

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
AUGUST 9, 2011 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Amendment to the Agreement with Downtown Downers Grove, Inc.	✓ Resolution Ordinance Motion Discussion Only	David Fieldman Village Manager

SYNOPSIS

A Resolution has been prepared to amend the agreement with Downtown Downers Grove, Inc. to state that the organization shall be exempt from all Village fees related to community events.

STRATEGIC PLAN ALIGNMENT

The Goals for 2011 to 2018 include *Steward of Financial and Environmental Sustainability and Exceptional Municipal Services*.

FISCAL IMPACT

The Village currently charges Downtown Downers Grove, Inc. approximately \$10,000 per year in fees for Village provided services at events hosted by Downtown Downers Grove, Inc. If the amendment is approved, the Village will likely incur similar expenses in the future without reimbursement. These expenses will be charged to the General Fund.

RECOMMENDATION

Action at the discretion of the Village Council on the August 16, 2011 active agenda.

BACKGROUND

On July 26, 1999, the Village entered into an agreement with Downtown Downers Grove Inc., to provide marketing and economic development activities. The agreement was amended in November 2007. The agreement states that Downtown Downers Grove, Inc. shall provide services which are deemed necessary for the proper management of the area including organization and management of special functions designed to promote the success of the downtown area.

In 2010, the Village began charging fees for Village provided services in support of community events. The fees cover the direct and indirect expenses incurred by the Village and have been applied to all community event providers including Downtown Downers Grove, Inc. In 2010, the Village charged Downtown Downers Grove approximately \$10,000 for services provided at events such as Ice Fest, Fine Arts Festival and It's a Wonderful Weekend event.

Downtown Downers Grove, Inc. has requested an amendment to the agreement that would specifically state that the Village fees for services and related application and review fees shall be waived (see Section 2(a)(i) of the agreement). Downtown Downers Grove, Inc. would still be required to submit Temporary Use applications for events for Village review and approval. The amount and type of Village

services to be provided at each Downtown event would be controlled by the Village and specified in the approved Temporary Use permits.

Approval of the requested amendment would allow Downtown Downers Grove, Inc. to re-submit their annual budget that was placed on and then subsequently removed from the June 21, 2011 Village Council meeting agenda.

Pursuant to the existing agreement, the Village provides funding to Downtown Downers Grove, Inc. from the property tax revenues from Special Service Area #2. The table below indicates the amount of funding the Village has provided since the creation of the Downtown Downers Grove, Inc.

Levy Year	Payment Year	Amount
1997	1998	\$ 209,009
1998	1999	\$ 209,000
1999	2000	\$ 210,166
2000	2001	\$ 210,885
2001	2002	\$ 211,097
2002	2003	\$ 223,211
2003	2004	\$ 232,464
2004	2005	\$ 233,702
2005	2006	\$ 231,038
2006	2007	\$ 234,121
2007	2008	\$ 236,174
2008	2009	\$ 246,445
2009	2010	\$ 246,351

ATTACHMENTS

Resolution

Amended Agreement

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN
AMENDMENT TO THE DOWNTOWN SPECIAL SERVICE AREA OPERATIONS
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 “Agreement”), between the Village of Downers Grove (the “Village”) and Downtown Downers Grove, Inc. (the “Corporation”), 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

DOWNTOWN SPECIAL SERVICE AREA OPERATIONS AGREEMENT

THIS AGREEMENT, is made this _____ day of _____, 20_____, by and between THE VILLAGE DOWNERS GROVE, a municipal corporation existing under the laws of the State of Illinois, having its principal place of business at Downers Grove (hereinafter the "Village"), and DOWNTOWN DOWNERS GROVE, INC., a Not-for-Profit corporation organized and existing under the laws of the State of Illinois, having its principal place of business at [4045933A](#) Curtiss, Downers Grove, Illinois, (hereinafter the "Corporation").

RECITALS

- A. The Village is a Municipal Corporation organized and existing under the laws of the State of Illinois.
- B. The Village has established Special Service Area Number Two pursuant to an Ordinance No. 3974, adopted September 15, 1997, entitled "An Ordinance Establishing Special Service Area #2 (Downers Grove Downtown Service Area) of the Village of Downers Grove", and Ordinance 3984 adopted October 27, 1997, entitled "An Ordinance Amending Ordinance No. 3974 Entitled "An Ordinance Establishing Special Service Area #2" (Downers Grove Downtown Service Area) Of the Village of Downers Grove". Special Service Area #2 was further amended and extended by Ordinance 4739, adopted on December 20, 2005 (the "Ordinance"). A map of said area is attached hereto as Exhibit A.
- C. The Ordinance provides for the imposition of an ad valorem tax not to exceed one and one half percent (1 ½ %) of the assessed value of real property located in Special Service Area Number Two in anticipation and for the purpose of providing certain services within the SSA#2 as listed in the ordinance and deemed to be special municipal services, including but not limited to promotion and marketing of businesses in the SSA as well as economic development within the SSA.
- D. The Village has determined that it is in the public interest for property owners and business owners located in Special Service Area Number Two to participate in a unified manner in the management of the retail, residential, service and office environment of Special Service Area Number Two.
- E. The Corporation is an Illinois Not-for-Profit corporation whose membership consists of business owners and property owners of Special Service Area Number Two.
- F. The Corporation has been established to promote the business within Special Service Area Number Two and to provide a centralized management structure in Special Service Area Number Two.
- G. The Village and the Corporation desire to enter into this Agreement whereby the Corporation will assume the responsibility of managing the commercial and residential environment of the property contained within Special Service Area Number Two and the Village will agree to provide funding to the Corporation in the amounts and for the purposes hereinafter set forth.

NOW, THEREFORE intending to be legally bound, and in consideration of the promises and other promises and covenants between the Village and the Corporation as hereinafter set forth, the parties hereto agree as follows:

1. Management Services: The Village recognizes the Corporation as the entity that will provide professional management services to Special Service Area Number Two.
2. Scope of Services: The services to be performed by the Village and the Corporation shall include the following:
 - a. Pursuant to Ordinance 4739, the Village intends to continue to provide at no cost other than those included in general or special taxes or as may be presently invoiced to the recipients of such services, such municipal services that have been customarily and historically provided in the past including but not limited to sidewalk and street maintenance, waste removal, operation of parking systems, snow and ice control, landscaping, police and fire protection, contributions to holiday decoration, and the like. These services will be provided by the Village of Downers Grove as long as they are able to do so and/or as authorized by the Village Council from time to time. It is through the intent of the parties that Special Service Area Number Two monies will not be used to fund such traditional municipal services as indicated herein. Monies for the Special Service Area Number Two shall only be used to fund those special services identified in the Ordinance. Nothing herein shall restrict the authority of the Village Council to determine the type of services to be provided to the municipality from time to time.

The Corporation shall provide for any services which, in its discretion, are deemed necessary for the proper management of the Special Service Area Two and will provide management services to Special Service Area Two including, but not limited to the following:

- i. Organization and management of 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 Downtown Management Corporation ~~will seek a waiver of any~~ shall be exempt from any and all applicable fees associated with such permits and licenses and Village expenses related to the permitted special function;
- ii. Consultation with and assistance to property owners and tenants who comply with the by-laws of the Corporation;
- iii. Consultation with, and assistance to, property owners and tenants with respect to retailing techniques, including property management practices;
- iv. Employing an Executive Director to oversee the day-to-day business of the Corporation;
- v. Coordination of common services for downtown merchants, such as the collection of commercial solid waste, which coordination may include the establishment of further agreements with the Village for physical improvements within common areas or public spaces of the Downtown, subject to any required approvals.

- vi. Monitor and offer comment to the Village on the maintenance and the physical appearance and retention of standards of the area;
- vii. At the Village's request, Corporation shall submit such written or verbal reports, no more than quarterly, by the Village while this Agreement is in effect; and
- viii. Any additional services which, in the discretion of the Corporation and the Village of Downers Grove, are deemed necessary for proper management of Special Service Area Two and those which conform with the by-laws of the corporation which may, from time to time, be amended.

3. The Village's SSA Contribution: For the purpose of permitting the Corporation to provide the services described herein, the Village shall pay to the Corporation an amount equal to the Special Service Area Tax from time to time collected but not in excess of the approved Corporation budget. Within 30 days of the approval of the initial budget of the Corporation as provided in Section 3, the Village shall pay to the Corporation an amount equal to the Special Service Area tax then held by the Village up to the amount of the approved budget. For each succeeding fiscal year thereafter, the Village shall, within 30 days of receipt, pay to the Corporation an amount equal to the Special Service Area Tax received by the Village in that fiscal year, up to the amount of the approved budget. It is understood and agreed that the Village's commitment under this section shall be limited to Special Service Area Tax monies actually received, and payment made hereunder shall be solely out of said funds. This Agreement shall not be construed as creating any obligation upon the Village to make payments from sources other than the Special Service Area Tax.

4. Approval of Budget: The Corporation shall submit to the Village for approval on or before March 1st of each year, the Corporation's proposed budget for the upcoming fiscal year commencing on May 1st and ending on April 30th of the following year. The Village shall review and approve the budget, or specify exceptions thereto, within 45 days of submittal. Provided, the Village's review of the proposed budget shall be limited to a determination that the Village SSA Contributions will be expended only on matters reasonably related to the public purposes set forth in the Ordinance. It is intended that the business decisions with respect to the manner in which the public purposes set forth in the Ordinance are effected shall be within the purview of the Corporation.

5. Books and Records: The Corporation shall, for the purpose of verifying the use of the above-described funds, provide the Village with a detailed review by an independent audit/accounting firm which is licensed by the State of Illinois to conduct the review in accordance with generally accepted accounting standards. Said review shall include all income received by the Corporation, disbursements by the Corporation and all investment transactions for the prior fiscal year. A copy of the review report shall be provided to the Village within thirty (30) days of the Corporation's receipt of the review. The Village shall have the right to inspect the books and records of the Corporation at any reasonable time.

6. Surpluses: Any portion of the contributions not expended by the Corporation in any fiscal year shall be retained by the Corporation and, applied to general operations of the Corporation.

7. Village Representative: The Village shall appoint or designate to the Corporation an individual to represent the Village on the Corporation's Board of Directors pursuant to the Corporation By-Laws dated May 6, 1999.

8. Statement of Cooperation: The Village agrees, where possible, to cooperate with the Corporation in achieving its corporate purpose and, further, where possible, to cooperate with the corporation in the implementation of promotional events.

9. Duration/Termination of Agreement: This Agreement shall remain in full force and effect after its execution by the parties, as set forth above, for a period of two (2) years and shall automatically renew for successive one (1) year periods unless otherwise terminated as provided herein.

This Agreement may be terminated by the Village at any time upon thirty (30) 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 not fault of the terminating party, provided, the Village issue a breach of contract notice detailing the breach and providing sixty (60) days cure period. If after sixty days, the breach has not been remedied, the Village may terminate the agreement as provided. Termination may render the Corporation ineligible for future Village funds. 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 shall be equivalent to personal notice and shall be deemed to have been given at the time of mailing.

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 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 Corporation could not avoid during the suspension period, provided that such costs were necessary and incurred in accordance with this Agreement.

Provided further, this Agreement shall automatically terminate upon the dissolution or termination of SSA #2.

10. Distribution of Assets: Upon dissolution of the Corporation, the Board of Directors shall, after paying or making provisions for the payment of all the liabilities of the Corporation, dispose of all assets of the Corporation exclusively for the purposes of the Corporation in such manner, or to such organization, or organizations, organized and operated exclusively for charitable, educational, religious or scientific purposes or shall at the time qualify as an exempt organization, or organizations, under section 501 (c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue law), as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed of by the Circuit Court of DuPage County exclusively for such purposes or to such organization, or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

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

Village of Downers Grove, a municipal corporation existing under the laws of the State of Illinois.

By: _____
Village Manager

Attest: _____

Notary Public

Downtown Downers Grove, Inc., a not-for-profit corporation organized and existing under the laws of the State of Illinois.

By: _____

Attest: _____

Notary Public