RESOLUTION NO. 10-34

RESOLUTION AUTHORIZING EXECUTION OF A MEMORANDUM OF AGREEMENT WITH GRAND TRUNK CORPORATION (Canadian National Railway Company)

WHEREAS, it is in the best interests of the Village of New Lenox ("Village") to enter into a Memorandum of Agreement with Grand Trunk Corporation, wholly owned subsidiary and owner of the United States rail operating subsidiaries of Canadian National Railway Company (collectively "GTC"), to set forth certain commitments by GTC to address issues relating to existing train traffic and changes in train traffic anticipated as a result of recent CN/EJ&EW transaction

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND BOARD OF TRUSTEES OF THE VILLAGE OF NEW LENOX, WILL COUNTY, ILLINOIS, PURSUANT TO ITS STATUTORY AND HOME RULE AUTHORITY AS FOLLOWS:

SECTION 1. The President and Board of Trustees hereby finds that all of the recitals contained in the preamble to this Resolution are true, correct and complete and are hereby incorporated by reference thereto and made a part thereof.

SECTION 2. The Village President is hereby authorized and directed to execute on behalf of the Village of New Lenox the Memorandum of Agreement attached hereto marked as Exhibit "A" and that the Village Clerk is hereby authorized and directed to attest to the President's signature.

SECTION 3. Each Section and part thereof of this Resolution is deemed to be severable and should any section or part hereof be held invalid or unconstitutional by any court of competent jurisdiction, such ruling shall not affect the validity or constitutionality of the remaining portion(s) of this resolution.

SECTION 4. This Resolution shall be in full force and effect immediately upon its passage and approval and publication as provided by law. All resolutions, motions or orders in conflict herewith be, and the same hereby are, to the extent of such conflict, repealed.

PRESENTED and passed by the Board of Trustees on a roll call vote on the 20th day of December, 2010 with 6 Trustees voting AYE, -0- Trustees voting NAY, -0- Trustees ABSTAINING, and with -0- Trustees ABSENT, the Mayor voting aye; and said vote being DYE aye, BOWDEN aye, BUTTERFIELD aye, MADSEN aye, SMITH aye, and TUMINELLO aye.

Laura Ruhl, Village Clerk

APPROVED this 21st day of December, 2010.

Tim Baldermann, Mayor

ATTEST:

Laura Ruhl, Village Clerk

MEMORANDUM OF AGREEMENT

This ***MEMORANDUM OF AGREEMENT*** ("Memorandum") is made and entered into this xxth day of December, 2010, by and between the **Village of New Lenox**, an Illinois municipal corporation ("New Lenox") 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 New Lenox that these commitments by GTC resolve any outstanding concerns New Lenox has related to the Transaction. The specific terms of this Memorandum between GTC and New Lenox are summarized below, and will be effective upon the execution of this Memorandum by duly authorized representatives of New Lenox and GTC.

A.

I Quiet Zones

(A) GTC will support and provide at its sole cost and expense independent consulting assistance and technical input to assist New Lenox's efforts to establish a Quiet Zone for the entire portion of the EJ&EW through New Lenox, including the crossings at Gougar Road, Nelson Road, Cedar Road, Spencer Road and Schoolhouse Road. GTC will bear such cost until the Quiet Zone has been lawfully implemented. GTC will be obligated to provide the funds and support to complete the Notice of Intent so that it is ready for filing within 180 days from the execution of this Agreement. New Lenox will assist in obtaining the cooperation and consent of the appropriate roadway agency for the crossings referenced herein, and in the event the consent is not obtained, the time period set forth herein will be extended accordingly. GTC shall reimburse up to $15,000.00 any appropriate expenses already borne by New Lenox in reviewing the Quiet Zone.

(B) GTC shall fund in its entirety the installation of and shall install the minimum requirements of any designated mitigation items required for the establishment of the Quiet Zone through New Lenox, including the crossings at Gougar Road, Nelson Road, Cedar Road, Spencer Road and Schoolhouse Road. GTC will be obligated to complete the installation as soon as practical after approval of the mitigation items by the appropriate roadway agency for the crossings referenced herein. In the event that New Lenox or the appropriate roadway agency requests mitigation items in excess of the minimum requirements, GTC will not be obligated to fund beyond the minimum requirements but shall cooperate with New Lenox and the appropriate roadway agency in installing the additional mitigation items.

(C) GTC will fund and install at GTC's sole cost constant warning time circuitry on the EJ&EW at five locations in New Lenox: Gougar Road, Nelson Road, Cedar Road, Spencer Road and Schoolhouse Road. GTC will commit to complete installation no later than 2012.

(D) Once the Quiet Zone has been implemented, GTC will fund additional measures that may be require to maintain the Quit Zone designation of the EJ&EW line within the village limits of New Lenox should the retention of the designation be jeopardized by additional GTC train volumes on that line. This provision will be limited *until January, 2019.*

II Noise and Safety Mitigation

GTC will provide $240,000 to New Lenox for noise mitigation. New Lenox may use these funds for any combination of mitigation elements constructed on non-railroad property, but immediately adjacent to the right of way. In addition, New Lenox may utilize any portion of these funds to administer a mitigation fund for distribution to owners of property located adjacent to rail lines owned by GTC's subsidiary. New Lenox or the referenced property owners will be responsible for the construction, ownership and maintenance of all improvements. Within 120 days from the effective date of this agreement, New Lenox shall submit to GTC 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 100% of these funds within 30 days of the receipt of the plan. New Lenox will be responsible for providing a semi-annual report to GTC of all expenditures until all of the $240,000 is spent or otherwise distributed.

III Emergency Response and Training

GTC will provide training, both in-house and off-site, at no cost to New Lenox for New Lenox's emergency responders. GTC will complete a training plan in conjunction with the designated Fire/Rescue Department representatives within 6 months after effective date of this agreement. All training will be completed within a 3-year span. Specialized training will be limited to qualified candidates submitted by New Lenox. This does not preclude additional training in subsequent years for new employees and as refresher. GTC will cover tuition, transportation, lodging and meals as required.

IV Communications

GTC will fund at its sole expense the establishment of a specific emergency protocol and dispatching view capability on behalf of New Lenox. The monitoring system will be web-based and allow for viewing of train location and direction of travel. GTC shall bear the cost of the hardware, software and communication equipment in order to provide specific emergency protocol and dispatching view capabilities as identified above.

V Utility Licenses

GTC will provide a waiver of fees for a period of ten years (10 years) for all existing municipal utility license agreements between GTC and New Lenox. GTC will convey up to 4 easements for municipal utility crossings at no charge for a period of ten (10) 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.

VI Annexation

GTC agrees to cooperate with New Lenox in the annexation of GTC's railroad right-of-way that is in unincorporated Will County and contiguous to the Village of New Lenox in the event that New Lenox makes a future request to annex all or a portion of the unincorporated right-of-way. New Lenox shall be responsible for all costs associated with any such effort, and any annexation shall be subject to a mutually agreeable annexation agreement.

VII Preliminary Engineering for Gougar Road Grade Separation

GTC agrees to contribute $500,000 toward preliminary engineering, and assessment of options for a grade separation at Gougar Road. These funds will be made available by GTC within 180 days of the date that additional public funds have been appropriated to complete the engineering. New Lenox agrees that the contribution by GTC should be credited toward GTC's standard 5% portion of the costs of the improvement. New Lenox agrees to support this formula for cost sharing with IDOT, Will County, and any other involved municipalities. This commitment will remain in place for a period of 5 years from the date of the ratification of this memorandum.

VIII Train Blockage Protocol

GTC agrees to abide by the attached Train Blockage Protocol in the event of blocked crossings. (See Exhibit "1").

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:

II. 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. New Lenox will accept funds committed for the mitigation provided in Section A and complete installation of improvements or distribution of said funds within the same three-year period.

New Lenox agrees that it shall not make further submissions in the STB proceedingor 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. New Lenox shall withdraw from membership in the TRAC coalition and publicly acknowledge this action within 20 days of the ratification of this memorandum.

III. Confidentiality

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

IV. 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 New Lenox. 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. Johnson

Title: Director

Date: 12/22/10

Agreed To:

Village of New Lenox

By: _____ Mayor

Date: 12/21/10

Exhibit 1

PROTOCOL ESTABLISHING MUNICIPAL CONTACT HIERARCHY
TO THE CANADIAN NATIONAL RAILWAY IN THE EVENT A
CN TRAIN BLOCKS A ROADWAY IN THE VILLAGE OF
NEW LENOX

In establishing the following protocol for municipal contact to the Canadian National Railway (CN) in the event a roadway in the Village of New Lenox (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 New Lenox recognize that train operations occur in a multi-modal 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.

Accordingly, the CN and the Village agree to the following protocol:

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 New Lenox Police Department shall call the CN police communications center at 1- 800-465-9239. The New Lenox 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 New Lenox in a timely manner informing them of the reason for the blockage and the estimated time to clear the roadway, so that the New Lenox 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.

4) Nothing herein is intended to limit the right of the Village to seek relief respecting this protocol from the Surface Transportation Board or any other governmental agency or tribunal having jurisdiction.