coverage as stated on **Exhibit A-2**, attached to and made a part of this Agreement ("**Insurance Requirements**"). To the extent permitted by law, said insurance shall show Metra, RTA, the NIRCRC, their respective directors, administrators, officers, employees, agents, successors, and assigns, as additional insureds and shall be endorsed to assume the contractual obligations of Municipality as set forth in this Agreement. A duplicate copy of such insurance policy or a certificate of insurance and signed copy of a report showing established insurable value shall be furnished to Metra and must show on the insurance policy or the certificate of insurance that Metra will be properly notified in writing at least thirty (30) days prior to any modification or cancellation of such policy.

(c) Municipality and its agents shall not permit the existence of any nuisance, dangerous or hazardous conditions, or allow dangerous, explosive, flammable, or combustible materials on the Premises which would increase or tend to increase the risk of fire; and further, the Municipality or its agent shall keep, observe and comply with all federal, state and local rules, regulations, ordinances, and laws having jurisdiction over the Premises. If, as a result of the Municipality's occupancy of the Improvements on the Premises hereunder, any such rule, regulation, ordinance or law is violated, the Municipality shall protect, hold harmless, defend and indemnify Metra, RTA and NIRCRC from and against any and all losses, penalties, fines, costs, damages or

expenses, including court costs and attorneys' fees, caused by, resulting from, or connected with such violation or violations.

(d) Municipality and its agents agree to use their reasonable best efforts to prevent the occurrence of contamination, hazardous or toxic substances or wastes or any related environmental damage or condition on the Premises during the Use Term. Should any contamination or other environmental condition occur or result from Municipality's use or occupancy of the Premises, Municipality will be responsible for all costs associated with its mitigation, cleanup and any related liability. Municipality specifically agrees to indemnify, defend and hold harmless Metra, RTA and NIRCRC from all such loss, damages, costs or liabilities, including court costs and attorneys' fees, arising from Municipality's use or occupancy of the Premises.

(e) Municipality's failure to obtain or to cause its contractors to obtain proper insurance coverage or to insure Metra, the RTA or the NIRCRC as additional insureds shall not, at any time, operate as a waiver to Metra's right to indemnification and defense against any claims, damages or injuries covered under the terms and provisions of this Agreement.

7. INDEMNIFICATION AND WAIVER.

(a) To the fullest extent permitted by law, the Municipality hereby assumes and agrees to release, acquit, waive any rights against and forever discharge the Indemnitees and all other persons, firms and corporations acting on behalf of or with the authority of the Indemnitees from and against any and all claims, demands or liabilities imposed upon them by law or otherwise of every kind, nature and character on account of personal injuries, including death at any time resulting there from, and on account of damage to or destruction of property, arising from any accident or incident which may occur to or be incurred by the Indemnitor, its employees, officers, agents and all other persons acting on its behalf while on the Premises except to the extent caused by the reckless or willful misconduct or negligence of Metra, the RTA, NIRCRC, or their respective directors, officers, agents or employees. Notwithstanding anything in this Agreement to the contrary, the waivers contained in this paragraph shall survive termination of this Agreement.

(b) To the fullest extent permitted by law, the Municipality agrees to indemnify, defend and hold harmless the Indemnitees from and against any and all liabilities, losses, damages, costs, payments and expenses of every kind and nature (including court costs and attorneys' fees) claims, demands, actions, suits, proceedings, judgments or settlements, arising out of or in any way relating to or occurring in connection with Municipality's construction on or use of or the condition of the Improvements, except to the extent caused by the reckless or willful misconduct or negligence of Metra, the RTA, the NIRCRC or their respective directors, officers, agents or employees. Metra agrees to notify the Municipality in writing within a reasonable time of any claim of which it becomes aware which may fall within this indemnity provision. The Municipality further agrees to defend the Indemnitees against any claims, suits, actions or proceedings filed against any of them

with respect to the subject matter of this indemnity provision, whether such claims, suits, actions or proceedings are rightfully or wrongfully made or filed; provided, however, that the Indemnitees may elect to participate in the defense thereof at their own expense or may at their own expense employ attorneys of their own selection to appear and defend the same on behalf of the Indemnitees. The Municipality shall not enter into any compromise, or settlement of any such claims, suits, actions or proceedings without the consent of Metra, which consent shall not be unreasonably withheld. Notwithstanding anything in this Agreement to the contrary, the indemnities contained in this paragraph shall survive termination of this Agreement.

(c) The indemnification and hold harmless provisions set forth in this Agreement shall survive termination of this Agreement and shall not be construed as an indemnification or hold harmless against and from the negligence of CRD, RTA or NIRCRC with respect to any party performing work on the Premises to the extent such violates the Illinois Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq.

8. CONTRACTOR INDEMNIFICATION AND INSURANCE.

(a) In all contracts executed by Municipality for maintenance of the Improvements (including snow removal) or for the construction, rehabilitation, improvement, repair or maintenance of structures, facilities or improvements located on the Premises, or to be located on such Premises, Municipality will require appropriate clauses to be inserted requiring contractors to indemnify, hold harmless and defend Metra, RTA and NIRCRC, their directors, employees, agents, licensees, successors and assigns from and against any and all risks, liabilities, claims, demands, losses, and judgments, including court costs and attorneys' fees, arising from, growing out of, or related in any way to work performed by such contractor(s), or their officers, employees, agents or subcontractors, and their agents or employees, except to the extent caused by the reckless or willful misconduct or negligence of the Municipality or its directors, officers, agents or employees.

(b) Municipality will further cause appropriate clauses to be inserted in all such contracts requiring contractors to procure and maintain comprehensive policies of insurance, insuring contractor, Metra, RTA and NIRCRC, their directors, employees, agents, successors and assigns from and against any and all risks, liabilities, claims, demands, losses and judgments, including court costs and attorneys' fees, arising from, growing out of or in any way related to the work performed or to be performed by such contractor(s), whether or not any such liability, claim, demand, loss or judgment is due to or arises from the acts, omissions or negligence of such contractor(s), or their officers, employees, agents or subcontractors and their agents or employees.

9. **LIENS.** If, because of any act or omission of Municipality or its officers, employees, contractors, subcontractors or agents, any mechanic's lien or other lien, charge, or order for the payment of money shall be filed against any portion of the Improvements, Municipality shall, at its own cost and expense, cause the same to be discharged of record within thirty (30) days or provide a bond or security acceptable to CRD sufficient to discharge such lien and any interest accrued

thereon.

10. **ASSIGNMENT.** This Agreement shall bind and inure to the benefit of the respective successors or assigns of Municipality and CRD, if any. Except for transfers or assignments to successor public agencies or to a receiver, master, sheriff, trustee in bankruptcy or other assignee by operation of law, neither Municipality nor CRD shall assign this Agreement or any interest therein, or sublet the same, without the written consent of the other party. Such consent will not be unreasonably withheld.

11. **UTILITIES.** Municipality will pay for all heat, water, gas, electricity and other utility expense incurred with respect to the construction, operation or maintenance of the Improvements.

12. **VALIDITY.** The invalidity or unenforceability of any provision of this Lease shall not effect or impair any other provision.

13. **IMPROVEMENTS.** CRD shall own the Improvements constructed on the Premises with CRD funds, including without limitation, the commuter parking facilities described in the Plans, and all other materials used to improve the Premises and related or appurtenant facilities, equipment, or fixtures. In the event this Agreement is terminated for any reason by Municipality and CRD has not defaulted under the terms and conditions of this Agreement or Municipality defaults under the terms and conditions of the Agreement and, as a result of such Municipality default, CRD is forced to terminate this Agreement, CRD shall be compensated by Municipality for the Improvements. Compensation shall be based upon the remainder of the period beginning on the date which the Improvements are first used in the facilitation of commuter services and ending on the later of the expiration of: (a) twenty (20) years from such date; or (b) if such actual useful life (as determined by CRD in its sole discretion) is more than twenty (20) years, the end of the actual useful life of such Improvements ("**Use Period**"). In either (a) or (b), compensation shall be in an amount equal to the average of the original cost and the replacement cost of each such Improvement taken out of service because of termination, reduced by that percentage of the Use Period which has expired before such termination. Such payment shall be made in full within ninety (90) days after Municipality's termination of this Agreement or interest at a rate of one percent (1%) per month pursuant to the Illinois Local Government Prompt Payment Act, 50 ILCS 505/4, and shall accrue on any unpaid balances due from the date payment is due until paid. In the event this Agreement is terminated for any reason by CRD and Municipality has not defaulted under the terms and conditions of this Agreement or CRD defaults under the terms and conditions of this Agreement and, as a result of such CRD default, Municipality is forced to terminate this Agreement, Municipality shall not be required to compensate CRD for the Improvements; provided, however, that Metra may, at its sole destruction and cost, remove the Improvements including, without limitation, lighting fixtures, benches, and railings or transfer ownership (by quit claim or bill of sale) of the Improvements to the Municipality. The Municipality shall accept the transfer of the Improvements in "as is" condition.

14. REVENUES.

(a) All parking fees or other revenue derived from Municipality's use of Improvements ("**Revenues**") shall first be utilized for Routine Maintenance, Standard Maintenance and administrative expenses incurred from the operation of the Improvements. The remainder shall be deposited in a capital improvement account to be used for future renovation or rehabilitation of the Improvements.

(b) Municipality shall establish and maintain adequate accounting records of all Revenues based on generally accepted accounting principles consistent with the manner Municipality maintains records of its other accounts in order to insure compliance with this Agreement. Municipality shall permit and shall require its contractors to permit Metra, RTA, NIRCRC or any other agency authorized to perform such audit and inspection, to inspect all work, material and other data and records with regard to the Revenue collected and to audit the books and accounts of Municipality and its contractors with respect to said Revenues. Metra shall have the right to conduct an annual audit of Municipality's records relating to the Revenue collected and Municipality shall make its records available to Metra at mutually convenient times. The Municipality provides its Comprehensive Financial Report as well as its proposed budget on the Internet at www.downers.us. Furthermore, Municipality shall immediately notify Metra if the Improvements are to be used in a manner substantially different from that intended by this Agreement. At the option of Metra, Metra and Municipality shall conduct a yearly joint inspection of the Premises to assure compliance with the terms of this Agreement.

15. **LICENSE TO OPERATE.** Municipality shall pay for the cost of any licenses, permits or fees required by federal, state or local rule, regulation, ordinance or law necessary to manage, operate and maintain the Improvements.

IN WITNESS WHEREOF, CRD and Municipality hereby enter into this Agreement as of the date and year first above written.

VILLAGE OF DOWNERS GROVE:

COMMUTER RAIL DIVISION:

By: Brian Krzycki

By: [Signature]

Its: Mayor

Its: Executive Director

ATTEST:

ATTEST:

By: April H. Holden

By: [Signature]

Its: Village Clerk

Its: Assistant Secretary

STATE OF ILLINOIS)
COUNTY OF DePage)

Before me, Carol Conforti, a Notary Public within and for the State and County aforesaid, personally appeared Brian Krzycki and April Holden, with whom I am personally acquainted and who, upon their oaths acknowledged themselves to be the Mayor and Village Clerk of the Village of Downers Grove an Illinois municipal corporation, and that they as such Mayor and Village Clerk, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing and attesting the same. Witness my hand and official seal at Downers Grove on the 5th day of July, 2005

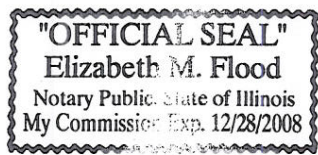
[Signature]
Notary Public

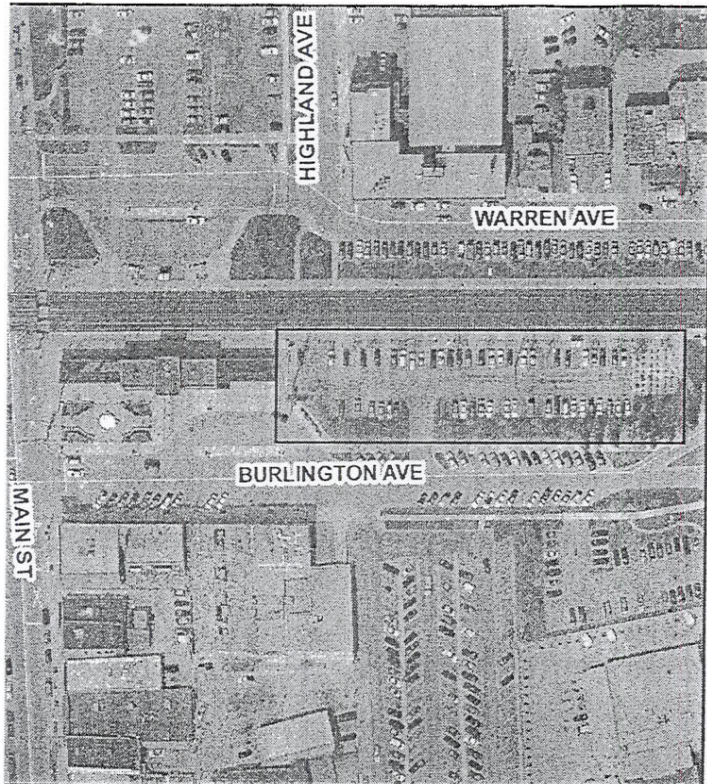


STATE OF ILLINOIS)
)
COUNTY OF COOK)

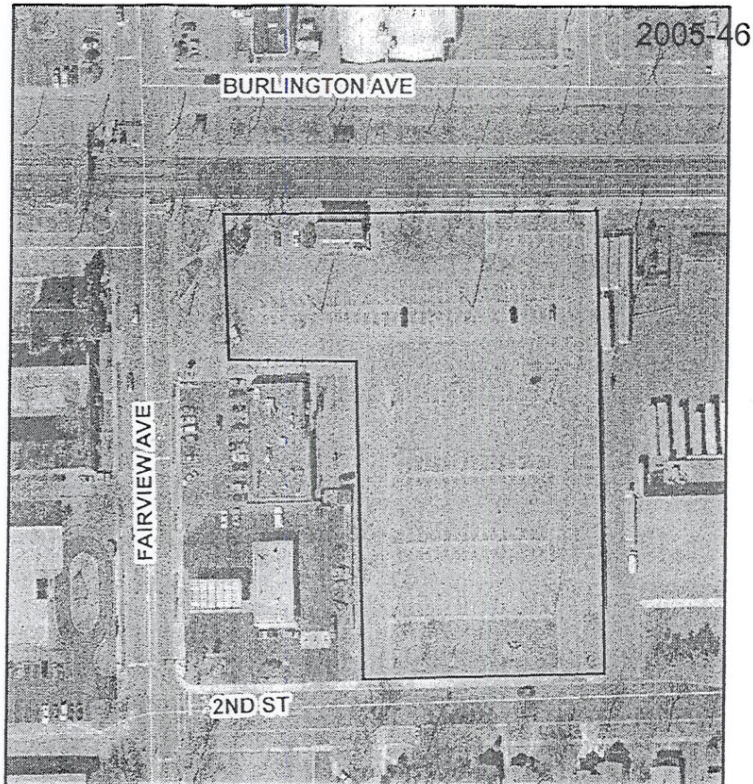
Before me, Elizabeth M. Flood, a Notary Public within and for the State and County aforesaid, personally appeared Philip A. Pagano and Elizabeth M. Murphy, with whom I am personally acquainted and who, upon their several oaths acknowledged themselves to be the Executive Director and Assistant Secretary respectively of the Commuter Rail Division, and that they as such Executive Director and Assistant Secretary being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing and attesting the same. Witness my hand and official seal at Chicago, Illinois on the 1st day of May, 2005.

Elizabeth M. Flood
Notary Public

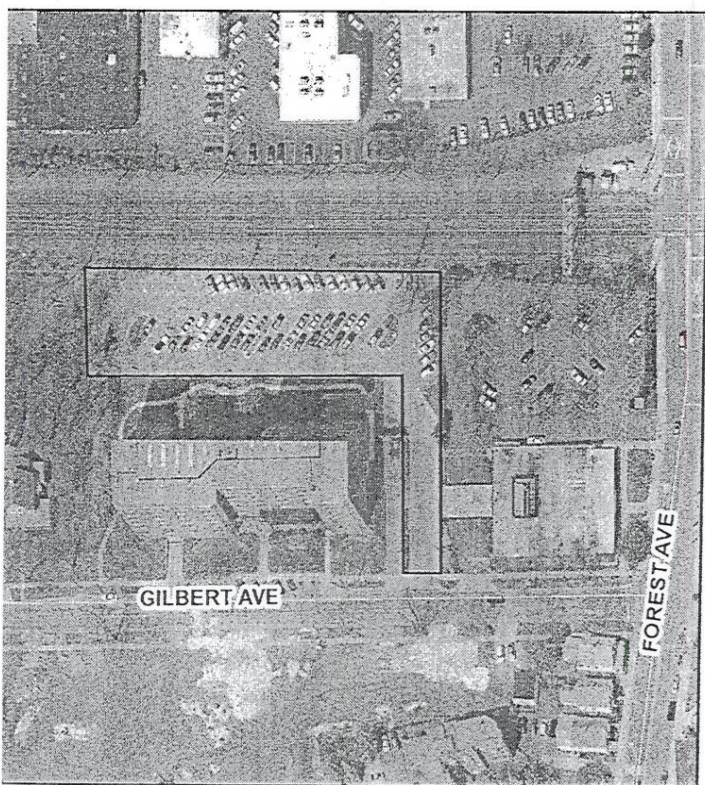




Main Street Lot B (Metra Lot 8)



Fairview Avenue Lot I (Metra Lot 4)



Main Street Lot D (Metra Lot 12)



Belmont Road Lot H (Metra Lot 4)

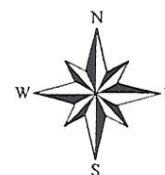


Exhibit A-2

COMMUTER PARKING FACILITY IMPROVEMENT GRANT AGREEMENT

INSURANCE REQUIREMENTS

The Municipality/Contractor shall take out and maintain during the life of this Agreement, the following insurance as specified by the insertion of policy limits and such other insurance as the Northeast Illinois Regional Commuter Railroad Corporation D/B/A Metra and the Commuter Rail Division from time to time may require.

Type of Coverage	GENERAL POLICY HOLDER RATING OF _____ OR BETTER	FINANCIAL RATING OF _____ OR BETTER - AS PUBLISHED BY BEST'S KEY RATING GUIDE	Amount Required
1. Worker's Compensation Coverage A – Statutory Coverage B - \$ _____ Policy to include a waiver of subrogation			\$ <u>500,000</u> _____ _____
2. COMPREHENSIVE GENERAL LIABILITY (Broad Form): Bodily Injury Liability & Property Damage (COMBINED) Policy to include a waiver of subrogation			\$ <u>1,000,000</u> _____ Each Occurrence \$ <u>2,000,000</u> _____ Aggregate
3. Railroad Protective Liability: Bodily Injury Liability & Property Damage (COMBINED)			\$ <u>2,000,000</u> _____ Each Occurrence \$ <u>6,000,000</u> _____ Aggregate
4. Automobile Liability Bodily Injury Liability & Property Damage (COMBINED)			\$ <u>1,000,000</u> _____ Combined Single Limit
5. OTHER INSURANCE			\$ <u>N/A</u> _____

Additional Insured shall be as follows: NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION d/b/a Metra and the COMMUTER RAIL DIVISION _____

The Municipality/Contractor shall not commence work /activity herein until each has obtained the required insurance and has received approval of such insurance by Metra. Certificates of Insurance indicating amounts and coverages in force shall be furnished to Metra within ten (10) days after the date of this agreement and/or the award of contract.

All policies are in effect at this time and will not be cancelled, modified, limited or allowed to expire without renewal until 30 days written notice has been given to Metra. Such notice shall be sent by certified mail to Metra, care of the Risk Management Director, 15th Floor, 547 W. Jackson Blvd., Chicago, IL. 60661.

The Municipality's/Contractor's policy will insure all liabilities assumed by the Municipality/Contractor under the provisions of the Hold Harmless and Indemnity Clause contained in the contract. The Municipality/Contractor shall be responsible for arranging that all subcontractors/sub-tenants maintain the necessary insurance requirements.

EXHIBIT "B"
APPROVED PROJECT BUDGET

AGREEMENT BETWEEN METRA
AND THE
VILLAGE OF DOWNERS GROVE

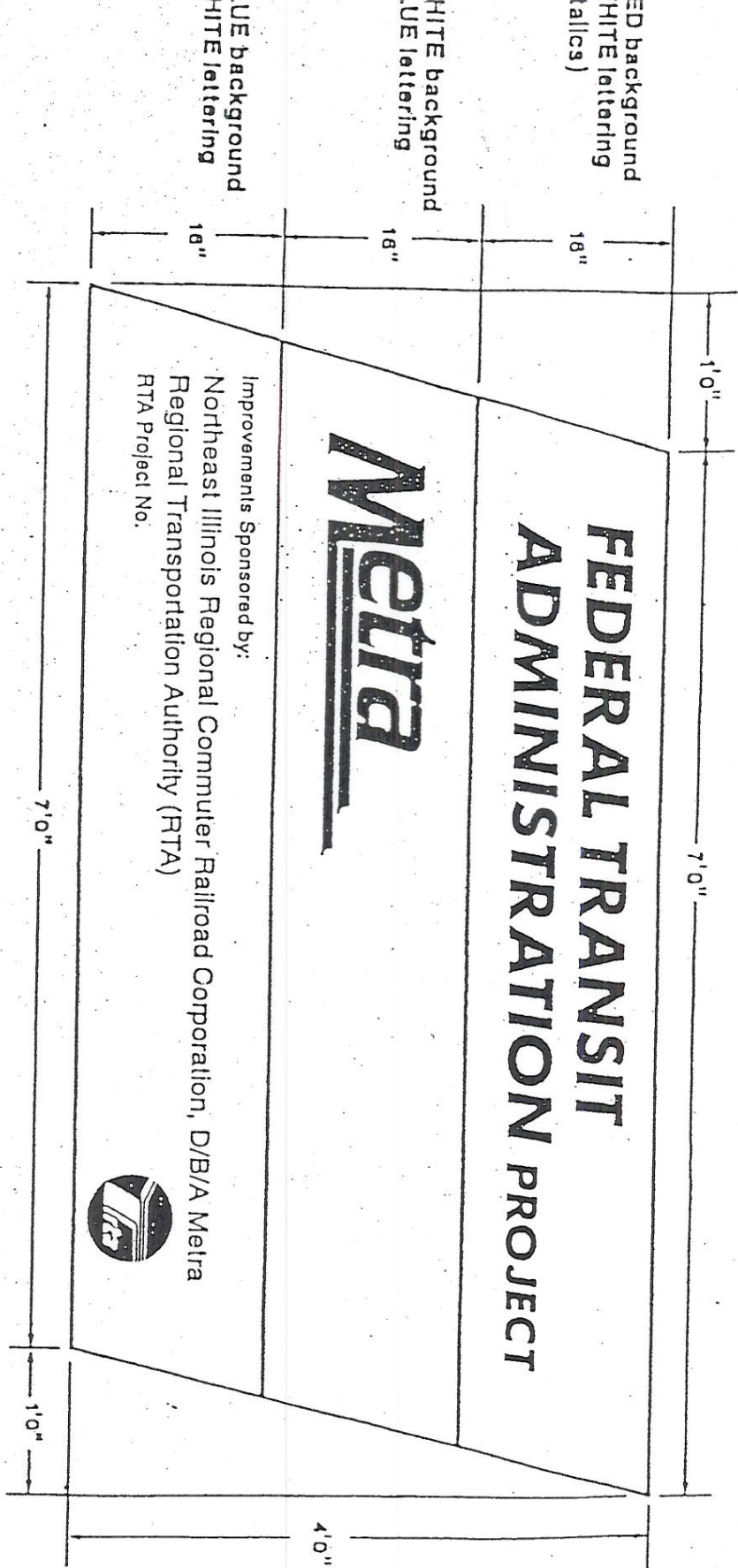
GRANT NUMBERS:
IL-90-X474/MET-062

PROJECT NO: 3872

CONTRACT NO: K00454

PROJECT DESCRIPTION: Renewal of Lot B

VILLAGE OF DOWNERS GROVE ACTIVITY	PROJECT BUDGET
Construction Lot B	\$200,000.00
Agreement Contingency	\$20,000.00
CK3872-53404006	TOTAL <u>\$220,000.00</u>



ED background
HITE lettering
(alics)

HITE background
UE lettering

UE background
HITE lettering

lettering: Futura Bold Italic (top)
Futura Bold (center)
Futura Demi Bold (bottom)
A Logo: Black circle, reversed
ite letters

EXHIBIT "C"

PROJECT SIGNS

1. One sign shall be erected at each major entrance to the project for maximum public identification of the work, and shall be maintained in good condition until completion of the project. Upon project completion, the signs shall be removed.
2. Signs are to be cut from standard 4' X 8' waterproof plywood sheets, or other suitable material, and shall meet the design standards shown in the drawing attached. The supports for the signs shall be furnished by the contractor and approved by the engineer.
3. The sign may be varied to meet special requirements of the situation, but proportions shall be maintained.
4. The center white panel will indicate briefly the nature of the project, such as "DEERFIELD COMMUTER RAIL STATION REHABILITATION". Copy should be limited to two lines if possible.
5. No information shall be included on the project signs except that stipulated in the above paragraphs or the drawings below.
6. Lettering and colors: Lettering and colors should have a minimum life of five years.
7. Back of sign to be painted white and edges to be painted white.
8. Notify Metra for inspection before shipment.
9. Signs to have face protection for shipment.
10. Signs will be promptly replaced or repaired, at no additional cost to Metra, if it is damaged, vandalized or stolen.

**ADDENDUM TO AN AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS GROVE AND
THE COMMUTER RAIL DIVISION
OF THE REGIONAL TRANSPORTATION AUTHORITY**

THIS ADDENDUM dated this 7th day of March, 2006, by and between the Village of Downers Grove, an Illinois municipal corporation (hereinafter referred to as "Village"), and the Commuter Rail Division of Regional Transportation Authority ("CRD"), in consideration of the following mutual covenants, terms and agreements, hereby agree to amend the Parking Facility Improvement Grant Agreement ("Agreement") between the Village of Downers Grove and CRD, whose effective date was May 1, 2005, as follows:

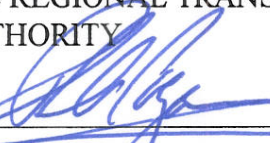
1. That Exhibit B will be amended to provide for Phase 2 funding in accordance with the Amended Exhibit B attached hereto and made a part to this Addendum Agreement and hereby attached to and made a part to the Agreement.
2. All terms and conditions of the May 1, 2005 Agreement and any other addendums thereto shall apply equally to this Addendum Agreement.


IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed as of the day and year first specified above.

VILLAGE OF DOWNERS GROVE

THE COMMUTER RAIL DIVISION OF
THE REGIONAL TRANSPORTATION
AUTHORITY

BY: 

BY: 

ATTEST: 

ATTEST: 

DATE: 3/21/06

DATE: 3/31/06

AMENDED
 EXHIBIT "B"
 APPROVED PROJECT BUDGET

 AGREEMENT BETWEEN METRA
 AND THE
 VILLAGE OF DOWNERS GROVE

GRANT NUMBERS:
 IL-90-X474/MET-062
 IL-90-X496

PROJECT NO: 3872
 CONTRACT NO: K00454

PROJECT DESCRIPTION: Renewal of Lots B,D,H & I

VILLAGE OF DOWNERS GROVE ACTIVITY	PREVIOUS BUDGET	FY2005 GRANT FUNDING	NEW APPROVED BUDGET
<u>Lot B Funding</u>			
CK3872-53404006	\$ 200,000.00		\$ 200,000.00
<u>Contingency</u>			
CK3872-53404006	\$ 20,000.00		\$ 20,000.00
<u>Lot D Funding</u>			
CY3872-53404006		\$ 250,000.00	\$ 250,000.00
TOTAL	\$ 220,000.00	\$ 250,000.00	\$ 470,000.00

**SECOND ADDENDUM TO AN AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS GROVE AND
THE COMMUTER RAIL DIVISION
OF THE REGIONAL TRANSPORTATION AUTHORITY**

THIS SECOND ADDENDUM dated this 2nd day of October, 2007, by and between the Village of Downers Grove, an Illinois municipal corporation (hereinafter referred to as "Village"), and the Commuter Rail Division of Regional Transportation Authority ("CRD"), in consideration of the following mutual covenants, terms and agreements, hereby agree to amend the Commuter Parking Facility Improvement Grant Agreement ("Agreement") between the Village and CRD, whose effective date was May 1, 2005, as follows:

1. That Exhibit B is hereby amended to increase the funded amount of the Agreement to \$1,035,000 in accordance with the amended Exhibit B attached to and made a part of this Second Addendum and hereby attached to and made a part of the Agreement.

2. All terms and conditions of the May 1, 2005 Agreement and any other Addendums thereto shall apply equally to this Second Addendum.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed as of the day and year first specified above.

VILLAGE OF DOWNERS GROVE:

By: *Curt J. Parkin*

Attest: *Amrit K. Dhillon*

Date: October 3, 2007

THE COMMUTER RAIL DIVISION OF
THE REGIONAL TRANSPORTATION
AUTHORITY:

By: *[Signature]*

Attest: *Debra M. Egan*

Date: October 16, 2007

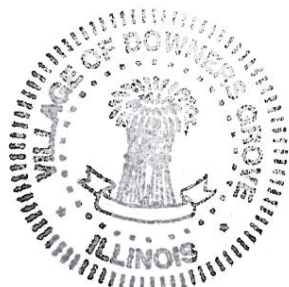


EXHIBIT "B"
APPROVED PROJECT BUDGET

AGREEMENT BETWEEN METRA
AND THE
VILLAGE OF DOWNERS GROVE

	GRANT NUMBERS:	CFDA NO.	PROJECT NO:	CONTRACT NO:
(CK)	IL-90-X474/MET-062	20.507	3872	K00454
(CY)	IL-90-X496	20.507		
(DU)	IL-05-0053	20.500		

PROJECT DESCRIPTION: Renewal of Lots B,D,H & I

VILLAGE OF DOWNERS GROVE ACTIVITY	PREVIOUS BUDGET	FY2007 GRANT FUNDING	NEW APPROVED BUDGET
Lot B Funding			
CK3872-53404006	\$ 200,000.00		\$ 200,000.00
Contingency			
CK3872-53404006	\$ 20,000.00		\$ 20,000.00
Lot D Funding			
CY3872-53404006	\$ 250,000.00		\$ 250,000.00
Lot H & I Funding			
DU3872-53404006	\$ -	\$ 510,000.00	\$ 510,000.00
Contingency			
DU3872-53404006	\$ -	\$ 55,000.00	\$ 55,000.00
TOTAL	\$ 470,000.00	\$ 565,000.00	\$ 1,035,000.00