

## MEMORANDUM OF AGREEMENT

This **MEMORANDUM OF AGREEMENT** ("Memorandum") is made and entered into this xxrd day of December, 2008, by and between the **Village of Mundelein**, an Illinois municipal corporation ("Mundelein") and **Grand Trunk Corporation** (together with its U.S. rail subsidiaries, "GTC"), a wholly owned U.S. subsidiary and owner of the U.S. rail operating subsidiaries of Canadian National Railway Company ("CN") 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 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 Mundelein that these commitments by GTC resolve any outstanding concerns Mundelein has related to the Transaction with respect to these issues. The specific terms of this Memorandum between GTC and Mundelein are summarized below, and contained in the attached exhibits and will be effective upon the execution of this Memorandum by duly authorized representatives of Mundelein and GTC.

### A.

#### I. Quiet Zones

- (A) GTC will provide \$125,000 to Mundelein for the installation of median barriers and driveway relocations to maintain the existing Quiet Zone along the Waukesha Subdivision (North/South CN Line), which improvements shall be made prior to the deactivation of the automated horns as provided herein.
- (B) GTC will fund additional measures required to maintain the Quiet Zone designation on the EJ&E line to be acquired by GTC should the retention of the designation be jeopardized by additional train volumes on that line.

#### II. Operations

- (A) GTC will engineer, construct and thereafter, at all times, maintain in good operating condition a 30 mph connection at Leithton interlocking (the "Curve") to expedite train movements through Mundelein. Mundelein and GTC understand that such construction is contingent on GTC securing property through acquisition at fair market value prices, or as otherwise agreed to by GTC, and obtaining all permits necessary. Mundelein agrees to support and assist GTC in seeking to secure such property, zoning approval, and permits as appropriate. GTC intends to prioritize this commitment and expects the construction can be completed within 18-24 months of the acquisition by GTC of control of the EJ&EW. If GTC does not complete construction of the first of two high-speed curve tracks prior to 24 months after the acquisition by GTC of control of the EJ&EW, GTC will contribute an additional \$150,000 to Mundelein for mitigation efforts. GTC will retain in service the existing connecting track at Leithton until both high-speed curve tracks are in place.

- (B) GTC will fund and construct the crossing rehabilitation at Hawley Street at an estimated cost to GTC of \$125,000 or such amount that may be required therefore. (See Exhibit 1.)

III. **Safety/Noise**

- (A) GTC will provide \$100,000 to Mundelein for the installation of privacy fencing and/or landscaping (berms and/or vegetation) off railroad property for safety separation/noise mitigation at Hickory Street, west of US 45 to the Village boundary. Mundelein will be responsible for the maintenance of this improvement, and may assign this responsibility to adjacent landowners. Should railroad property be required for some portion of the construction, GTC agrees to consider and issue a zero cost lease for the installation on reasonable terms and conditions.
- (B) GTC will provide \$50,000 to Mundelein for safety or noise mitigation at the West Oak Middle School building.

IV. **Emergency Response Training**

GTC will provide training at no cost to Mundelein for Mundelein and Countryside Fire Protection District emergency responders. GTC will complete a training plan in conjunction with the Police Chief and Fire Chiefs within 3 months after acquisition. All training will be completed within a 3-year span. This does not preclude additional training in subsequent years beyond 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 Mundelein and Countryside Fire Protection District assuming hardware and communications equipment are jointly deemed appropriate. Mundelein agrees to assist in the design and testing.

VI. **Emergency Response**

GTC will contribute \$400,000 toward emergency response equipment and/or a contribution toward the construction of a pedestrian overpass or subway at the Mundelein Metra station (See Exhibit B hereto).

VII. **Route 60/83**

The crossing at IL Route 60/83 just outside Mundelein has been considered for improvement by IDOT. GTC agrees to contribute \$500,000 toward engineering, design, and construction of a grade separation or other Route 60/83 improvement in the area of the crossing. Mundelein and GTC shall jointly confer with IDOT in a timely manner regarding this matter in an effort to expedite such improvement. These funds will be made available by GTC within 180 days of the date that IDOT is prepared to proceed with a Feasibility Study of such improvement, whether designated under that

nomenclature or otherwise. Mundelein agrees that the contribution by GTC should be credited toward GTC's standard 5% portion of the costs of the improvement. Mundelein agrees to support this formula for cost sharing with IDOT, Lake County, and the other involved municipalities. This commitment will remain in place for a period of 5 years from the date of acquisition of control by GTC of the EJ&EW.

**VIII. Allanson Road Bypass**

GTC will contribute \$500,000 toward the design, engineering, and construction of a designated bypass road in the Tower Road industrial park to alleviate travel over the Allanson Road crossing. These funds will be made available by GTC within 180 days of the date that Mundelein is prepared to proceed with land acquisition for such improvement. Mundelein hereby agrees that this contribution by GTC is made in lieu of any future GTC contribution toward an Allanson road crossing/separation improvement.

GTC's \$500,000 contribution toward the bypass road improvement described above will remain in place for a period of 7 years. This period may be extended upon the request of Mundelein with the approval of GTC which shall not be unreasonably withheld. Mundelein may use this \$500,000 contribution instead, in whole or in part, for a pedestrian bridge or subway at the Kiss and Ride and/or other projects referred to in this Memorandum upon Mundelein's request and with the approval of GTC which shall not be unreasonably withheld. Mundelein may also use these funds for additional projects or programs not identified in this Memorandum that may mitigate the impact of the Transaction on Mundelein residents, but only upon GTC approval.

**IX. Alternative Post-Transaction Relief**

GTC acknowledges that Mundelein is concerned that CN will implement anticipated changes in operations to implement the Transaction prior to improvements, such as construction of the Curve, in a manner that will create adverse environmental impacts in excess of those expected from the Transaction after the full realization of the mitigation anticipated in this agreement ("excess effects"). GTC also acknowledges, without waiving any defenses or other rights of GTC, that Mundelein will have a continuing right following the STB's approval of the Transaction to seek relief from the STB regarding any such excess effects.

**X. Other**

Regardless of whether the STB approves the application by CN to acquire control of the EJ &EW, GTC is committed to do the following within 30 days from the execution hereof by both parties:

- (A) GTC will establish a Protocol for communication in the event of train blockages, and signal malfunctions (gates down, no trains) as attached hereto as Exhibit C. GTC shall continue the recent operational changes made to reduce the number of blocked crossings, as identified in a letter from Gordon Trafton II to Mayor Kessler, dated May 16, 2008 attached hereto, until GTC has notified Mundelein of its wish to modify such operational changes, because of changed circumstances, and the parties have met and discussed such modifications.

- (B) GTC will consent to Mundelein establishing access to the east side platform of the Metra station from the proposed Kiss and Ride, as set forth in Exhibit B hereto.
- (C) GTC will amend the license agreement authorizing the installation of automated train horns to enable Mundelein, at its sole cost, to deactivate the horns but leave all applicable hardware in place as set forth in Exhibit A hereto.

**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) Except for GTC's commitments in Section X (A), (B) and (C) above, STB approval of the application by GTC to acquire control of the EJ&EW, provided that in the event such approval includes the STB's imposition upon GTC of a condition or conditions for mitigation that would require GTC to contribute funds toward a grade separation at the crossing at IL Route 60/83 just outside Mundelein, and/or at the crossing at Allanson Road, on a contribution percentage basis greater than 5% of the costs of each separation, then Section A.VII. and/or Section A.VIII. of this Memorandum will no longer apply, as the case may be; and
  - (B) Acquisition by GTC of control of the EJ&EW, pursuant to STB authorization. GTC shall inform Mundelein of the date of such acquisition of control promptly therefore.
- II. Upon execution of this Memorandum and both the final approval of the Transaction, including any required environmental review, by the STB, and the acquisition of control of EJ&EW by GTC, the following time schedule shall be implemented:
  - (A) Within 30 days after acquisition of control of EJ&EW, GTC shall deposit with Mundelein the sum of \$675,000 to be expended by Mundelein as provided in Sections A I (A), III (A) and (B), VI or returned to GTC if not properly expended for such purposes within 7 years.
  - (B) Within one year after acquisition of control of EJ&EW, GTC shall complete the engineering for the improvements to the Curve, make application for a wetland permit and all other governmental permits, make written offers to the property owners to acquire the necessary land and obtain from ComEd the right to cross its right-of-way and, upon obtaining all necessary permits and land acquisition, to promptly commence and diligently pursue to completion all necessary improvements to successfully achieve a 30 mph train speed on the Curve.
  - (C) Within one year after acquisition of control of EJ&EW, GTC shall complete the construction of the crossing rehabilitation at Hawley Street.

(D) As promptly as commercially reasonable, but not later than the end of 3 years after acquisition of control of EJ&EW, GTC shall fulfill all of its other commitments contained herein, except for its commitments in Section X (A), (B) and (C) above, which shall be performed as provided therein.

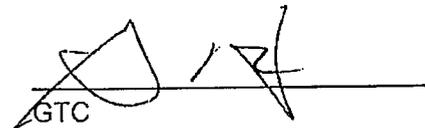
III. Mundelein agrees that it shall not make further submissions in the proceeding without GTC's prior review and approval except in support of this agreement and prompt STB approval of the Transaction.

IV. Confidentiality

This negotiated Memorandum and its terms shall be confidential, except to the extent disclosure may be essential for consideration by the Mundelein corporate authorities at a public meeting and as otherwise required by law and only after notice to, and consultation between GTC and Mundelein, 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 in the Village of Mundelein. SEA has asked that it be provided 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. Notwithstanding anything to the contrary herein, in the event that the STB does not require GTC's full compliance with this agreement, the parties agree to renegotiate this Agreement in good faith to achieve the intent of the parties as expressed herein.

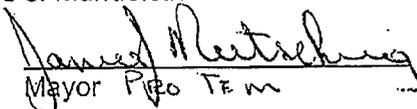
  
GTC

SVP Southern Region  
Title

Date: 12/12/08

Agreed To:

Village of Mundelein

By:   
Mayor Pro Tem

Date: 12-8-08

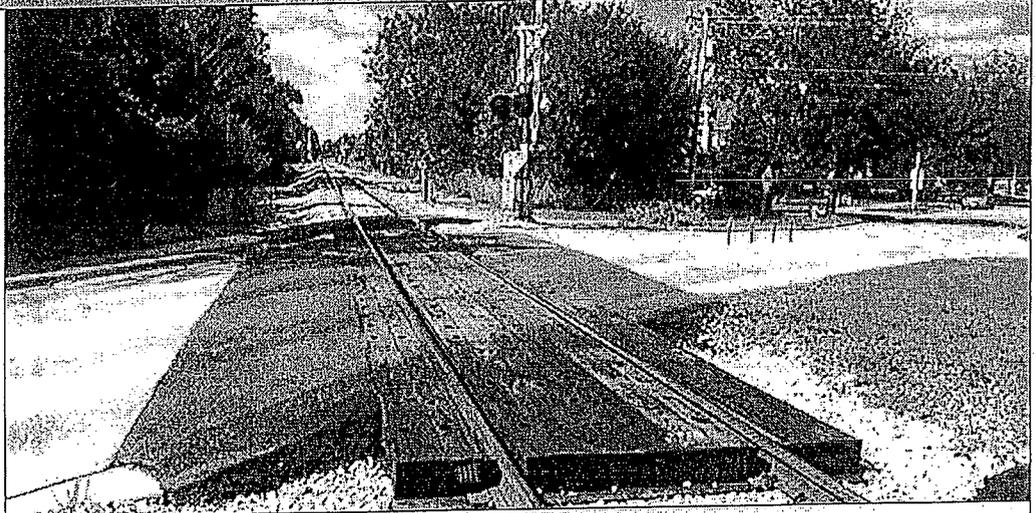
Mundelein Voluntary Agreement

EXHIBIT 1



CN Acquisition of E.J. &amp; E. Lines

## Crossing Rehabilitation



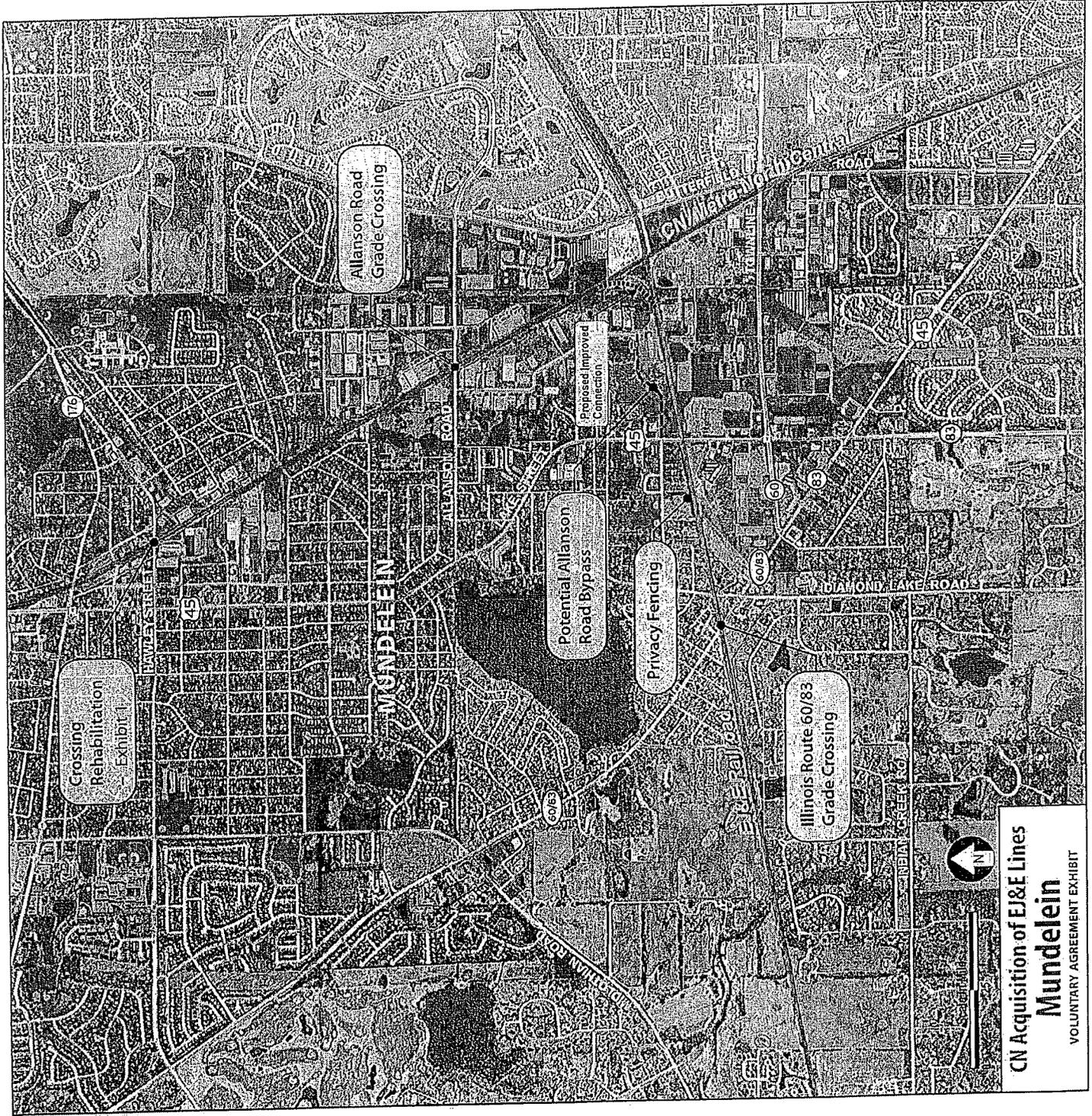
Railroad crossing rehabilitation includes installing panels between the rails to allow for smoother crossing. This also allows for quieter crossing.

Benefits include:

- Smoother ride over the track crossing
- Durability
  - Built of high-strength materials
  - Able to withstand heavy vehicles
- Safety
  - Non-skid surface matches existing roads
- Quick and easy installation

GTC will replace the CN grade crossing surface at Hawley Street.

The estimated cost of this improvement is \$125,000.



CN Acquisition of E&E Lines  
**Mundelein**  
VOLUNTARY AGREEMENT EXHIBIT

## EXHIBIT A

### AUTOMATED HORNS

Following is a draft of proposed language amending Paragraph 2 of the CN License Agreement:

- (a) Delete existing Paragraph 2 which reads as follows: "Cancellation effective immediately upon LICENSEE's termination of maintenance responsibility for the FACILITY or upon there no longer being a need for maintenance of the FACILITY. Upon termination of the LICENSE, and if permitted by law or regulatory order, LICENSEE shall remove the FACILITY and restore the property of RAILROAD to a condition satisfactory to the RAILROAD, all at LICENSEE's Costs."
- (b) Add the following Paragraph:
  - (i) "Subject to reinstatement as provided herein, cancellation of this LICENSE shall be effective immediately upon LICENSEE's termination of maintenance responsibility for the FACILITY or upon there no longer being a need for maintenance of the FACILITY. Upon termination of this LICENSE, LICENSEE shall remove, at its cost, so much of the FACILITY as is necessary to alert train engineers that FACILITY has been deactivated. The remainder of the FACILITY may be left in place and shall be removed by LICENSEE, at its cost, within five (5) years following its deactivation. RAILROAD shall not unreasonably withhold its consent to a request for extension. Upon removal of the FACILITY, the LICENSEE shall restore the RAILROAD property to a condition satisfactory to RAILROAD, all at LICENSEE's cost.
  - (ii) In the event that, either before or after the complete removal of the FACILITY, the LICENSEE wishes to reactivate and reinstall the FACILITY, the RAILROAD shall not unreasonably withhold its consent to the reinstatement of this LICENSE and the LICENSEE, at its cost, reinstalling, reactivating and thereafter maintaining the FACILITY.
  - (iii) LICENSEE shall apply for and obtain all permits, if any are needed, from State of Illinois and/or Federal regulatory bodies with respect to the deactivation and reactivation of the FACILITY.

## **EXHIBIT B**

### **KISS AND RIDE**

GTC shall deliver to Mundelein its written consent establishing an at grade access to the East Side Platform of the Metra Station from the proposed Kiss and Ride subject to the approval thereof by METRA. Mundelein agrees that such access shall be terminated should a pedestrian overpass or subway, to be constructed by Mundelein at Mundelein's expense, not be in place within five (5) years of this agreement. Mundelein anticipates securing needed funds for the overpass or subway from third parties.

## EXHIBIT C

### PROTOCOL ESTABLISHING MUNICIPAL CONTACT HIERARCHY TO THE CANADIAN NATIONAL RAILWAY IN THE EVENT A CN TRAIN BLOCKS A ROADWAY, OR A RAILROAD SIGNAL MALFUNCTIONS, IN THE VILLAGE OF MUNDELEIN

In establishing the following protocol for municipal contact to the Canadian National Railway (CN) in the event a roadway in the Village of Mundelein (Village) is blocked due to a stopped train or a signal malfunction, the CN reinforces the importance of rail freight to the US economy and the movement of interstate commerce by rail. Furthermore, the CN and the Village of Mundelein recognize that train operations occur in a multimodal environment where traffic conflicts and other causes lead to train stoppages.

The CN is committed to being a responsible corporation by improving communications between itself and the municipality, investigating the root cause of blocked roadway crossings, and staying engaged with municipal representatives to resolve issues of concern.

The CN and the Village agree as follows:

- 1) In the event that a crossing on the CN or EJ&E lines within, or adjacent to, the Village is blocked for longer than 10 minutes without train movement, or a signal malfunction causes the railroad crossing arms to block the roadway, the Village of Mundelein Police Department shall call the CN police communications center at 1-800-465-9239. The Mundelein Police Department shall provide a call back phone number, which may be the Dispatcher, patrol officer, or supervisor. The CN Police will call back the Village of Mundelein in a timely manner informing them of the reason for the blockage and the estimated time to clear the roadway, so that the Mundelein Police Department can better allocate resources and inform the public.
- 2) In the event that blockages persist or this protocol is not being followed, the Village may contact the CN Government Affairs Manager and request a meeting in the Village with a CN management representative. A CN Government Affairs Manager shall meet with Village representatives at least twice a year to discuss blockages, and other issues related to railroad operations that are of concern to the Village, unless both the CN and Village agree that a meeting is not necessary.
- 3) In the event that the root causes of blocked crossings, or another recurring, operational problem, remain unresolved, the CN will make itself available to mediation intervention to discuss and resolve the outstanding problems. It is anticipated that mediator would come from the STB or the ICC.

This agreement shall remain in full force and effect for two years from the date of execution by the Canadian National representative, and shall remain in effect unless revoked in writing by mutual agreement of the parties.

For the Village of Mundelein:

James Rutschky  
MAYOR Pro Tem

Title

12-8-08  
Date

For the Canadian National:

[Signature]  
SVP SOUTHERN REGION

Title

12/12/08  
Date