

COPY

MEMORANDUM OF AGREEMENT

This **MEMORANDUM OF AGREEMENT** ("Memorandum") is made and entered into this 17th day of November, 2008, by and between the *City of Crest Hill*, an Illinois municipal corporation ("Crest Hill") and Grand Trunk Corporation, a wholly owned U.S. subsidiary and owner of the U.S. rail operating subsidiaries of Canadian National Railway Company ("CN") (collectively, "GTC"), and co-applicant in the filing before the Surface Transportation Board ("STB"). This Memorandum sets out certain commitments GTC is prepared to make to address the following issues resolved by the parties related to existing train traffic and changes in train traffic anticipated as a result of the proposed CN/EJ&EW transaction ("Transaction"), should that Transaction be authorized by the STB in STB Finance Docket No. 35087, and the corresponding agreement by Crest Hill that these commitments by GTC resolve any outstanding concerns Crest Hill has related to the Transaction with respect to these issues. The specific terms of this Memorandum between GTC and Crest Hill are summarized below, and contained in the attached exhibits and will be effective upon the execution of this Memorandum by duly authorized representatives of Crest Hill and GTC.

A.

I. Quiet Zones

- (A) GTC will support and provide at its sole cost and expense technical input to Crest Hill's application for a Quiet Zone, which would include all of the EJ&E Western Subdivision within the city limits of Crest Hill. GTC will bear such cost until the application for Quiet Zone has been approved by the appropriate authorities having jurisdiction over the same. GTC will be obligated to provide the funds and support to accomplish the application so that it is ready for filing by Crest Hill within 180 days of the date of acquisition of the EJE&W.
- (B) GTC will fund and install at GTC's sole cost constant warning time circuitry on the EJ&E line at the crossing at Oakland Avenue at an estimated cost of \$60,000 (See Exhibit 1). The parties acknowledge that the cost is an estimate only, and GTC will install such warning time circuitry or such other devices as may be necessary to attain the status of a Quiet Zone notwithstanding that the cost may exceed the sum set forth herein. GTC will be obligated to complete installation as soon as practical after approval of the application, and no later than one year after the date of acquisition of the EJE&W.
- (C) Once the Quiet Zone has been approved, GTC will fund additional measures required to maintain the Quiet Zone designation on the EJ&EW line to be acquired by CN within the city limits of Crest Hill should the retention of the designation be jeopardized by additional GTC train volumes on that line. In the event Crest Hill is notified or otherwise becomes aware that additional measures must be taken to maintain such Quiet Zone, GTC agrees to immediately commence the prosecution of such

additional measures within thirty (30) days after written notice from Crest Hill, or at such earlier date as may be required by any federal, state or local authority having jurisdiction over the Quiet Zone designation. A representative of GTC agrees to meet with Crest Hill's City Administrator, or his designee to establish a timeline in order to establish the commencement date, progression reporting periods and the final date for acceptance of such additional measures. Such timeline shall be subject to approval by the City Council of Crest Hill. This provision will be limited for a period of 10 years from the date of acquisition by GTC of control of EJ&EW.

II. Operations/Property

GTC grants to Crest Hill the exclusive option to purchase for the sum of \$1.00 a certain right-of-way commonly known as the Rockdale Branch right-of-way property. ("Rockdale Branch") The Rockdale Branch right-of-way property shall be defined as the right-of-way consisting of a parcel of real estate approximately 4,000 feet long by 50 feet wide bounded on the westside by Weber Road and on the eastside by the southern boundary of the right-of-way line of EJ&EW mainline (See Exhibit 2). This option may be exercised by giving written notice of the exercise to GTC at the address hereinafter set forth below at any time during the term of the option, which shall be for a period of three (3) years commencing on the date of acquisition by GTC of control of EJ&EW and shall continue until 11:59 o'clock PM on the date of the termination of such option. Nothing contained herein shall prevent Crest Hill from taking title to the right-of-way, or assigning to its designee its right to take such title and all proceeds from any such assignment, conveyance or transfer shall accrue to Crest Hill. GTC agrees to convey by quit-claim deed its title to the Rockdale Branch to Crest Hill or Crest Hill's designee within thirty (30) days after the date of the exercise of the option as provided for herein. GTC will retain ownership of all rail and ties and will be required to remove the same at GTC's sole cost and expense no later than six (6) months after the date of the conveyance of the right-of-way.

III. Safety/Noise

GTC and Crest Hill acknowledge that the operation by GTC will substantially increase train traffic traveling through Crest Hill thereby creating incidents of additional noise which the parties acknowledge requires acts of mitigation to reduce the impact upon the residents of the City.

- (A) GTC will fund, construct, and maintain safety fencing in one location adjacent to Richland School, 1919 W. Caton Farm Road, Crest Hill, Illinois ("Richland") and the Lockport Township Park District park for a total of 2,000 feet at an estimated cost of Sixty-five thousand (\$65,000) dollars within twelve (12) months of the date of acquisition by GTC of control of EJ&EW (See Exhibit 3). GTC agrees that the fencing shall be five (5) feet in height and located upon its property at a site agreeable to Crest Hill and Richland. GTC acknowledges that the Sixty-five thousand (\$65,000) dollar amount set forth herein is an estimate only and GTC agrees shall bear the

cost necessary to construct such 2,000 foot fence in length. GTC agrees to repair such fence when such repairs are needed or within thirty (30) days after written notice by either Crest Hill or Richland that such fence is in need of repair.

- (B) GTC will expend the sum of Five thousand (\$5,000) dollars in order to provide vegetation grubbing for the area adjacent to the fence line and baseball field at Richland School. The parties acknowledge that the sum set forth herein for such grubbing is an estimate of the cost necessary to complete the removal of the vegetation in the area adjacent to the proposed fence line as set forth in subsection A above and that GTC agrees it shall pay the total cost of such vegetation grubbing, notwithstanding that it may exceed \$5,000 as herein provided. Such vegetation grubbing shall occur within twelve (12) months after the date of acquisition by GTC of control of EJ&EW and shall be completed after prior consultation with Crest Hill and Richland. GTC agrees to attempt to save as many mature trees as possible in order to mitigate the noise of the train traffic traveling through the area adjacent to Richland. A mature tree shall be defined as any tree which exceeds two and one-half (2 ½") inches or more in diameter.
- (C) At its sole expense, GTC will add and maintain fencing to protect an open culvert at Milepost 3.75. The installation of such fencing shall occur within twelve (12) months of the date of acquisition by GTC of control of EJ&EW.
- (D) GTC will fund, construct and maintain a sound wall or a mature vegetation shield for a distance of 0.4 miles at a cost estimated to be eight hundred thousand (\$800,000) dollars at a location designated in the attached exhibit (See Exhibit 4). GTC acknowledges this is an estimate only and GTC agrees it shall bear the actual cost necessary to construct such soundwalls or mature vegetation for a distance of 0.4 miles. GTC shall have the continuing obligation to maintain the sound walls or mature vegetation after their construction or planting, respectively. In the case of vegetation, GTC agrees to maintain the same by providing necessary irrigation in order that such vegetation may grow in a healthy vegetative state. In the event any of the mature vegetation dies or is otherwise damaged or destroyed, GTC agrees to replant the same within thirty (30) days after written notice from Crest Hill that such plantings require replacement. Further, GTC also agrees to repair any damage to soundproofing walls upon thirty (30) days written notice from Crest Hill. The species of trees to be planted as mature vegetation shall be determined by Crest Hill.
- (E) GTC will construct and maintain on a continuing basis a berm with vegetation and safety fencing at the east end of Autumn Ridge subdivision in order to mitigate train traffic noise at such location. The location of such berm shall be subject to the approval of Crest Hill. GTC's obligation to construct such berm and safety fencing shall not exceed fifty thousand (\$50,000) dollars. GTC agrees to maintain the same by providing necessary irrigation in order that such vegetation may grow in a healthy vegetative state. In the event any of the mature vegetation dies or is otherwise damaged or destroyed, GTC agrees to replant the same within thirty (30) days after written notice from Crest Hill that such plantings require

replacement. Further, GTC also agrees to repair any damage to the safety fencing upon thirty (30) days written notice from Crest Hill. The species of trees to be planted as mature vegetation shall be determined by Crest Hill

(F) GTC will address the issue of idling locomotives in the following manner:

a) GTC will work with the delivering carriers and the receiving customer to review train operations and scheduling to minimize the time the trains will be held on, and idle at, the Crest Hill siding. GTC will develop and then share this plan, and all progress with Crest Hill.

b) To the extent trains are held on the Crest Hill siding, GTC will make all reasonable efforts to minimize idling and, to the greatest extent possible, shut down locomotives when temperatures remain above 45 degrees and it is anticipated that the train will not be moved within 4 hours.

c) GTC shall install a stopboard at the east end of the siding, and issue instructions to all train crews in order to adopt a practice of positioning the lead locomotives as far east on the siding as is operationally practical.

d) GTC will agree to review the operations at this siding location annually with Crest Hill to review issues and possible solutions. Crest Hill shall contact the designated GTC Government Affairs Officer and request a meeting should any concerns require discussion on an expedited basis. GTC agrees to respond and schedule such meeting within 14 days of a written request by Crest Hill.

(G) GTC agrees that within 90 days of the date of its acquisition of control of EJ&EW, GTC shall deliver a plan for the specific construction timetable for the improvements required in this Section III. GTC will complete all construction activity within one year of the date that the plan has been reviewed and approved by Crest Hill. Assuming Crest Hill does not seek any aesthetic or additional coverage for the designated improvements, GTC understands that Crest Hill shall not be required to contribute any funds toward these improvements. GTC will be responsible for maintenance of all improvements as noted in the above sections. Crest Hill agrees to maintain vigilance over the improvements in order to minimize the potential for vandalism. For the purpose of this Agreement, "maintain vigilance" shall be defined as the usual and customary municipal services normally provided by officials and employees of the City, for the protection of the property of its residents. Upon observing such vandalized property, Crest Hill shall notify GTC of any damage which in the City's sole opinion should be addressed by GTC.

IV. Emergency Response Training

GTC will provide training at its sole cost to Crest Hill for Crest Hill's emergency responders. GTC will complete a training plan in conjunction with the Police Chief and the Fire Chief within 3 months after acquisition of EJ&EW. All training will be completed within a 3-year period following acquisition by GTC of control of

EJ&EW. This does not preclude additional training in years following that three-year period, for new employees and as refresher.

V. Communications

GTC will fund at its sole expense a specific emergency protocol and dispatching view capability on behalf of Crest Hill in cooperation with Wescom Communications Center. GTC agrees to bear the cost of the hardware, software and communication equipment, which the parties jointly deem necessary and appropriate in order to provide specific emergency protocol and dispatching view capabilities at the Wescom Public Safety Answering Point. Crest Hill agrees to assist in the design, testing and training with the Wescom Communication Center.

VI. Additional Considerations

GTC will convey easements at no charge for up to four (4) future utility improvements for access and maintenance within the City limits of Crest Hill. Further, any utility lines, which have unrecorded easements, shall be grandfathered and properly documented at the time they are discovered. Any new construction or replacement of existing lines within the easement area shall be constructed in accordance with AREMA specifications, and subject to GTC engineering review. This provision shall be limited for a period of ten years from the date of acquisition by GTC of control of EJ&EW.

GTC will remove excess vegetation from the existing Route 53 bridge structure within 90 days of the date of acquisition by GTC of control of EJ&EW.

GTC will agree to monitor the condition of the crossing surface at Oakland Avenue and Gaylord Road and as appropriate when the track maintenance cycle allows.

B.

CONDITIONS FOR GTC'S OBLIGATIONS UNDER THIS MEMORANDUM OF AGREEMENT

- I. The commitments of GTC set forth in this Agreement are conditioned upon the following:
 - (A) STB approval of the application by GTC to acquire control of the EJ&E West Company, provided that such approval does not include the imposition upon GTC of any condition for mitigation in Crest Hill that is materially inconsistent with, in lieu of, or supplemental to the commitments in this Agreement (including but not limited to an imposed condition requiring further study and evaluation of impacts and mitigation options for Crest Hill); and
 - (B) Acquisition by GTC of control of the EJ&EW, pursuant to STB authorization.

- II. As promptly and commercially reasonable, but not later than three years after acquisition of control of EJ&EW, GTC shall fulfill all of its commitments contained herein.
- III. Crest Hill agrees that it shall not make further submissions in the proceeding without GTC's prior review and approval except in support of this agreement and prompt STB approval of the Transaction.

IV. Confidentiality

This negotiated Memorandum and its terms shall be confidential, except to the extent disclosure may be essential for consideration by the Crest Hill corporate authorities at a public meeting and as otherwise required by law and only after notice to, and consultation between GTC and Crest Hill, and except that it may be submitted to the STB's Section of Environmental Analysis ("SEA"), subject to a request that it be kept confidential by SEA and the STB.

V. Sole Remedy

It is the intent of the parties to this Memorandum that the STB require GTC's compliance with this agreement in lieu of any additional or inconsistent mitigation that the STB might otherwise impose regarding environmental impacts within the city limits of Crest Hill. SEA has asked that CN provide copies of any formalized agreements between GTC and affected communities, and the parties agree that GTC shall provide a copy of this Memorandum to SEA upon execution.

VI. Notices.

All notices required to be sent by the respective parties to this Memorandum shall be given as follows:

If to Crest Hill:

Mr. John Tomasoski
City Administrator
City of Crest Hill
1610 Plainfield Road
Crest Hill, Illinois 60403

With a copy to:

David L. Ruttle, Esq.
McKeown, Fitzgerald, Zollner,
Buck, Hutchison & Ruttle
2455 Glenwood Avenue
Joliet, Illinois 60435

If to GTC/CN:

Mr. Gordon Trafton
Senior Vice President
Canadian National

17641 S. Ashland Avenue
Homewood, IL 60430

Mr. Eric Jakubowski
Director, Product Development
17641 S. Ashland Avenue
Homewood, Illinois 60430

All notices, requests, and other communications under this Memorandum shall be in writing and shall be personally delivered or sent by first-class, certified mail, postage prepaid, return receipt requested, by facsimile, or licensed overnight courier to the appropriate party at the address set forth above. Notice shall be deemed given at the time delivered, if personally delivered, at the time indicated on the duly completed postal service return receipt, if delivered by certified mail, at time the facsimile is transmitted, if delivered by facsimile, or on the next business day, after such notice is sent if delivered by overnight courier. Either Party may change its address for notices under this Agreement by giving written notice of such change to the other Party in accordance with the terms of this Section.

Agreed To:

GTC

By: 

Title: SVP SOUTHERN REGION

Date: 11/24/08

Agreed To:

City of Crest Hill

By: 

Mayor

Date: November 17, 2008