

**RESOLUTION 2012-87-R**

**A RESOLUTION APPROVING OF THE MEMORANDUM OF AGREEMENT BETWEEN THE VILLAGE OF BARTLETT AND GRAND TRUNK CORPORATION**

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**BE IT RESOLVED** by the President and Board of Trustees of the Village of Bartlett, Cook, DuPage and Kane Counties, Illinois, as follows:

**SECTION ONE:** The Memorandum of Agreement dated December 4, 2012, between the Village of Bartlett and Grand Trunk Corporation (the "Agreement"), a copy of which is appended hereto and expressly incorporated herein by this reference, is hereby approved.

**SECTION TWO:** That the Village President and the Village Clerk are hereby authorized and directed to sign and attest, respectively, the Agreement on behalf of the Village of Bartlett.

**SECTION THREE: SEVERABILITY.** The various provisions of this Resolution are to be considered as severable, and of any part or portion of this Resolution shall be held invalid by any Court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Resolution.

**SECTION FOUR: REPEAL OF PRIOR RESOLUTIONS.** All prior Ordinances and Resolutions in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict or inconsistency.

**SECTION FIVE: EFFECTIVE DATE.** This Resolution shall be in full force and effect upon passage and approval.

**ROLL CALL VOTE:**

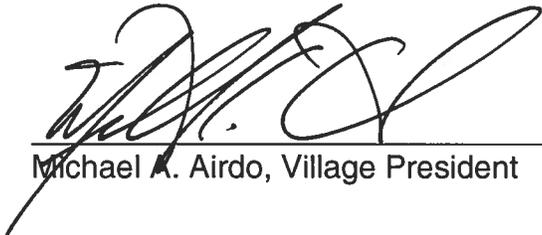
**AYES:** Trustees Kelly, Martin, Nolan, Shipman

**NAYS:** None

**ABSENT:** Trustees Arends, Napolitano

**PASSED:** December 4, 2012

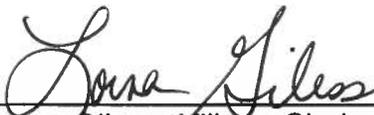
**APPROVED:** December 4, 2012

  
\_\_\_\_\_  
Michael A. Airdo, Village President

**ATTEST:**  
  
\_\_\_\_\_  
Lorna Giles, Village Clerk

**CERTIFICATION**

I, the undersigned, do hereby certify that I am the Village Clerk of the Village of Bartlett, Cook, DuPage and Kane Counties, Illinois, and that the foregoing is a true, complete and exact copy of Resolution 2012-87-R enacted on December 4, 2012, and approved on December 4, 2012, as the same appears from the official records of the Village of Bartlett.

  
\_\_\_\_\_  
Lorna Giles, Village Clerk



## **MEMORANDUM OF AGREEMENT**

This **MEMORANDUM OF AGREEMENT** ("Memorandum") is made and entered into this 12th day of December, 2012, by and between the **Village of Bartlett**, an Illinois municipal corporation ("Bartlett") 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 application filed with the Surface Transportation Board ("STB") in STB Finance Docket No. 35087. This Memorandum sets out certain commitments GTC is prepared to make to address various issues between the parties related to existing train traffic and changes in train traffic anticipated as a result of the CN/EJ&EW transaction authorized by the STB by decision served on December 24, 2008 in STB Finance Docket No. 35087 ("Transaction"), and Bartlett's corresponding agreement that these commitments by GTC resolve all of Bartlett's outstanding concerns related to the Transaction. This Memorandum agreement will be effective upon its execution by the duly authorized representatives of Bartlett and GTC.

### **A.**

#### **I Noise and Safety Mitigation**

GTC will pay up to a maximum cumulative total of \$1,000,000.00 for noise mitigation for the collective properties within Bartlett designated as adjacent impacted properties, provided the expenditures against that total are for projects or properties within 2500 feet of property owned by a GTC subsidiary. Bartlett may use these funds for any combination of noise mitigation elements constructed on non-Elgin, Joliet & Eastern Railway Company property. In addition or instead, Bartlett may utilize all or a portion of these funds to establish a noise mitigation fund for distribution of monies directly to adjacent property owners with noise mitigation needs. Bartlett or adjacent property owners will be responsible for the construction, ownership, and maintenance of all improvements; under no circumstance will GTC own or maintain, or pay for the ownership or maintenance of, the noise mitigation elements selected by Bartlett. Within 90 days from the effective date of this Memorandum, Bartlett shall submit to GTC a specific noise mitigation plan for use of the funds (the "Plan"), along with the criteria for disbursement if funds are to be distributed to individual property owners.

- A. If this Memorandum is executed by Bartlett on or before December 15, 2012, then GTC and Bartlett shall observe the provisions of this subsection A.

GTC will process payment of the full \$1,000,000.00 before December 31, 2012. On each six (6) month anniversary of Bartlett's receipt of GTC's \$1,000,000.00, until all of the \$1,000,000.00 is expended, Bartlett will forward to GTC a written report detailing its progress toward expenditure of the \$1,000,000.00, with sufficient detail to identify that the expenditures were made consistent with the requirements of this Memorandum and the Plan. Such reports shall identify, at a minimum, the location and nature of construction for which the funds are used (if any) and the name of each property owner to which direct payment is made (if any), as well as the address for such property owner that qualified the property owner for such direct payment.

Bartlett will make every reasonable effort to complete the expenditure of the funds received from GTC hereunder within three (3) years of the date of execution of this Memorandum. Should it become apparent that circumstances beyond the reasonable

control of Bartlett or GTC make full expenditure of the \$1,000,000.00 impossible before the three (3) year anniversary of its receipt by Bartlett, upon request by Bartlett, GTC will consider a one-time extension of twelve (12) additional months for completion, not to be unreasonably withheld.

At the expiration of three (3) years from the date of execution of this Memorandum if no extension is requested (or four (4) years if an extension is granted), any unused funds shall be returned to GTC within sixty (60) days of the appropriate anniversary date.

- B. If this Memorandum is executed by Bartlett later than December 15, 2012, then GTC and Bartlett shall observe the provisions of this subsection B.

GTC shall reimburse Bartlett for noise mitigation expenditures made in accordance with this Memorandum and the Plan, up to a cumulative total of \$1,000,000.00, pursuant to invoices submitted by Bartlett, which invoices shall describe the expenditures in sufficient detail to demonstrate that they were made consistent with the requirements of this Memorandum and of the Plan. Such invoices shall identify, at a minimum, the location and nature of construction for which the funds are used (if any) and the name of each property owner to which direct payment is made (if any), as well as the address for such property owner.

GTC shall pay any invoice submitted in accordance with this paragraph B within 30 days of its receipt by GTC. The total time period for submitting said invoices to GTC shall not exceed twenty four (24) months from the date of execution of this Memorandum, after which GTC shall have no further obligation to pay any invoices received by GTC.

## **II Emergency Response and Training**

GTC will at no cost to Bartlett provide training, both in-house and off-site, for Bartlett's emergency responders. All training is to be completed within one year of the effective date of this Agreement. Specialized training will be limited to qualified candidates submitted by Bartlett. This provision is not intended to preclude additional training in subsequent years for new employees or as a refresher.

## **III Communications**

GTC will fund at its sole expense the establishment of an active railroad crossing system, which is client server based and allows for the display, on one or more monitors observable by personnel of Bartlett or its designated emergency response agency or agencies, of the status (activated or unactivated) of active warning devices at GTC railroad crossings in Bartlett. Upon execution of a separate License Agreement outlining the use of this system, GTC will coordinate with Bartlett or its designated emergency response agency or agencies to implement the system. Acceptance and use of this system is at Bartlett's discretion.

## **IV Operations**

GTC has instituted a process to coordinate switching operations for the interchange of trains with Canadian Pacific Railroad at GTC's Spaulding Yard, which is largely located between

Spaulding Road and West Bartlett Road. This process has dramatically reduced the number of instances of trains on GTC tracks blocking West Bartlett Road for a period of ten (10) or more minutes. GTC agrees to continue to monitor the activities and work in good faith with Canadian Pacific (or its successors and assigns) with the intention of continuing to minimize blockages of West Bartlett Road due to train operations. Should Bartlett believe there has been an increase in the number of crossing blockages lasting ten (10) or more minutes at West Bartlett Road that in its judgment does not appear to be addressed by GTC, Bartlett shall notify GTC's Government Affairs personnel responsible for that territory of its concern, and such personnel shall raise and seek to address that concern with GTC senior management and report back to Bartlett within three (3) business days of receiving the initial notification.

**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. Bartlett shall formally withdraw from the TRAC coalition and provide written evidence to GTC within 20 days of the execution of this Memorandum of having done same. Bartlett agrees that it shall not make further submissions in the STB proceeding or in appellate proceedings regarding the Transaction or its impacts without GTC's prior review and approval except in support of this Memorandum and/or the STB's decision approving the Transaction.

**II. Sole Remedy**

It is the intention of the parties to this Memorandum that the STB require GTC's compliance with this Memorandum in lieu of any additional or inconsistent mitigation that the STB might otherwise impose regarding environmental impacts in Bartlett. OEA has asked that GTC 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 OEA upon execution.

Agreed To:  
Grand Trunk Corporation

By: V. J. Kera  
Title: VP Senior Southern Region  
Date: 12-12-12

Agreed To:  
Village of Bartlett

By: [Signature]  
Village President

Date: 12-10-12