



MANAGER'S MEMO ITEM

ITEM: Metra Agreement
WORKSHOP DATE: February 8, 2005
PREPARED BY: Rick Ginex, Village Manager
 Enza Petrarca, Village Attorney
 Ann Marie Perez, Assistant Village Attorney
BID AMOUNT: \$ _____ **ACCOUNT:** _____
BUDGET AMOUNT: \$ _____

PURPOSE: To authorize acceptance of the lease agreement with Metra wherein the Village is to provide 250 commuter parking spaces to Metra riders in exchange for \$1,875,000.

BACKGROUND:

In an effort to obtain funding for the Parking Deck, the Village agreed to entertain the idea of leasing commuter parking spaces in the deck to Metra. The attached agreement is the culmination of those discussions. Basically, Metra will lease 250 commuter parking spaces for a forty-year (40) term for the price of \$1,875,000. Metra will pay the Village in a lump sum payment due and payable upon execution of the agreement. There is the possibility of two renewal periods of forty years each. The cost of each forty-year renewal is \$10.00.

Metra is entitled to use the parking spaces for commuter rail parking only and is to have exclusive use between 6:00 a.m. and 3:00 p.m. Metra will allow downtown employee overlay parking so long as the overlay parking does not interfere with the commuter rail parking use.

The Village will be responsible for upkeep on the parking spaces.

This agreement may be terminated by either party; however, in the event the Village terminates the agreement prior to the end of the forty-year term, the Village will have to either replace the parking spaces with acceptable alternatives or refund Metra the costs they paid out to us on a straight line pro rata basis.

ATTACHMENTS:

Lease Agreement

STAFF RECOMMENDATION:

Approve the Lease Agreement.

REQUESTED COURSE OF ACTION:

Place this item on the February 15th Council Meeting Agenda for approval.

RESOLUTION NO. ____

**A RESOLUTION AUTHORIZING EXECUTION OF A LEASE AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS GROVE AND THE COMMUTER RAIL
DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY (METRA)**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Lease Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and the Commuter Rail Division of the Regional Transportation Authority ("Metra"), for daily fee commuter parking spaces, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

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

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

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

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

Mayor

Passed:

Attest: _____
Village Clerk

LEASE AGREEMENT

THIS AGREEMENT is entered into as of this _____ day of _____, 2004, by and between the **Commuter Rail Division of the Regional Transportation Authority**, a division of an Illinois municipal corporation having an office at 547 West Jackson Boulevard, Chicago, Illinois 60661 ("**Metra**") and the Village of Downers Grove, an Illinois municipal corporation ("**Village**"). Village and Metra are hereinafter sometimes individually referred to as a "**Party**" and jointly referred to as the "**Parties**".

RECITALS

A. Village owns a parking deck located on property located west of Washington Street between Maple and Curtiss Avenues in the Village of Downers Grove and State of Illinois delineated on **Exhibit "A"** attached to and made a part of this Agreement ("**Premises**"), and commonly known as 945 Curtiss, Downers Grove, IL 60515.

B. Village desires to lease a portion of the Premises consisting of not less than 250 new parking spaces for commuter parking ("**Parking Spaces**"), together with access thereto, (collectively the "**Facility**") to Metra and Metra desires to lease the Facility from Village for the purpose of providing daily fee commuter parking for the nearby commuter train station.

C. The Parties agree that the Parking Spaces shall be provided in addition to the existing 575 commuter parking spaces presently located in the vicinity of the Main Street commuter train station during the Lease Term.

D. The Parties agree that the Village will provide for the operation, maintenance and repair of the Facility, including, without limitation, the Parking Spaces.

E. The Parties acknowledge that the funds paid to the Village hereunder have been provided under a Federal Transit Administration grant.

NOW, THEREFORE, for and in consideration of the foregoing Recitals, which are hereby incorporated into and made a part of this Agreement and the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted by the Parties, Metra does hereby agree to lease from Village and Village does likewise agree to lease to Metra the Facility subject to and in accordance with the following terms, covenants, conditions and provisions:

1. **TERM.** Metra's lease of the Facility shall commence on the date the Parking Spaces are first used in commuter service or October 1, 2004, whichever is later, and shall continue in force and effect for a period of forty (40) years, unless sooner terminated as herein provided ("**Lease Term**"). Metra shall have the option to renew the Lease Term for two additional forty (40) year terms (hereinafter individually referred to as a "**Renewal Term**" and jointly referred to as the "**Renewal Terms**") for rent in the amount of Ten Dollars (\$10.00) per Renewal Term by giving Village notice of its intention to renew at least ninety (90) days prior to

the commencement of each Renewal Term. In the event this Lease is renewed as set forth above, then all references to the Lease Term as set forth hereinafter shall include the additional Renewal Term or Terms.

2. **RENT.** The annual rental under this Lease shall be Forty Six Thousand Eight Hundred and Seventy Five Dollars (\$46,875), and shall be payable by Metra for the entire 40 year Lease Term in one lump sum, in the amount of One Million Eight Hundred Seventy Five Thousand Dollars (\$1,875,000) upon execution of this Agreement and the commencement of the Lease Term.

3. **LEASED ACTIVITIES.** Metra shall use said Facility during the Lease Term as a commuter rail parking facility ("**Leased Activities**") and shall not directly or indirectly use the Facility for any other purpose(s).

4. **TAXES.** Village represents that the property is currently tax exempt from real property taxes. During the Lease Term, Metra shall pay all real estate taxes that may become due or which may be assessed against said Facility or Metra or in any manner arises from any activities conducted on the Facility by Metra ("**Charges**").

5. **VILLAGE'S TITLE.** Metra's interest in the Premises shall be limited to a leasehold interest. This Agreement vests no rights in the fee title to the Premises in Metra and nothing herein contained shall empower Metra to do any act that shall cloud or encumber Village's title to the Premises.

6. **RESERVED RIGHTS.** Village reserves the following rights upon giving Metra prior reasonable notice, however, no notice shall be necessary if, in Village's sole opinion, an emergency situation exists: (a) to enter upon the Facility or any part thereof at reasonable hours to make inspections, repairs or alterations to the Facility or other parts of the Premises; (b) to perform any acts related to the safety, protection, preservation, sale or improvement of the Premises; (c) to enter upon said Facility at any time to eject therefrom any disorderly person or persons; (d) to enter upon the Facility to enforce traffic and parking laws, ordinances and regulations; and (e) to charge users of the Parking Spaces parking usage fees in the same manner as other parking facilities owned, maintained or controlled by the Village, and provided, no fee(s) shall be revised by the Village without the prior review and consent of Metra's Executive Director as to such revision. The exercise of any reserved right by Village shall never be deemed an eviction or disturbance of Metra's use and possession of the Parking Spaces nor render the Village liable in any manner to Metra.

7. **WAIVER OF CLAIMS.** All property on or about the Premises belonging to Village or any other occupant of the Premises shall be there at the risk of Village or other occupant only and Metra shall not be liable for damage thereto or theft or misappropriation thereof.

8. **LIENS AND ASSIGNMENTS.** Metra agrees not to suffer or permit any lien of mechanics or materialmen to be placed against the Facility.

9. **CONDITION OF THE FACILITY.** Metra has examined and inspected the Facility and knows the condition of the Facility and acknowledges that no representations as

to the condition and repair thereof have been made by Village, its agents or employees prior to or at the execution of this Agreement that are not expressed in this Agreement.

10. **ALTERATIONS.** Metra shall not make any alterations or additions to the Facility without the Village's prior consent, which consent shall not be unreasonably withheld. Metra shall pay the cost of all such improvements, installations, alterations and additions, if permitted by Village, and the expense of the maintenance and operation thereof.

11. **USE OF FACILITY.** The Parties agree that the Parking Spaces shall be used as daily fee commuter parking spaces and that the Village shall at all times provide Metra and the general public with a means of access to and from the Parking Spaces. The Village shall at all times provide the 250 Parking Spaces in addition to the existing 575 commuter parking spaces currently provided by the Village. Parking lot fees for the Parking Spaces set and collected by the Village shall be standardized for all patrons of the 250 commuter Parking Spaces and the Village shall, under no circumstances, discriminate against non-residents of the Village in setting parking fees for the Parking Spaces. The Parking Spaces shall be available on a first-come-first-serve basis. Metra reserves the right, at any time, to review and approve the amount of the parking fees charged by Village. The Village shall not increase the Three Dollar (\$3.00) daily parking fee for the Parking Spaces without having first received the written consent of Metra's Executive Director. Metra's use of the Parking Spaces shall be exclusive during the hours of 6:00 a.m. to 3:00 p.m., Monday through Friday; provided, however, that, with the permission of Metra's Executive Director, the Village may issue Village business merchants and their employees permits to park in the vacant Parking Spaces after 10:59 a.m., Monday through Friday, as long as such permit parking does not interfere with Metra commuter parking ("Employee Overlay Permit Parking"). In the event the Village receives notice from Metra that the Employee Overlay Permit Parking is interfering with commuter use of the Parking Spaces ("**Interference**"), the Village will take whatever action is necessary to rectify the Interference in a manner acceptable to Metra's Executive Director; provided, however, that in the event the Village is unable to correct the Interference in a manner acceptable to Metra's Executive Director within thirty (30) days after receipt of the aforementioned notice, the Village shall immediately suspend the use of the Parking Spaces for Employee Overlay Permit Parking. Additionally, regardless of whether or not such days fall on a weekday, weekend or holiday, Metra shall have exclusive use of the Parking Spaces, (1) during and on the days of the events listed on Exhibit "B" attached to and made a part of this Agreement ("Event Days"), and (2) after having given the Village at least forty-eight (48) hours prior notice, on such other days that Metra anticipates unusually heavy commuter ridership.

12. **REPAIRS AND MAINTENANCE – RE-STRIPING.** During the Lease Term, Village shall, at Village's sole cost and expense, keep the Premises, including the Facility, or cause the Premises, including the Facility, to be kept, in good order, condition and repair. In addition to the foregoing, during the Lease Term, Village shall, at Village's sole cost and expense, perform, or cause to be performed, all structural maintenance and any reconstruction of the Facility and the structure in which the Facility is located as may be required. Further, Village shall re-stripe the Facility during the Lease Term at such time or times as re-striping may be required. If during the course of any such repairs, reconstruction or re-striping of the Facility, the Parking Spaces or any portion thereof, shall be made unavailable for commuter parking, Village shall provide to Metra on another level of the Premises, for the period of such

unavailability, the comparable number of replacement parking spaces as has been made unavailable as a result of such repairs, reconstruction or re-striping; and such replacement parking spaces shall be considered "Parking Spaces" under the terms and provisions of this of this Agreement for the period of such replacement use. In connection therewith, Village shall provide advance notice to the commuter parkers of the availability of such alternative commuter parking. If Village does not make repairs or perform the reconstruction, or cause the repairs or reconstruction to be made, promptly and adequately, or perform the re-striping as required, Metra may, but shall not be required to, make such repairs, or perform such reconstruction or re-striping, and Village shall promptly pay the reasonable cost thereof, including overtime and other expenses (including the cost of any replacement parking spaces which may be required as a result of such repairs, reconstruction or re-striping), all without any liability to Metra by reason of interference, inconvenience or annoyance. Metra shall not be liable to Village for any expense, injury, loss or damage resulting to Village from work done pursuant to this Section 12 in, upon or along the Premises.

13. INDEMNIFICATION.

(a) To the fullest extent permitted by law, Metra agrees to protect, indemnify, defend and forever hold harmless the Village, its council members, directors, officers, employees, agents, contractors, licensees, successors and assigns against and from, and to assume all liability and expense, including court costs and attorneys' fees for, death or injury to any person or persons and all loss, damage or destruction to any property caused by, attributable to or resulting from Metra's activities on or use of the Facility or any portion thereof pursuant to the terms and provisions of this Agreement, or Metra's negligence or failure to comply with the provisions of this Agreement; provided, however, in no event shall this indemnification apply to the any such damages arising from the negligence or willful misconduct of Village.

(b) To the fullest extent permitted by law, Village agrees to protect, indemnify, defend and forever hold harmless Metra, its council members, directors, officers, employees, agents, contractors, licensees, successors and assigns against and from, and to assume all liability and expense, including court costs and attorneys' fees for, death or injury to any person or persons and all loss, damage or destruction to any property caused by, attributable to or resulting from the Village's activities on the Premises, the Village's management, maintenance or use of the Premises or any portion thereof pursuant to the terms and provisions of this Agreement, or the Village's negligence or failure to comply with the provisions of this Agreement; provided, however, in no event shall this indemnification apply to the any such damages arising from the negligence or willful misconduct of Metra.

(c) In all contracts executed by the Village for routine or any other maintenance of the Facility or for the construction, rehabilitation, improvement, repair or maintenance of structures, facilities or improvements located on the Premises, or to be located on the Premises or on the Facility, the Village 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 contractors(s), or their officers, employees, agents or subcontractors, and their agents or employees.

(d) The Village will further cause appropriate clauses to be inserted in all such contracts requiring contractors to procure and maintain comprehensive policies of insurance, as hereinafter set forth, 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.

(e) 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 Metra, RTA or NIRCRC with respect to any party performing work on the Premises or in the Facility to the extent such violates the Illinois Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq.

14. **INSURANCE.** With respect to the Leased Activities, Metra shall self-insure for the minimum coverage set forth below. Further, Metra shall furnish certificates of self-insurance to the Village evidencing the insurance coverage required herein and shall name the "Village of Downers Grove, its officers, officials, employees and volunteers" as additional insureds. With respect to Village's obligations hereunder, Village shall self-insure or procure insurance coverage set forth below, or a combination thereof. The Village shall require its contractors and subcontractors that perform work on the Facility to procure and maintain the insurance coverage set forth below. The insurance specified shall be carried until all work required to be performed under the terms and provisions of this Agreement is completed. Village and its contractors or subcontractors shall furnish to Metra certificates of insurance or similar evidence of self-insurance evidencing the insurance coverage required herein and showing Metra, RTA and NIRCRC as additional parties insured. The following coverage amounts are stipulated:

- (1) General Liability:
 - (A) Bodily Injury \$ 2,000,000 each occurrence
 - (B) Property Damage \$ 2,000,000 each occurrence
- (2) Automobile Liability with Extended Coverage:
 - Property Damage \$ 1,000,000 each occurrence
- (3) Workmen's Compensation and Employer Liability: statutory amounts

15. **DAMAGE OR DESTRUCTION.** In the event of damage to, or destruction of, the Facility by fire, explosion, severe weather conditions or other casualty, Village shall at Village's expense, unless otherwise agreed to by the parties, repair, restore or rebuild the same within a reasonable period of time from the date of such casualty, to the condition it was in immediately prior to such casualty. Rent shall be reduced and abated during

the period of such repair, restoration or rebuilding to the extent (i) the Facility is not tenantable, and (ii) Village fails to provide similar replacement commuter parking spaces in a location acceptable to Metra. If either party chooses to terminate the Lease effective as of the date of such casualty, the terminating party shall give written notice to the other party within ninety (90) days thereafter. If neither party exercises its right to terminate the Lease as aforesaid, and Village fails to complete repair, restoration or rebuilding of the Facility within a reasonable period of time from the date of such casualty, Metra shall have the further right to terminate the Lease, effective as of the date of such casualty, by giving written notice of such election to Village at any time thereafter prior to Village's completion of the repair, restoration or rebuilding of the Facility. Upon termination of the Lease pursuant to this Section, the provisions of Section 18 of this Lease shall apply.

16. **REMEDIES.** All rights and remedies of Village herein enumerated shall be cumulative, and none shall exclude any other right or remedy allowed by law.

(a) If Metra defaults in the prompt and full performance of any provision of this Agreement and such default continues and is not cured to the satisfaction of Village within a reasonable time after notice of default, at Village's sole option, this Agreement and Metra's lease of the Facility shall automatically cease and terminate without further action of or notice by Village.

(b) No waiver of any obligation or default shall be implied by omission to take any action on account of such obligation or default and no express waiver shall affect any obligation or default other than the obligation or default specified in the express waiver and then only for the time and to the extent therein stated.

(c) Upon any termination of this Lease, whether by lapse of time or otherwise, or upon any termination of Metra's right to possession without termination of this Lease, Metra shall surrender possession and vacate the Facility immediately and deliver possession thereof to Village in as good a condition as that which existed prior to the commencement of the Leased Activities on or Metra's use of the Facility, normal wear and tear excepted. If Metra does not remove Metra's personal property, if any, from the Facility prior to the end of the Lease Term, Village may remove all such personal property at Metra's sole cost and expense or, at Village's option, Metra shall be conclusively presumed to have conveyed the same to Village under this Agreement as if by a bill of sale without further payment or credit by Village to Metra. Metra hereby grants to Village full and free license to enter the Facility in such event, with or without process of law, and to repossess the Facility and to remove Metra and any others who may be within the Facility. Village may remove any and all property from the Facility using such force as may be necessary without being deemed guilty of trespass, eviction or forcible entry or detainer, and without relinquishing any other right given to Village herein under or by operation of law. Subject to the reimbursement provisions of Section 18 below, Metra shall pay Village as liquidated damages and not as a penalty for forfeiture, \$2500.00 per month for each month that Metra wrongfully retains possession of the Facility or any part thereof after the termination of Metra's lease of the Facility or this Agreement whether by lapse of time or otherwise as provided for in this Agreement. Possession of the Facility shall include without limitation continued placement of materials, signs, debris or other articles or personal property owned or permitted by Metra to be placed on or about the Facility. No termination of Metra's lease shall release Metra

from any liability or obligation that accrued under the terms and provisions of this Agreement prior to said termination.

17. **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 and provisions 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 within twenty-four (24) hours of said transmission by Village or Metra 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) 322-8005
Fax: (312) 322-7098

(b) Notices to Village shall be sent to:

Village of Downers Grove
801 Burlington Ave.
Downers Grove, IL 60515
Attn: Village Manager
Phone: 630/434-5000
Fax: 630/434-5493

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.

18. **TERMINATION.** Notwithstanding anything to the contrary contained herein, in the event this Agreement is terminated by the Village or by Metra for any reason prior to the expiration of the fortieth (40th) year of the Lease Term, then, in the event of such termination, the Village, if permitted by the funding authority, shall replace the Parking Spaces with alternate spaces acceptable to Metra in its sole discretion, or shall fully reimburse the funding authority in accordance with the terms and provisions of the funding authority's grant and, in addition, thereto any prepaid Rent paid to the Village in excess of such reimbursement amount shall be promptly refunded to Metra based on a straight line prorata basis over the Lease Term, provided that the Village's reimbursement obligation hereunder shall, in no event, exceed One Million Eight Hundred Seventy Five Thousand Dollars (\$1,875,000), regardless of what entity may be entitled to receive all or any portion of such reimbursement. No termination of

this Agreement shall release the Parties from any liability or obligation that accrued prior to said termination.

19. **GENERAL.** This Agreement and the rights and obligations accruing hereunder are binding upon the respective heirs, legal representatives, successors and assigns of Village and Metra. Section captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement. Whenever the context requires or permits the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable. In the event the time for performance hereunder falls on a Saturday, Sunday or holiday, the actual time for performance shall be the next business day. This Agreement shall be governed by the internal laws of the State of Illinois. If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word or the application thereof is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that the Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of the Parties. In the event of any conflict or inconsistency between the terms or provisions set forth in the body of this Agreement and the terms or provisions set forth in any exhibit hereto, the terms or provisions set forth in such exhibit shall govern and control.

20. **ENTIRE AGREEMENT.** It is expressly agreed by and between the Parties hereto that all of the agreements, terms, covenants and provisions contained in this Agreement are the only agreements between the parties with respect to the Facility and this Agreement incorporates all agreements entered into between the Parties affecting the Premises. No modification, waiver or amendment of this Agreement, or any of its terms or provisions, shall be binding upon Village or Metra unless it is in writing, dated subsequent to the date of this Agreement and signed by a duly authorized officer or officers of the Party to be charged; which in the case of Metra shall be the Executive Director. Metra expressly acknowledges that Village has made no agreements affecting the Premises except those as are expressed herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

METRA:

VILLAGE:

THE COMMUTER RAIL DIVISION OF
THE REGIONAL TRANSPORTATION
AUTHORITY:

VILLAGE OF DOWNERS GROVE:

By: _____
Philip A. Pagano, Executive Director

By: _____
Riccardo F. Ginex, Village Manager



Village of Downers Grove Parking Deck

Exhibit A: Premises



EXHIBIT "B"

EVENT DAYS

- 1. Chicago St. Patrick's Day Parade**
- 2. Chicago Blues Festival**
- 3. The Taste of Chicago**
- 4. Chicago July 3rd Fireworks**
- 5. Chicago Venetian Night**
- 6. Chicago Air and Water Show**
- 7. Chicago Jazz Festival**