

**VILLAGE OF DOWNERS GROVE**  
**COUNCIL ACTION SUMMARY**

**INITIATED:** Legal Department      **DATE:** October 21, 2003  
(Name)

**RECOMMENDATION FROM:** \_\_\_\_\_ **FILE REF:** \_\_\_\_\_  
(Board or Department)

**NATURE OF ACTION:**

- Ordinance
- Resolution
- Motion
- Other

**STEPS NEEDED TO IMPLEMENT ACTION:**

Motion to Adopt "A RESOLUTION AUTHORIZING THE EXECUTION OF A STATION AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND THE BURLINGTON NORTHERN AND SANTA FE RAILWAY", as presented.



**SUMMARY OF ITEM:**

Adoption of the attached resolution will authorize an agreement between the Village and the Burlington Northern and Santa Fe Railway for a contract and lease agreement for certain premises along and adjacent to the BNSF line of railroad.

**RECORD OF ACTION TAKEN:**

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**STATION AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE  
AND THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

This agreement ("Agreement"), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the VILLAGE OF DOWNERS GROVE, Illinois, a municipal corporation (hereinafter referred to as the "Municipality"), and THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation (Burlington Northern Inc. and Burlington Northern Railroad Company [each a predecessor-in-interest to The Burlington Northern and Santa Fe Railway Company] and The Burlington Northern and Santa Fe Railway Company are collectively referred hereinafter as "BNSF"):

WHEREAS, the Municipality and BNSF entered into the following agreements: (a) a "Contract and Lease Agreement" dated February 23, 1976; (b) an "Amendment No. 1 to Station Agreement between the Village of Downers Grove, Illinois, and Burlington Northern, Inc." and dated May 2, 1977; (c) an "Amended Station Agreement between the Village of Downers Grove, Illinois and Burlington Northern Railroad Company" dated March 14, 1983 (sometimes referred to hereinafter as the "Amended Station Agreement"); and (d) a "First Amendment to Amended Station Agreement between the Village of Downers Grove, Illinois and Burlington Northern Railroad Company", dated March 14, 1987 (collectively, the "Original Agreements");

WHEREAS, the Municipality and BNSF wish to agree with each other concerning the future use of certain premises along and adjacent to BNSF's line of railroad within the Municipality's boundaries.

NOW, THEREFORE, in order to continue to promote public safety and comfort in the Main Street and Fairview Avenue commuter station areas, to control and regulate traffic and parking, to continue to make improved travel facilities available to the public, and to ensure that these travel facilities are properly maintained and repaired, and the grounds around them properly cared for and beautified, and in consideration of the mutual covenants and agreements hereinafter set forth, the Municipality does hereby contract, promise and agree with BNSF, and BNSF does likewise contract, promise and agree with the Municipality, as follows:

## I. LEASE OF PROPERTIES

A. For an annual rental of One Dollar (\$1.00) payable by the Municipality, BNSF hereby leases to Municipality and Municipality does hereby lease from BNSF, for a period of twenty (20) years commencing March 14, 2003, nine (9) parcels of land, hereinafter referred to as Parcels 1 through 9, inclusive but exclusive of any and all improvements thereon hereinafter collectively referred to as the "leased premises". The location, dimension and configuration of the leased premises are shown on Exhibit "A" attached hereto and by this reference made a part hereof. Said Parcels 1 through 9 are identified as follows:

| <b>Identity</b> | <b>Location</b>   |
|-----------------|---|
| Parcel 1        | North of BNSF right-of-way; west of Main Street to Forest Avenue, lying south of Warren Avenue, including land under platforms.   |
| Parcel 2        | South of BNSF right-of-way; west of Main Street to Forest Avenue lying north of Burlington Avenue.  |
| Parcel 3        | North of BNSF right-of-way; east of Main Street to Washington Street, lying south of Warren Avenue, including land lying under existing platforms and canopies.   |
| Parcel 4        | South of BNSF right-of-way; east of Main Street to Washington Street, lying north of Burlington Avenue, including land lying under the Main Street station and all existing platforms.  |
| Parcel 5        | A strip of land extending along the north edge of BNSF right-of-way from Washington Street to Prospect Street, lying south of Warren Avenue.  |
| Parcel 6        | All of BNSF's property lying north of its ballasted right-of-way commencing at the east edge of Fairview Avenue and extending easterly a distance of 900 feet. The north boundary of said parcel shall be the north boundary of BNSF's property line. The south boundary of said parcel shall be the platform edge of the westbound Fairview Station platform.      |
| Parcel 7        | All of BNSF's property lying south of its ballasted right-of-way commencing at the east edge of Fairview Avenue and extending easterly a distance of 830 feet. The south boundary of said parcel shall be the south boundary of BNSF's property line. The north boundary of said parcel shall be the platform edge of the eastbound Fairview Platform, as extended. |

Parcel 8            A parcel of land containing approximately 0.39 acres commencing at the east line of Washington Street and extending easterly a distance of 1428.84 feet. The south boundary line of said parcel shall be the south boundary line of the BNSF's property line, the north boundary of said parcel shall be 20 feet south of the centerline of the southerly most railroad track.

Parcel 9            A strip of land north of BNSF's ballasted right of way from Fairview Avenue west approximately 300 feet, with a width of 46.65 feet for a total of approximately 18,193 square feet.

Provided, however, that BNSF reserves unto itself, its successors and assigns, and licensees the right to use the leased premises in the general conduct of its railroad business, and to operate, maintain and renew such pipelines, telephone, fiber optic and signal lines, electric transmission lines, and other facilities of like character, as may now exist upon, over or under said leased premises, and to construct, operate, maintain and renew such additional facilities thereon so long as the same will not interfere with the use of said leased premises for the purposes hereinafter set forth.

B.            The leased premises shall be used by the Municipality only for the following purposes and for no other purpose whatsoever:

- (1)           to provide BNSF's patrons with an adequate commuter station building, platforms, canopies and other appropriate facilities at Main Street and Fairview Avenue;
- (2)           to provide on said leased premises at least 310 stalls for designated parking at or near Main Street station and at least 36 stalls at or near Fairview station;
- (3)           to provide adequate facilities on or in conjunction with the leased premises for convenient drop off or pickup of BNSF's patrons, either by car or by bus; and
- (4)           for such other uses as are expressly permitted under the terms of this Agreement or pursuant to separate agreement.

C. Municipality agrees that none of the leased premises will be used, nor will Municipality permit them to be used, for parking within twenty (20) feet of the center line of any trackage. It is further agreed that Municipality shall provide BNSF two (2) reserved parking spaces near each of the station buildings for exclusive use of BNSF, such spaces to be appropriately marked and policed by Municipality.

D. Any portion of the leased premises within twenty (20) feet from the nearest rail of BNSF's trackage shall be used for the construction, maintenance, repair and renewal of platforms, canopies and landscaping only (subject to legal clearance requirements) and for no other purpose whatsoever.

E. During the term of this Agreement, Municipality shall pay all taxes, special assessments, license fees or other governmental charges or fees which may become due or which may be assessed or levied upon or against the leased premises or any facilities or improvements located thereon, or in any manner arising from or growing out of any activities conducted on the leased premises by the Municipality, its subtenants, licensees or assigns. Such taxes, special assessments, license fees or other governmental charges or fees may be treated for the purpose of this Agreement as an operating expense within the provisions of Part VI below.

F. Municipality agrees not to construct any improvements or facilities or make any modifications upon the leased premises without the prior written consent of BNSF. All improvements or facilities constructed upon the leased premises must be approved in advance of construction by BNSF with respect to design, location and construction standards. Failure of BNSF to give such approval, conditional approval or disapproval within sixty (60) days after receipt of Municipality's submission of design plans, location and construction standards shall constitute approval. Further, for any improvements which may generate Leased Premises Revenues (as hereinafter defined), BNSF and Municipality must agree in advance of the start of construction as to how such Leased Premises Revenues will be distributed between the parties.

## **II. STATION BUILDING, PLATFORMS AND CANOPIES**

As a result of a prior sale of the station buildings, platforms and canopies from BNSF to the Municipality pursuant to the terms enumerated in the Amended Station Agreement dated March 14, 1983, Municipality possesses all rights, title and interest, subject to the Option (as hereinafter defined), in and to the existing commuter station building, platforms and canopies at and near the Main Street and Fairview Stations, located upon Parcels 1 through 9, inclusive. However, BNSF reserved the option to repurchase all of such facilities, and any subsequent improvements thereto or replacements thereof, for the sum of One Dollar (\$1.00) (the "Option"). The parties hereby expressly agree that BNSF has the Option to repurchase all of the facilities referenced herein, which Option may be exercised by BNSF by service of written notice upon the Municipality at any time within one year after the expiration or earlier termination of the lease term set forth in Part I hereof.

The parties further acknowledge and confirm that BNSF has the right to use and occupy for the purpose of transacting railroad business the room in the Main Street Station currently used by BNSF's agent and the room in the Fairview Station formerly used by BNSF's agent under the Original Agreements; and Municipality agrees to provide and maintain a toilet and washbasin in the Main Street and Fairview station buildings for use by the BNSF's agent during the agent's customary hours of duty. Municipality shall heat and light both such rooms, and BNSF shall pay to the Municipality a proportional amount of the cost of heating and lighting each of them represented by the ratio of the floor area in said rooms as compared to the total floor area in the station buildings which house them.

## **III. CONSTRUCTION AND REHABILITATION OF STATION BUILDINGS, PLATFORMS AND CANOPIES BY MUNICIPALITY**

A. Municipality and BNSF agree that the terms of the Original Agreements have been carried out with respect to construction and rehabilitation of station buildings, platforms and canopies.

B. Municipality agrees that the leased premises and facilities constructed thereon will be used for the provision of commuter rail service, unless such continued use is made impossible by lawful action of the Regional Transportation Authority or unless BNSF is lawfully permitted to cease operations or such facilities are taken over by some other party. Such facilities shall be so used for the period of the

Agreement as set forth in Part 1 hereof or for the period of the useful life of such facilities, whichever is less. Such facilities shall be operated and utilized for the use, comfort, safety and convenience of the patrons of BNSF's commuter train service. Municipality shall be permitted to utilize the leased premises and facilities constructed thereon for the location of commercial or municipal enterprises, provided that they do not unduly interfere with the use thereof for the purposes contemplated by this Agreement.

#### **IV. CONSTRUCTION OF PARKING LOT IMPROVEMENTS BY MUNICIPALITY**

A. Municipality and BNSF agree that the terms of the Original Agreements have been carried out with respect to construction of parking lot improvements.

B. Of the more than 310 parking spaces available at or near the Main Street Station, at least 247 spaces shall be for long-term commuter parking at the locations on the leased premises shown on Exhibit A attached hereto. In addition, at least 36 spaces at or near the Fairview Station are likewise designated for long-term commuter parking. The Municipality shall continue to provide during the term of this Agreement such number of parking spaces for commuter parking in a manner as to permit at least 12 hours of continuous parking at rates as may from time to time be established by the Municipal Council by ordinance, but in no event less than a rate of 50 cents for 12 hours.

Municipality may permit general parking upon the leased premises with or without charge, between 6:00 p.m. and 6:00 a.m. on business days and all day Saturday, Sunday and legal holidays. On that portion of Lot 2 colored in red on Exhibit A, Municipality may permit general parking for continuous periods not to exceed 12 hours in duration. Municipality may, from time to time, increase the parking rates charged patrons for use of commuter parking spaces located upon the leased premises. In the event the Municipality proposes to increase such rates, Municipality shall provide written notice to BNSF of the proposed increase. If BNSF fails to object to the proposed rate increase in writing within a period of sixty (60) days from the date such notice is received by BNSF, approval shall be deemed to have been given and Municipality may institute the proposed increase.

C. During the period of this Agreement, the Municipality agrees to maintain and keep the parking spaces and all related parking facilities in good and serviceable condition for the uses intended.

## V. WAIVERS OF LIEN

Municipality agrees to require each contractor and subcontractor performing any work upon the leased premises to furnish waivers of lien prior to making final payment to such contractor or subcontractor.

## VI. PARKING REVENUES AND LEASED PREMISES REVENUES

A. During the term of this Agreement, revenues from parking upon the leased premises, pursuant to Part IV above ("Parking Fee Revenues"), shall be collected by the Municipality and applied to the payment of costs and expenses (hereinafter called "Leased Premises Costs") to the extent and in the order listed below:

1. All reasonable and actual costs of operating, maintaining, repairing, cleaning, heating, and lighting said station building, platforms, canopies, parking facilities and meters, or other improvements on said leased premises, including the cost of snow and ice removal, grass and weed cutting, tree and shrubbery care and sewer, water and other utility charges.
2. All reasonable and actual costs related to the collection of parking fees on the leased premises.

B. After Municipality shall have been fully reimbursed for all Leased Premises Costs, the balance of any Parking Fee Revenues earned on the leased premises shall be set aside to cover the cost of any major maintenance work on the leased premises. Municipality provides its Comprehensive Financial Report as well as its proposed budget on the Internet at [www.vil.downers-grove.il.us](http://www.vil.downers-grove.il.us). BNSF shall, at its option and convenience, periodically review the financial report and budget of the Municipality to monitor the uses of the Parking Fee Revenues and Leased Premises Revenues. Once a year, BNSF may request paper copies of the Municipality's Financial Report and Budget regarding parking. The Municipality shall send paper copies of requested documents to BNSF within thirty (30) days of receipt of request.

C. Any income realized from commercial use of the leased premises shall be treated as "Leased Premises Revenues" and shall be applied by the Municipality against the cost of maintaining the leased premises as provided in Article VI, Parts A1 and 2 and Part B. If and when any Leased Premises Revenues received by the Municipality becomes \$20,000 or more, in any one calendar year period, for a single business or lessee, the Municipality shall notify BNSF in writing and provide proof of said receipts. To the extent Leased Premises Revenues exceed \$20,000 annually per single business or lessee, the amount of Leased Premises Revenue that is over \$20,000 per single business or lessee will either (i) be shared equally between the parties or (ii) be used for commuter-related capital improvements to the leased premises, as mutually agreed upon by the parties, as the Municipality acknowledges the benefit to the Municipality of a very low rental rate for the leased premises from BNSF and does not expect any windfall.

D. BNSF shall have the right, upon ten (10) days' notice, to examine the books and records of the Municipality relative to the collection of such Parking Fee Revenues, Leased Premises Revenues and the payment of such Leased Premises Costs.

## **VII. MAINTENANCE AND OPERATION OF LEASED PREMISES**

During the term of this Agreement, Municipality shall operate, maintain, and repair, as necessary, said station buildings and the canopies, platforms, lighting facilities, sidewalks, parking facilities, entrances and exits located upon, or hereafter located on the leased premises, and shall keep all of the same and all leased premises in a good state of repair, appearance, order and cleanliness, corresponding to standards that apply to public buildings, grounds and facilities otherwise owned or operated by the Municipality.

As part of its obligation to operate the station buildings, Municipality shall provide heat, water and light to the station buildings and shall cause the same to be open and heated at least one-half hour before and after an arrival or departure of any commuter train.

When necessary to the safety and convenience of persons using the leased premises, Municipality shall promptly remove ice and snow from the platforms, entrances, exits, sidewalks, driveways and

parking areas located on the leased premises, and when necessary, shall de-ice the same (except for the parking areas) with commercial products in order that they will be suitable for use.

Municipality shall be responsible for major maintenance or replacement of facilities located on the leased premises only to the extent that funds from Parking Fee Revenues and Leased Premises Revenues are deemed by the Municipality to be sufficient to meet all obligations for routine maintenance and repair and to meet the cost of such major maintenance or replacement of facilities. Should sufficient revenues not be available to meet all of such obligations and costs, BNSF and the Municipality shall use their best efforts to obtain public funds as needed from sources available to them, and shall provide from such funds for the major maintenance or repair of such facilities.

#### VIII. INSURANCE

For purposes of this section VIII, **Railroad** shall mean "Burlington Northern Santa Fe Corporation", "The Burlington Northern and Santa Fe Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

Municipality is allowed to self-insure without the prior written consent of **Railroad**. Any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Municipality in lieu of insurance. Any and all **Railroad** liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Municipality's insurance will be covered as if Municipality elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Municipality promises and agrees, during the term of this Agreement, to provide adequate proof of self-insured retention or other financial responsibility to **Railroad**, such proof to demonstrate to **Railroad's** satisfaction that Municipality's self-insurance or other financial responsibility provides substantially the following coverages and minimum amounts, and meets the other standards and requirements stated herein:

- A. Commercial General Liability Insurance. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Municipality's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

Other Requirements:

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and **Railroad** shall be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming **Railroad** as additional insured shall be indicated on the certificate of insurance.

Prior to executing the agreement, Municipality shall furnish to **Railroad** an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify **Railroad** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of

insurance. In the event of a claim or lawsuit involving Railroad arising out of this agreement, Municipality will make available any required policy covering such claim or lawsuit.

Any insurance policy shall be written by a reputable insurance company acceptable to **Railroad** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

Not more frequently than once every five years, **Railroad** may reasonably modify the required insurance coverage to reflect then-current risk management practices and underwriting practices in the insurance industry.

Failure to provide evidence as required by this section shall entitle, but not require, **Railroad** to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Municipality's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Municipality shall not be deemed to release or diminish the liability of Municipality.

The ballasted right-of-way and tracks not being not part of the leased premises, it is understood that such areas are excluded from this insurance requirement.

#### **IX. PROCEDURES AS TO REPAIRS, TERMINATION OF CONTRACT AND PROHIBITION OF ASSIGNMENT**

To the extent any facilities and improvements are constructed, improved or rehabilitated by Municipality under the terms of this Agreement, Municipality shall arrange therefor at its expense, using outside contractors if it chooses. When necessary, Municipality shall arrange for the repair and replacement of any structure, facility or improvement located or to be located on the leased premises, using Parking Fee Revenues, Leased Premises Revenues and/or insurance proceeds, as the case may be for such repairs and replacements.

Upon the execution of this document, any and all existing leases held by Municipality on Parcels 1 through 9, inclusive, are canceled and rescinded by joint agreement of the parties. The Municipality may not transfer or assign this Agreement to any other person or party.

## **X. MUNICIPALITY'S USE OF CONTRACT SERVICES**

It is understood and agreed that Municipality may contract with outside parties to furnish maintenance or operational services in and about the leased premises, and Municipality may reimburse itself for the cost of those contract services under the provisions of Part VI above.

## **XI. TERMINATION CLAUSE**

If either party to this Agreement shall fail to perform its substantive duties and obligations hereunder, the other party may deliver a written complaint to the delinquent party specifying the claimed failures, and demanding them to be corrected. If the notified party fails to satisfy this demand, or fails to adequately satisfy said demand within forty (40) days, the complaining party may, upon thirty (30) days' written notice to the delinquent party, declare this Agreement and the aforesaid Agreement to be terminated.

After such termination, each party may pursue such legal remedies as it may elect, to serve its own interest, but subject to all provisions of this Agreement.

## **XII. CONTRACTORS' INSURANCE REQUIREMENT**

In all contracts executed by Municipality for the construction, rehabilitation, improvement, repair or maintenance of structures, facilities or improvements located on the leased premises, or to be located on such premises, Municipality will require appropriate clauses to be inserted into its contracts requiring Municipality's outside consultants, contractors and subcontractors of any tier (collectively, "Contractors") to indemnify BNSF and Municipality against any and all risks, liabilities, claims, demands, losses and judgments arising from or growing out of, or related in any way to the work performed or to be performed by Contractors. In addition, prior to the commencement of any construction, rehabilitation, improvement, repair or maintenance activities on the leased premises by any Contractor pursuant to a contract or contracts that sets forth a total amount (including costs of labor, materials and overhead and profit) to be paid to Contractor that equals or exceeds \$50,000, the Municipality shall require each such Contractor to review and execute BNSF's then-current standard agreement between BNSF and contractors for work to be performed on BNSF property ("Standard Contractor Agreement").

### **XIII. SUPERVISION**

Municipality promises and agrees that it will appoint and employ competent engineers to supervise all contractors' activities on the leased premises during the term of this Agreement and Municipality further promises and agrees that it will, by appropriate means of inspection or testing, or otherwise, assure itself that all contractors and subcontractors working upon the leased premises will have fully complied with all specifications and requirements of their respective agreements. When any such contractors' work has been completed to the satisfaction of the Municipality, Municipality will promptly notify BNSF in writing of that fact.

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Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to be effective as of March 14, 2003 (the "Effective Date").

VILLAGE OF DOWNERS GROVE

THE BURLINGTON NORTHERN AND SANTA  
FE RAILWAY COMPANY

\_\_\_\_\_  
Brian J. Krajewski  
Mayor

\_\_\_\_\_  
Name: \_\_\_\_\_  
Director, Suburban Services

ATTEST:

\_\_\_\_\_  
April Holden, Village Clerk

**EXHIBIT "A"**

**DESCRIPTION OF LEASED PREMISES**

**[to be attached]**