

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
JUNE 3, 2014 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Amendment to Lease with the Downers Grove Sanitary District	✓ Resolution Ordinance Motion Discussion Only	David Fieldman Village Manager

SYNOPSIS

A resolution has been prepared authorizing execution of an amendment to the lease with the Downers Grove Sanitary District for the property located at 5101 Walnut Avenue (Public Works Facility).

STRATEGIC PLAN ALIGNMENT

The goals for 2014 to 2018 identified *Exceptional Municipal Services*.

FISCAL IMPACT

The adopted FY14 budget includes \$35,000 in the General Fund for the annual lease payments.

UPDATE & RECOMMENDATION

This item was discussed at the May 20, 2014 Village Council meeting. Staff recommends approval on the June 3, 2014 Consent Agenda.

BACKGROUND

Since 1996 the Village has leased land located on the north side of the Public Works facility at 5101 Walnut Avenue from the Downers Grove Sanitary District. The property, owned by the District, is improved with the Public Works north parking lot and the salt dome. The Village entered into the lease when the Public Works facility was constructed. The annual lease payments are based on an appraisal of the land completed in 1996 and increase each year based on the Consumer Price Index. To date, the Village has paid approximately \$510,000 to the District for use of the land.

The proposed salt dome would be located on the leased parcel. The potential construction of a new salt dome prompted the Village to pursue amendments to the lease that would reduce the likelihood that the Village would have to remove the salt dome from the property due to a termination of the lease by the District. The key terms of the amendment are as follows:

- The term of the lease would be ten years from the date of the execution of the amendment (this is the longest lease term permitted by the Illinois Sanitary District Act). The lease may be renewed upon written consent of the Village and District.
- The Village would be permitted to construct and operate a new salt dome on the property.
- The District may terminate the lease only if the District finds it necessary to use the property for District facilities required by the United States or Illinois Environmental Protection Agency. The lease would terminate five years after the District notifies the Village of the termination.
- The District shall not be required to pay stormwater utility fees attributable to the Village improvements made on the property.

ATTACHMENTS

Resolution

Map of Leased Property
Amended Lease
Summary of Annual Lease Payments – 1996 to Present

RESOLUTION NO. ____

**A RESOLUTION AUTHORIZING EXECUTION OF AN AMENDMENT
TO A LEASE 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 Agreement (the “Agreement”), between the Village of Downers Grove (the “Village”) and the Downers Grove Sanitary District (the “District”), for a lease amendment for property located on the north side of the Public Works Facility at 5101 Walnut Avenue, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

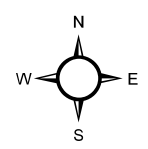
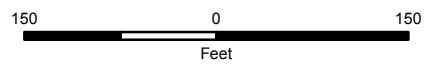
Mayor

Passed:

Attest: _____
Village Clerk



Sanitary District Leased Property



AMENDED LEASE

THIS AMENDED LEASE is made and entered into this _____ day of _____, 2014, by and between the Downers Grove Sanitary District, a sanitary district created and existing under the laws of the State of Illinois, (hereinafter referred to as the "District"), and the Village of Downers Grove, an Illinois Municipal Corporation (hereinafter referred to as "the Village").

For and in consideration of the mutual covenants, conditions, and agreements herein set forth, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The District is the owner of the real estate depicted in Exhibit A which is attached hereto and incorporated herein entitled "Village of Downers Grove Public Works Facility Downers Grove, Illinois Lease Area", prepared by Rust Environment & Infrastructure dated September 17, 1996 (hereinafter referred to as "the Parcel"). The Village is the owner of the real estate legally described in Exhibit B, which is attached hereto and incorporated herein (hereinafter referred to as "the Village Property").

2. The term of this Amended Lease shall conclude on September 16, 2034ten (10) calendar years after the date this lease is made and entered. ~~District leases the Parcel herein described to Village for a term of ten (10) years commencing September 17, 1996, and concluding September 16, 2006, for use by Village in conjunction with the construction of a public works facility on Village property. The Village shall use the Parcel in conjunction with the Village's public works facility located on the Village Property.~~ This lease may be renewed thereafter upon the mutual written consent of the parties. Provided, however, that if the District finds it necessary to utilize the Parcel for District facilities required by the Federal or State EPA, their successors, or a court of competent jurisdiction, ~~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 EPA, their successors or assigns, or any court of competent jurisdiction,~~ the District shall notify the Village in writing, and this lease shall terminate ~~two (2)~~ five (5) calendar years after the Village's receipt of such notice. While the District has no current plan to utilize the Parcel for District ~~storage or~~ facilities within the term of this Lease, the parties mutually acknowledge that the District is subject to statutes, rules and regulations of both Federal and State governments and their regulatory agencies. The Village shall endeavor to vacate the premises sooner as needed to meet the District's regulatory need unless a period shorter than five (5) years creates an unanticipated hardship. The Village may terminate this lease upon thirty (30) days written notice to the District.

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

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

CPI-U shall mean the Consumer Price Index for all categories of goods for all urban consumers for the Chicago area as published by the U.S. Department of Labor. An example of the

calculation of the computed lease payment is shown on Exhibit C attached hereto and incorporated herein.

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

4. The Parcel is currently exempt from the assessment of any real estate taxes. Both parties anticipate that said exemption will not be changed due to this lease. In the event the District is assessed any real estate taxes against the Parcel due to the Village's use of the Parcel, the Village agrees to pay any and all said real estate taxes which are directly attributable to its use of the Parcel in addition to the lease amount contained herein. The Village shall make payment of said real estate taxes to the District prior to the due date(s) of said taxes.

5. The District shall not be responsible for payment of the Village of Downers Grove storm water utility fee directly related to any Village improvements on the Parcel during the term of this Lease.

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

7. The Village is authorized to improve the Parcel at its sole expense, substantially in conformance with the plan attached hereto and incorporated herein as Exhibit C.

8. 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~~ making its improvements thereon, if so requested by the District. In the event the Village is unable or unwilling to restore the Parcel, the Village hereby gives the District full authority to do so, without any liability on the District's behalf, and the Village hereby agrees to reimburse the District promptly for any and all expenses reasonably incurred in connection therewith.

9. The 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 Parcel have been made by the District.

10. The Village shall maintain all landscaped areas and shall keep the Parcel in a clean, neat, orderly and sightly condition to the 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 the Village's use of the Parcel.

11. Options to Purchase

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

failed attempts to sell the Village Property.

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

12. 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 maintenance or repair of the improvements placed on the Parcel by the Village. The Village further agrees to defend, indemnify and hold harmless the District, its General Manager, members of the Board of Trustees, members of the Board of Local Improvements, officers, employees and agents thereof, individually from any claim, suit, demand, set-off or other action against any of the foregoing

described parties arising out of the subject matter of this lease or the District's performance of its obligations hereunder; provided, however, that the obligation of the Village shall not extend to negligent acts or omissions of the District, the General Manager, Board of Trustees, members of the Board of Local Improvements, officers, employees or agents thereof. The obligation of the Village hereunder shall include and extend to payment of reasonable attorney's fees for representation of the District, its trustees, officers, employees and agents in such litigation and includes expenses, court costs, and fees. The District shall provide the Village with prompt, written notice of any possible claim, demand or suit with respect to which the District may seek indemnity from the Village pursuant to the terms of this paragraph.

13. The 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 the District, its agents, servants or employees.

14. The Village shall reimburse the District for any damage to District land, facilities or equipment caused by anyone using the ~~leased-premises~~ Parcel with Village authorization.

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

16. No representations are made by the District to the Village that the parcel is properly zoned for the purposed use. The 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.

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

18. 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 the Village, and nothing stated herein is to be construed as restricting the District from granting rights to other parties or persons, to use property adjacent to the Parcel, providing those rights and access do not interfere with the Village's access to, and use of, the Parcel.

19. The District shall have access, at reasonable times and upon reasonable notice, for its employees, agents, representatives, assigns or grantees to enter upon the Parcel, 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~~ Parcel.

20. 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 property hereunder~~ the Parcel. 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~~ the Parcel.

The Village, at its cost, shall assume the defense of all claims of violation of the Standards, regardless of whether they are asserted against the Village or the District. Notwithstanding the expiration or termination of this Lease, the Village shall remain liable for all costs provided for herein, and shall further remain obligated to defend, indemnify and hold the District harmless for any and all violations or alleged violations of Standards which occurred or

were caused during the term of this Lease. In the event that any claim is finally determined to be caused by the sole negligence of the District, the District shall reimburse the Village for such costs reasonably incurred by the Village.

21. In the event the Village fails to make the monthly payments provided in Paragraph 3 or the Village fails to fulfill any obligation of this lease, the District may unilaterally terminate this lease upon sixty (60) days written notice to the Village.

22. All notices to the parties shall be mailed, postage prepaid, as follows:

To the District:

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

To the Village:

Village of Downers Grove
801 Burlington Ave.
Downers Grove, IL 60515

23. This Lease shall only be amended by a written instrument approved and signed by all parties hereto. Such amendment shall take effect immediately upon its execution.

IN WITNESS WHEREOF, the Parties, pursuant to proper and necessary authorization have executed this Agreement on the date first written above.

**DOWNERS GROVE SANITARY
DISTRICT**

VILLAGE OF DOWNERS GROVE

By:_____

By:_____

Title:_____

Title:_____

ATTEST:

ATTEST:

Clerk

Village Clerk

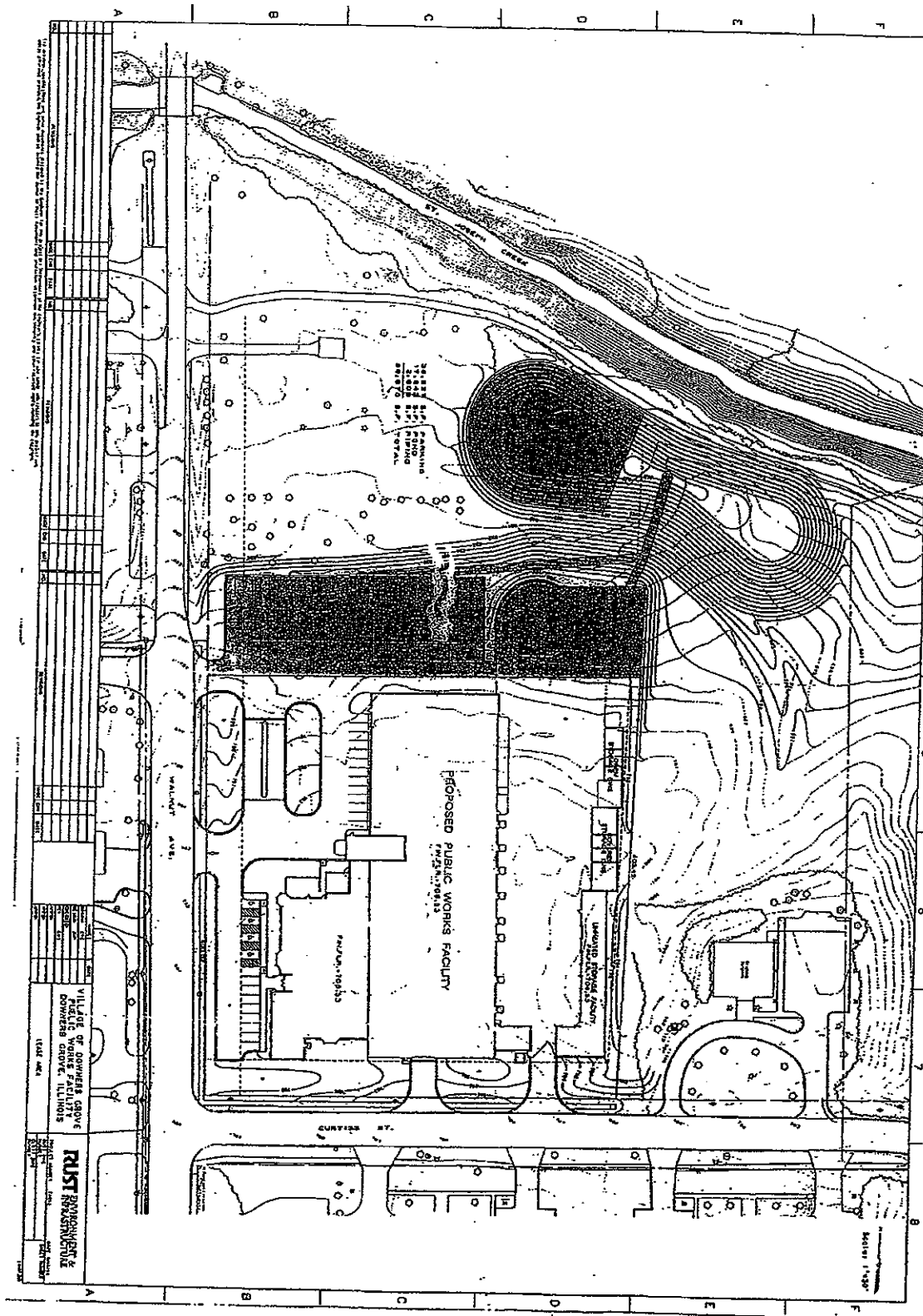


Exhibit A

EXHIBIT B - VILLAGE PROPERTY

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

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

Annual Lease Payments, 1996 to Present

Year	Lease Payment
2014 (through 5/31/14)	13,589.90
2013	32,390.94
2012	32,027.64
2011	31,324.38
2010	31,004.10
2009	31,363.05
2008	30,601.92
2007	29,829.48
2006	29,267.31
2005	29,132.64
2004	28,639.62
2003	27,973.08
2002	27,551.70
2001	27,159.42
2000	26,652.87
1999	25,706.22
1998	25,202.01
1997	24,814.83
1996	6,177.93
Total	510,409.04