



RESOLUTION NO. 09-10-09-2

A RESOLUTION AUTHORIZING THE EXECUTION
OF AN AGREEMENT – CANADIAN NATIONAL

BE IT RESOLVED by the Mayor and Board of Trustees of the Village of Hawthorn Woods, Illinois, that the Mayor and Village Clerk be, and the same are, hereby authorized and directed to execute an agreement with Canadian National, in substantially the form attached hereto and Exhibit "A", and, by this reference, made a part hereof.

The foregoing Resolution was adopted by a roll call vote as follows:

AYES: Arsoni, Riess, Morgan, Wright, Weice, Corrigan

NAYS: 0

ABSENT AND NOT VOTING: 0

APPROVED: Joseph Mancino
Joseph Mancino, Mayor

ATTEST: Daryl Hansen
Daryl Hansen, Deputy Village Clerk

ADOPTED: September 10, 2009

APPROVED: September 10, 2009

MEMORANDUM OF AGREEMENT

This **MEMORANDUM OF AGREEMENT** ("Memorandum") is made and entered into this 10th day of September, 2009, by and between the **Village of Hawthorn Woods**, an Illinois municipal corporation ("Hawthorn Woods") and **Grand Trunk Corporation**, a wholly owned U.S. subsidiary and owner of the U.S. rail operating subsidiaries of Canadian National Railway Company (collectively, "GTC"), and co-applicant in the filing before the Surface Transportation Board ("STB") in STB Finance Docket No. 35087. 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 CN/EJ&EW transaction ("Transaction"), authorized by the STB on December 24, 2008 in STB Finance Docket No. 35087, and the corresponding agreement by Hawthorn Woods that these commitments by GTC resolve any outstanding concerns Hawthorn Woods has related to the Transaction. The specific terms of this Memorandum between GTC and Hawthorn Woods are summarized below, and will be effective upon the execution of this Memorandum by duly authorized representatives of Hawthorn Woods and GTC.

A.

I Quiet Zones

- (A) GTC will fund additional measures required to maintain the existing Quiet Zone designation on the EJ&EW line acquired by GTC within the limits of Hawthorn Woods should the retention of the designation be jeopardized by additional train volumes on the line resulting from the transaction. This provision will be limited for a period of 10 years from the date of acquisition by GTC of control of EJ&EW.

II Noise and Safety Mitigation

GTC will provide \$ 760,000 for noise mitigation, safety fencing, and public safety within Hawthorn Woods. These funds include all costs for the improvements including design, equipment and engineering. Hawthorn Woods may use these funds for any combination of mitigation elements constructed on non-railroad property. In addition, Hawthorn Woods may utilize any portion of these funds to administer a mitigation program. Hawthorn Woods or adjacent property owners will be responsible for the construction, ownership and maintenance of all improvements.

Within 180 days from the effective date of this agreement, Hawthorn Woods shall submit a specific plan for use of the funds, along with any criteria for disbursement if funds are distributed to individual property owners. GTC will commit to disburse 50% of these funds within 90 days of the receipt of the plan. The balance of funds will be disbursed upon the execution of a public safety plan. Hawthorn Woods will be responsible for providing a semi annual report to GTC of all expenditures.

III Emergency Response and Training

GTC will provide training at no cost to Hawthorn Woods for Hawthorn Wood's emergency responders. All training will be completed within a 3-year span. Some training will be limited to qualified candidates submitted by Hawthorn Woods. This does not preclude additional training in subsequent years for new employees and as refresher.

IV Communications

GTC will fund at its sole expense the establishment of a specific emergency protocol and dispatching view capability on behalf of Hawthorn Woods. GTC shall bear the cost of the hardware, software and communication equipment in order to provide specific emergency protocol and dispatching view capabilities at the appropriate dispatch facility.

V Pedestrian Crossing Protection

- (A) GTC will fund \$125,000 towards the installation of a bicycle/pedestrian crossing, including crossing surface on railroad property and protected by automatic gates and flashers at a single location to be designated by Hawthorn Woods at either Old McHenry road or Gilmer road.

VI Traffic signals

- (A) GTC will contribute \$50,000 to Hawthorn Woods for the work necessary to coordinate the grade crossing protection at Old McHenry road with the traffic signals at the intersection of Old McHenry and Midlothian roads.

VII Other

- (A) GTC will negotiate a pesticide use policy for EJ&E property within Hawthorn Woods that restricts the use of specific products as requested by Hawthorn Woods.
- (B) GTC will convey up to 6 easements for municipal utility crossings at no charge for a period of five years from the effective date of this agreement. Any improvement within the easement area shall be constructed with AREMA specifications, and subject to GTC engineering review and concurrence.
- (C) GTC will install a curve lubricator at a location to be determined by GTC within Hawthorn Woods on the EJ&E.

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. Upon execution of this Memorandum, GTC will fulfill its commitments contained in this agreement within a three-year period after the effective date of this agreement, unless otherwise specified herein. Hawthorn Woods will accept funds committed for mitigation and complete installation of improvements or distribution of said funds within the same three-year period.
- B. Hawthorn Woods agrees that it shall not make further submissions in the STB proceeding or in appellate proceedings without GTC's prior review and approval except in support of this agreement and/or the STB's decision approving the Transaction. Hawthorn Woods also agrees to withdraw from membership in the TRAC coalition within 20 days of execution of this agreement.

II. Confidentiality

This negotiated Memorandum and its terms shall be confidential, except to the extent disclosure may be essential for consideration by the Hawthorn Woods corporate authorities at a public meeting and as otherwise required by law and only after notice to, and consultation between GTC and Hawthorn Woods, 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.

III. 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 in Hawthorn Woods. In the event that GTC is in default of any provision within this agreement, the Village of Hawthorn Woods reserves the right to re-enter litigation. 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.

Agreed To:

GTC

By:

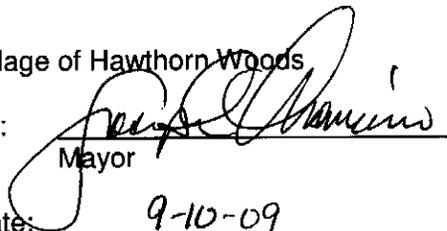
Eric T. Jablonski
GTC
Director

Title

Date: 9/14/09

Village of Hawthorn Woods

By:


Mayor

Date:

9-10-09