

MEMORANDUM

TO: Ken Alberts
FROM: Alan Cooper
RE: Nippon Sharyo Agreement
DATE: December 8, 2010

At your request, I am writing to summarize the background of the agreement between Nippon Sharyo and the City which will be presented to the City Council for approval at the December 13, 2010, council meeting.

The E-Rail Project as a whole involves a number of private and public entities, and numerous agreements. The three primary parties are: (1) Nippon Sharyo; (2) GPLH, LLC (commonly referred to as Black Earth); and (3) the City of Rochelle. Additionally, the BNSF Railway Company is involved with respect to the construction of a City rail siding off the BNSF mainline, and CenterPoint is involved with respect to the dedication of a right-of-way for rail siding on the CenterPoint property. Finally, there are various governmental agencies involved with the awarding of grants for roadway, water and sewer and rail construction. The City has entered into, or will be entering into, agreements with virtually all of the other entities.

Initially, the City was instrumental in procuring certain economic incentives to persuade Nippon Sharyo to locate in Rochelle, primarily including the grants. Nippon Sharyo and GPLH then engaged in extended negotiations related to Nippon Sharyo's purchase of approximately 35 acres of the GPLH property, to be used for the E-Rail Project. At the same time, the City negotiated a development agreement with GPLH containing terms covering the construction of public improvements on the 200-acre GPLH site for the E-Rail Project and future development (including roadways, water and sewer, electric and fiberoptic, and rail), the application of grants, and adequate security to be posted by GPLH. The City/GPLH Agreement was approved by the City Council on October 25, 2010, and was signed the next day.

Nippon Sharyo then requested that the City enter into an agreement with Nippon Sharyo. The purposes of this agreement were primarily: (1) to confirm that certain rights and obligations of the City in the City/ GPLH Agreement would also run in favor of Nippon Sharyo; and (2) to address certain miscellaneous matters of concern to Nippon Sharyo. Additionally, the City and GPLH have agreed to amend their development agreement to incorporate certain specific construction deadlines from the Nippon Sharyo/GPLH Site Development Agreement, and to clarify that two spurs and switches to serve the Nippon Sharyo property are included in the definition of rail improvements.

With that background, I believe the terms of the City/Nippon Sharyo Agreement are fairly self-explanatory.