

VILLAGE OF DOWNERS GROVE
Report for the Village
12/14/2021

SUBJECT:	SUBMITTED BY:
Downtown Management Corporation (DMC) Agreement	Mike Baker Deputy Village Manager

SYNOPSIS

A resolution has been prepared to authorize execution of the operating agreement between the Village and the Downtown Management Corporation (DMC).

STRATEGIC PLAN ALIGNMENT

The goals for 2021-23 include *Strong, Diverse Local Economy*.

FISCAL IMPACT

The agreement allows the Village to provide annual funding to the DMC in amounts and from sources as deemed appropriate by the Council. The primary funding source identified to fund the DMC is the Downtown Special Service Area (SSA#11).

RECOMMENDATION

Approval on the December 14, 2021 Consent Agenda

BACKGROUND

The Village approved an operating agreement with the DMC in 1999. In December 2019, the Village Council accepted the Plan for the Future of the Downtown, in which the DMC was actively involved. Based on this plan, the original agreement was amended in 2020 for a one-year period of time to allow for the transition to a new DMC Board structure and establishment of SSA#11 following the expiration of SSA#2. The agreement as amended is currently in place.

The proposed operating agreement, which will replace the original agreement, reflects key components and recommendations included in the [DMC's 2021 Strategic Plan](#). These plans were presented to the Council at the August 3, 2021 meeting. The proposed operating agreement includes the following key terms:

- DMC shall perform the following services, duties and responsibilities:
 - Market, promote and facilitate Downtown business attraction, retention and expansion;
 - Organize and manage special functions designed to promote the commercial success of the
 - Pursue opportunities to enhance the aesthetic appearance of the Downtown area
 - Coordinate the management of common services for Downtown businesses, which may include but not be limited to, solid waste collection, maintenance and cleaning services to improve the appearance of the Downtown, and shared parking arrangements;
 - Consult with, and assist property owners and tenants with respect to retailing techniques, including property management practices;

- Work in coordination with the Village to develop and implement a comprehensive aesthetics and property maintenance plan that incorporates the following:
 - Aesthetic enhancements that are impactful and draw residents and visitors, including the presence of art in the Downtown;
 - Use of direct services (by Village or contract), code enforcement activities and direct communication to business and property owners that strives to achieve a clean and well-maintained Downtown area, on both public and private property.
 - Use of planters and landscaped areas throughout the Downtown that are attractive, generally consistent in appearance and cost-effective to install and maintain.
 - Participate in Village planning and zoning efforts involving property in the Downtown.
- DMC shall operate with a Board of Directors and Executive Board in a manner consistent with the by-laws
- The Village shall have 3 ex-officio members on the Board of Directors
- DMC shall prepare a Strategic Plan at a minimum of every five years and submit the plan to the Village
- DMC shall prepare an annual budget and submit it to the Village for review
- The DMC should submit a request for funding each year in conjunction with the submittal of the budget. The funding request shall indicate how the DMC intends to use the funds and what outcomes and results are expected.
- The Village intends on providing funds to the DMC each year to support the DMC's operations.
- The Village will provide funding to the DMC in amounts and from sources that are determined by the Village Council.
- The Village shall provide the DMC with annual funding in 12 equal monthly installment payments
- The DMC shall prepare an Annual Financial Report in a form acceptable to the Village.
- The DMC shall prepare quarterly and annual performance reports which include:
 - Key accomplishments
 - Progress reports on all work plan action items
 - DMC financial information
- The term of the agreement is 10 years and may be extended by mutual written agreement of the Village and DMC

ATTACHMENTS

Resolution

Agreement

RESOLUTION NO. _____**A RESOLUTION AUTHORIZING EXECUTION OF AN
OPERATING AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE
AND DOWNTOWN DOWNERS GROVE, INC.**

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 AAgreement@), between the Village of Downers Grove (the AVillage@) and the Downtown Downers Grove, Inc. (the ACorporation@), for the adoption of an operating 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

**OPERATING AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE
AND DOWNTOWN DOWNERS GROVE, INC.**

THIS AGREEMENT is entered this day of _____, 20____, between the Village of Downers Grove, an Illinois municipal Corporation, with offices at 801 Burlington Avenue, Downers Grove, Illinois (hereinafter referred to as the "Village") and Downtown Downers Grove, Inc. (hereinafter referred to as the "Corporation"), an Illinois non-profit Corporation with offices at 1015 Curtiss, Downers Grove, Illinois.

RECITALS

WHEREAS, Section 10 of Article 7 of the 1970 Constitution of the State of Illinois authorizes units of local government to contract and otherwise associate with individuals, associations, and Corporations in any matter not prohibited by law or by ordinance; and

WHEREAS, the Village strives to maintain and enhance a strong, authentic and vibrant Downtown; and

WHEREAS, a strong, authentic and vibrant Downtown benefits the larger Downers Grove community and provides a destination for formal and informal gathering, exists as a multi-modal transit hub, serves as a location for diverse local businesses, and represents the "heart of the community"; and

WHEREAS, the Corporation is an Illinois no-for-profit Corporation created in 1997; and

WHEREAS, the Village and the Corporation have worked cooperatively on Downtown-related activities since the Corporation's inception; and

WHEREAS, the Village and the Corporation desire to continue to work cooperatively on Downtown-related activities; and

WHEREAS, the Village and the Corporation entered into an operating agreement in 1999;

and

WHEREAS, the Village and the Corporation amended the operating agreement on December 15, 2020; and

WHEREAS, the Village Council accepted the plan for the Future of Downtown and directed staff to proceed with implementation on December 15, 2019; and

WHEREAS, the Village adopted Special Service Area #11 (“SSA #11”) on January 12, 2021 as a source of funding for the Corporation’s operations and activities; and

WHEREAS, the Corporation recently drafted and adopted a Strategic Plan and Work Plan; and

WHEREAS, the Village and the Corporation desire to enter into a new operating agreement, replacing the existing agreement; and

WHEREAS, the 1999 agreement and the 2020 agreement will be declared null and void upon execution of this Agreement, and the Parties intend that this Agreement shall supersede the previous agreement; and

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein, the Village and Corporation agree as follows:

1.0 RECITALS INCORPORATED.

1.1 The foregoing recitals are incorporated as though fully set forth herein.

2.0 CORPORATION AUTHORITY.

2.1 The Corporation warrants that it is the real party in interest to this Agreement, that it is not acting for or on behalf of an undisclosed party, and that it possesses the legal authority to execute this Agreement. Any person binding the Corporation shall, when required, state and/or provide written evidence of the legal authority for his or her agency. If subsequent to the execution

of this Agreement, a person signing on the Corporation's behalf is found not to have the appropriate express or implied authority, the would-be-agency shall be primarily liable under this Agreement as principal in breach of this Agreement. The Corporation acknowledges that it has read, understood and agreed to all provisions of this Agreement.

3.0 CORPORATION'S BUSINESS ORGANIZATION.

3.1 Prior to this Agreement's execution, the Corporation shall be registered to do business in the State of Illinois with the Illinois Secretary of State, and be incorporated as an Illinois non-for-profit Corporation, and shall remain so throughout the term of this Agreement. The Corporation shall also be registered, and approved to operate, as a tax-exempt organization with the United States Internal Revenue Service.

3.2 The Corporation shall hire and maintain a qualified and competent staff to provide all management and administrative services necessary to accomplish the Corporation's mission, goals and objectives and to successfully perform the duties described herein.

4.0 GOVERNANCE

4.1 The Corporation shall operate with a Board of Directors in a manner consistent with the By-Laws in place at the time of the execution of this Agreement (attached hereto and incorporated herein as Exhibit A are said By-Laws).

4.2 The Village shall have up to three (3) ex-officio members on the Board of Directors, in accordance with the By-Laws.

5.0 STATUS OF CORPORATION'S PERSONNEL OR CONTRACTED AGENTS.

5.1 All technical, clerical, and other personnel necessary for the Corporation's performance required by this Agreement shall be the Corporation's employees, volunteers, or contracted agents, and shall in all respects be subject to the Corporation's rules and regulations

governing its employees. Neither the Corporation nor its personnel or contracted agents shall be considered to be agents or employees of the Village.

5.2 The Village, its officials and employees, when acting pursuant to this Agreement are acting as Village officials or employees in their official capacity and not personally or as agents of the Corporation or others.

6.0 CORPORATION'S RESPONSIBILITIES.

6.1 The Corporation shall perform the following services, duties and responsibilities:

6.1.1 Market, promote and facilitate Downtown business attraction, retention and expansion;

6.1.2 Organize and manage special functions designed to promote the commercial success of the area and make application for special commercial event licenses or such other necessary permits and licenses as may be required by the Municipal Code or State law and it is understood that the Corporation will seek a waiver of any applicable fees associated with such permits and licenses;

6.1.3 Pursue opportunities to enhance the aesthetic appearance of the Downtown area;

6.1.4 Coordinate the management of common services for Downtown businesses, which may include but not be limited to, solid waste collection, maintenance and cleaning services to improve the appearance of the Downtown, and shared parking arrangements;

6.1.5 Consult with, and assist property owners and tenants with respect to retailing techniques, including property management practices;

6.1.6 Work in coordination with the Village to develop and implement a comprehensive aesthetics and property maintenance plan that incorporates the following:

- Aesthetic enhancements that are impactful and draw residents and visitors, including the presence of art in the Downtown;
- Use of direct services (by Village or contract), code enforcement activities and direct communication to business and property owners that strives to achieve a clean and well-maintained Downtown area, on both public and private property.
- Use of planters and landscaped areas throughout the Downtown that are attractive, generally consistent in appearance and cost-effective to install and maintain.

6.1.7 At the Village's request, Corporation shall submit written or verbal reports, no more than quarterly, by the Village while this Agreement is in effect;

6.1.8 Participate in Village planning and zoning efforts involving property in the Downtown.

6.1.9 Any additional services which, at the discretion of the Corporation and the Village, are deemed necessary for proper management of the Downtown and which conform with the by-laws of the corporation which may, from time to time, be amended.

7.0 VILLAGE'S RESPONSIBILITIES

7.1 Village shall perform the following services, duties and responsibilities:

7.1.1 Provide services that support events for which the Corporation has obtained a temporary use permit at no direct cost to the Corporation;

7.1.2 Share information in a timely manner regarding Downtown capital projects, Village maintenance activities, financial information and Village-issued temporary use permits;

9.2 The Corporation shall submit the budget to the Village for review on or before a date determined by the Village Manager. The budget submittal date will be coordinated with the Village's preparation and consideration of the Village's budget.

10.0 FUNDING.

10.1 The Corporation should submit a request to the Village for funding each year in conjunction with the submittal of the Corporation's budget. The funding request shall indicate how the Corporation intends to use the funds and what outcomes and results are expected. The funding request should align with the Corporation's action items included in the Strategic Plan.

10.2 The Village intends on providing the Corporation with annual funding to support the Corporation's operations. The funding will be in amounts and from sources (including, but not limited to SSA #11) that are determined by the Village Council and will be provided to the Corporation in twelve (12) equal monthly installment payments.

10.3 Nothing in this Agreement shall obligate the Village to provide funding to the Corporation.

10.4 Payments to the Corporation are subject to the availability of funds and their appropriation and authorized expenditure pursuant to applicable law.

11.0 FINANCIAL REPORTS AND RECORDS.

11.1 The Corporation shall prepare an Annual Financial Report in a form acceptable to the Village, which shall include a detailed list of all revenues received and expenditures incurred, investment activity, names of financial institutions in which funds are deposited, and current balances.

11.2 The Annual Financial Report shall be submitted to the Village no later than June 15 each year. At the request of the Village Manager, the Corporation shall present the Annual

Financial Report to the Village Council at a Village Council meeting.

11.3 At any time during the term of this Agreement, the Village shall have the right to examine the Corporation's financial records and statements with reasonable notice, and during regular business hours.

11.4 The Corporation shall maintain a financial management system that shall be structured to provide for accurate, current, and complete disclosure of the expenditure of all funds provided by the Village under this Agreement. The Corporation shall maintain effective control and accountability over all funds disbursed and equipment, property, or other assets acquired with Village funds. The Corporation shall keep records sufficient to permit the tracing of funds to a level of expenditure adequate to insure that funds have not been unlawfully spent.

12.0 PERFORMANCE REPORTS

12.1 The Corporation shall prepare quarterly performance reports in a manner acceptable to the Village Manager, which shall include the following:

12.1.1 Key accomplishments;

12.1.2 Progress reports on all work plan action items;

12.1.3 Corporation financial information and performance.

12.2 At the request of the Village Manager, the Corporation shall present the quarterly performance reports to the Village Council at Village Council meetings.

12.3 The Corporation shall prepare an annual performance report in a manner acceptable to the Village Manager, which shall include the following:

12.3.1 Key accomplishments;

12.3.2 Progress reports on all work plan action items;

12.3.3 Corporation financial information and performance;

12.3.4 Priority Action items for the next year;

12.3.5 Key performance indicators for the next year.

13.0 TERM OF THIS AGREEMENT.

13.1 The term of this Agreement shall be for a ten (10) year period commencing on January 1, 2022 and terminating on December 31, 2031. This Agreement may be extended by mutual written agreement of the Parties.

14.0 : SUSPENSION

14.1 This Agreement may be terminated by the Village at any time for any reason upon sixty (60) days written notice, or by either party in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party, provided, the non-breaching party shall issue a breach of contract notice detailing the breach and providing sixty (60) days cure period. If after sixty (60) days the breach has not been remedied, the non-breaching party may terminate the Agreement as provided. Termination may render the Corporation ineligible for consideration for future Village grants. This Agreement is also subject to termination by either party if either party is restrained by State or federal law or by a court of competent jurisdiction from performing the provisions of this Agreement. Upon such termination, the liabilities of the parties to this Agreement shall cease, but they shall not be relieved of the duty to perform their obligations up to the date of termination. Mailing of such notice, as and when above provided, shall be equivalent to personal notice and shall be deemed to have been given at the time of mailing.

14.2 The Village's obligations under this Agreement shall cease immediately without penalty of further payment being required if, in any fiscal year, the Village or other funding source fails to appropriate or otherwise make available sufficient funds for this Agreement. In the event a lack of funding occurs in full or in part, the Village shall give the Corporation written notice, which shall set forth the effective date of full or partial termination, or if a change in funding is

required, setting forth the change in funding and changes in the approved budget.

14.3 If the Village terminates this Agreement, the Corporation shall not incur new obligations or costs after the date of the notice of termination, other than the current day to day operational costs and payroll costs. The Corporation shall cancel as many current obligations as possible. The Village shall allow full credit to the Corporation for the Village's share of non-canceled obligations, if properly incurred by the Corporation prior to termination.

14.4 If the Corporation fails to comply with any term of this Agreement, the Village may, after written notice to the Corporation, suspend this Agreement, withhold further payments and prohibit the Corporation from incurring additional obligations of funds, pending corrective action by the Corporation or the Village's decision to terminate this Agreement. The Village may allow such necessary and proper costs which the Corporation could not avoid during the suspension period, provided that such costs were necessary and incurred in accordance with this Agreement.

15.0 INDEMNIFICATION AND INSURANCE.

15.1 The Corporation shall hold harmless and indemnify the Village, its elected officials, officers, employees, and agents from any and all claims, suits, actions, costs, and fees, including but not limited to, attorneys' fees, interest and expenses, growing out of, or connected with the performance of this Agreement, or because of any act or omission, neglect, or misconduct of the Corporation, its officers, employees, agents, volunteers, sub-recipients, independent contractors, or subcontractors.

15.2 Nothing contained herein shall be construed as prohibiting the Village, its elected officials, officers, agents, or employees, from defending through the selection and use of their own agents, attorneys, and experts, any claims, actions, or suits brought against them. The Corporation

shall be liable for the costs, fees, and expense incurred in the defense of any such claims, actions, or suits.

15.3 In the event that any demand or claim relating to this Agreement is known to either party, the Village and/or the Corporation will notify the other party in writing in an expedient manner.

15.4 The Corporation shall, at its own expense, secure and maintain in effect throughout the duration of this Agreement, insurance of the following kinds and limits. The Corporation shall furnish Certificates of Insurance to the Village before any Village funds are released pursuant to this Agreement. All insurance policies shall be written with insurance companies licensed to do business in the State of Illinois, which have a rating of not less than A IX, according to the latest edition of the A.M. Best Company. Such policies shall include a provision preventing cancellation of the insurance policy except upon thirty (30) days prior written notice to the Village. Such provision shall also be stated on each Certificate of Insurance as "Should any of the above-described policies be cancelled before the expiration date, the issuing company shall mail thirty (30) days written notice to the certificate holder named to the left." Upon the Village's written request, the Corporation shall provide copies of any or all policies of insurance to the Village.

15.4.1 The limits of liability for the insurance required shall provide coverage for not less than the following amounts, or greater where required by law.

(A) Commercial General Liability:

- i. Coverage to include Premise/Operations, Products/Completed Operations, Independent Contractors, Broad Form Property Damage, Contractual and Personal Injury.
- ii. Limits:
 - General Aggregate \$2,000,000.00
 - Products/Completed Aggregate \$1,000,000.00
 - Each Occurrence \$1,000,000.00

Personal Injury \$1,000,000.00

- iii. Coverage is to be written on an "occurrence" basis.
- iv. Products/Completed Operations coverage is to remain in force for a period of two (2) years after the completion of the project. Cover all claims arising out of the CORPORATION's operations or premises, anyone directly or indirectly employed by the CORPORATION, and the CORPORATION's obligations under indemnification under this Agreement.

(B) Workers' Compensation:

Shall be in accordance with the provisions of the laws of the State of Illinois, including occupational disease provisions, for all employees at the site of the project, and in case work is sublet, the CORPORATION shall require each of its Subcontractors similarly to provide Workers' Compensation Insurance. In case employees engaged in hazardous work under this contract at the site of the project are not protected under Workers' Compensation statute, the CORPORATION shall provide, and shall cause each of its Subcontractors to provide, adequate and suitable insurance for the protection of employees not otherwise provided.

(C) Comprehensive Automobile Liability:

- i. Coverage to include all Owned, Hired, Non-owned vehicles, and/or trailers and other equipment required to be licensed.
- ii. Limits:
Combined Single Limit \$1,000,000.00

(D) Umbrella:

- i. Limits:
Each Occurrence/Aggregate \$2,000,000.00

(E) The Village of Downers Grove shall be named as additional insured on all insurance policies except Workers' Compensation.

The CORPORATION understands and agrees that liability, any performance bond or insurance protection required by this Agreement or otherwise provided by the CORPORATION, shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the Village as herein provided.

16.0 COVENANT NOT TO SUE.

16.1 The Corporation forever releases and discharges the Village, its officials, agents or employees from all claims, demands, damages, actions or causes of action which arise out of the

Village's performance of this Agreement.

16.2 The Corporation covenants not to sue or otherwise bring any action in law or equity against the Village, its officials, agents or employees for any claims, loss, damage, expense, debt or liability of any nature whatsoever which the Corporation may sustain arising out of the Village's performance of this Agreement.

17.0 DEFAULT AND REMEDIES.

17.1 Any failure on the part of either party to exercise any right under this Agreement shall not be construed as a waiver of that right.

17.2 In the event that the Corporation ceases to exist, all unused funds provided by the Village pursuant to this Agreement shall be returned to the Village.

18.0 NON-ASSIGNMENT AND SUCCESSORS IN INTEREST.

18.1 This Agreement shall not be assigned, sublet, or transferred by either party hereto.

18.2 The parties each bind themselves and their partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement.

18.3 Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the Village, nor shall it be construed as giving any right or benefits hereunder to anyone other than the Village and the Corporation.

19.0 MODIFICATION AND AMENDMENT.

19.1 This Agreement may only be amended or modified by a written instrument, signed by the parties hereto, other than modifications required by changes in Federal or State law or regulations or required by Village ordinance applicable to this Agreement. No amendment or

modification of this Agreement shall be valid or enforceable unless in writing and signed by the authorized representatives of the parties.

19.2 This Agreement is subject to such modifications as the Village determines may be required by changes in Federal, State or local law or regulations. Any such required modification shall be incorporated into and be part of this Agreement as if fully set forth herein. The Village shall notify the CORPORATION of any change in law or regulation of which it has notice.

20.0 CONFLICT OF INTEREST.

20.1 The Corporation shall establish safeguards to prohibit its officers, directors, agents and employees from using Village funds for their own private use.

20.2 No Village officer or employee may be hired or paid with funds derived directly or indirectly through this Agreement.

21.0 GOVERNING LAW AND VENUE.

21.1 This Agreement shall be governed and construed by the laws of the State of Illinois both as to interpretation and performance. Venue is proper only in the County of DuPage, Illinois.

22.0 REQUIRED NOTICES OR REPORTS.

22.1 Any notices, reports, records or documents required by the terms of this Agreement shall be deemed sufficient if made in writing and sent by first class mail or personal service to:

FOR THE VILLAGE

David Fieldman, Village Manager
Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515

FOR THE CORPORATION

Erin Venezia, Executive Director
Downtown Downers Grove, Inc.
933A Curtiss St.
Downers Grove, IL 60515

22.2 Either party may change its address for receiving notices by giving notice thereof in compliance with the terms of Section 22.1.

23.0 ENTIRE AGREEMENT.

23.1 This Agreement represents the entire agreement between the parties and supersedes all previous communications or understandings, whether oral or written.

23.2 There are no covenants, promises, agreements, conditions or understandings between the parties, either oral or written, other than those contained in this Agreement.

24.0 SAVINGS CLAUSE.

24.1 If any provision of this Agreement, or the application of such provision, shall be rendered or declared invalid by a court of competent jurisdiction, or by reason of its requiring any steps, actions or results, the remaining parts or portions of this Agreement shall remain in full force and effect.

IN WITNESS OF the parties to this Agreement by their signatures acknowledge they have read and understand this Agreement and intend to be bound by its terms.

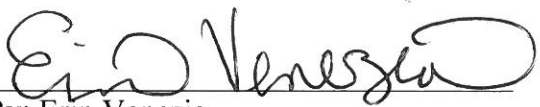
VILLAGE OF DOWNERS GROVE

By: David Fieldman
Its: Village Manager

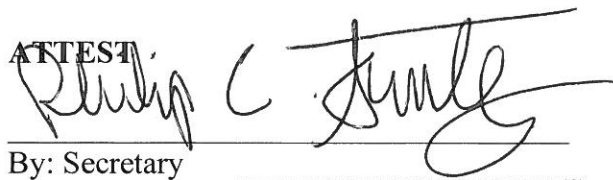
ATTEST

By: Village Clerk

DOWNTOWN DOWNERS GROVE, INC.


By: Erin Venezia
Its: Executive Director

ATTEST


By: Secretary

