



# City of Elgin

Memorandum

To: Jennifer Quinton, Deputy Clerk  
From: Mary Giffort, Legal Secretary/Paralegal  
Subject: Resolution No. 09-100 Adopted at the April 29, 2009 Council Meeting

Attached find for the city clerk's files one originally executed copy of the agreement between the city and Grand Trunk Corporation.

*Mary*  
MG

mg  
Attachment

April 2, 2009

TO: Mayor and Members of the City Council

FROM: Olufemi Folarin, City Manager  
William A. Cogley, Corporation Counsel

SUBJECT: Memorandum of Agreement with Grand Trunk Corporation, a subsidiary of Canadian National Railway Company, Regarding Noise Mitigation



*Financially Stable  
City Government*

### PURPOSE

The purpose of this memorandum is to provide the Mayor and members of the City Council with information to consider a proposed Memorandum of Agreement with Grand Trunk Corporation, a wholly owned U.S. subsidiary and owner of the U.S. rail operating subsidiaries of Canadian National Railway Company, regarding noise mitigation along the Canadian National/EJ&EW line being acquired by Canadian National Railway Company.

### RECOMMENDATION

It is recommended that the City Council approve the Memorandum of Agreement.

### BACKGROUND

The Canadian National Railway Company is in the process of finalizing its acquisition of the EJ&EW railway line. Such railway line runs along a portion of the easternmost boundary of the City of Elgin.

Attached is a proposed Memorandum of Agreement between the City and Grand Trunk Corporation, a wholly owned U.S. subsidiary and owner of the U.S. rail operating subsidiaries of Canadian National Railway Company ("CN") (collectively "GTC"). The agreement may be summarized as follows:

1. GTC will fund additional measures required to maintain the existing quiet zone designation on the EJ&EW line to be acquired by GTC within the City limits of the City of Elgin 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 ten (10) years from the date of acquisition by GTC of control of the EJ&EW line.

Memorandum of Agreement with Grand Trunk Corporation Regarding Noise Mitigation

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2. GTC will fund noise mitigation for a total distance of 1,700 feet for the residential development known as Fieldstone located south of Irving Park Road. An exhibit which identifies the noise barrier on the eastern portion of the Fieldstone development is attached to the agreement as Exhibit 1. (The Fieldstone development appears to be the only residential development currently developed within the City adjacent to the subject EJ&EW line.) Within 180 days from the date of acquisition by GTC of control of the EJ&EW rail line, the City is to select one of two specified mitigation options. The specific design under either option will be established in cooperation with the City and the final design subject to City approval. Option 1 is that GTC shall fully fund and construct sound walls of concrete or timber panels on the GTC property. GTC shall have the continuing obligation to maintain the sound walls for structural integrity. The City would have the responsibility for keeping the walls free from graffiti or other visual defacement. Option 2 is that GTC shall contribute \$700,000 toward the construction of an earthen berm by the City or its designee together with mature vegetation and provide a shield for the subdivision. GTC would allow a maximum of 15 feet of its right-of-way to be utilized for the berm subject to GTC's engineering concurrence. All maintenance of the vegetation would be the responsibility of the City or its designee. In the event the entirety of the \$700,000 was not utilized for the earthen berm, the City may allocate the balance of the \$700,000 towards safety fencing installed on other property adjacent to the EJ&EW right-of-way within the City limits.
3. GTC will provide training at no cost to the City for the City's emergency responders. GTC will complete a training plan in conjunction with the Police Chief and the Fire Chief within six months after acquisition. All training will be completed within a three year span. Such provisions do not preclude additional training in subsequent years for new employees and as refresher training.
4. GTC will work with the City to identify available industrial development parcels and include them in GTC's commercial portfolio.
5. The City would agree that it would not make further submissions to the Surface Transportation Board proceeding, or in related appellate proceeding, without GTC's prior review and approval except in support of this agreement and/or the Surface Transportation Board's decision approving the transaction.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED

The property owners association for the Fieldstone development. Initial discussions with the property owners association indicate that the property owners association prefers Option 1 consisting of the sound walls of concrete or timber panels.

FINANCIAL IMPACT

None

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April 2, 2009  
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LEGAL IMPACT

None

ALTERNATIVES

1. The City Council may choose to authorize execution of the Memorandum of Agreement.
2. The City Council may choose not to authorize execution of the Memorandum of Agreement.

Respectfully submitted for Council consideration.

mg  
Attachment

RESOLUTION  
AUTHORIZING EXECUTION OF A MEMORANDUM OF AGREEMENT  
WITH GRAND TRUNK CORPORATION, A SUBSIDIARY OF CANADIAN NATIONAL  
RAILWAY COMPANY, REGARDING NOISE MITIGATION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ELGIN, ILLINOIS, that Ed Schock, Mayor, and Diane Robertson, City Clerk, be and are hereby authorized and directed to execute a Memorandum of Agreement with Grand Trunk Corporation on behalf of the City of Elgin regarding noise mitigation, a copy of which is attached hereto and made a part hereof by reference.

s/ Ed Schock  
Ed Schock, Mayor

Presented: April 29, 2009  
Adopted: April 29, 2009  
Omnibus Vote: Yeas: 7 Nays: 0

Attest:

s/ Diane Robertson  
Diane Robertson, City Clerk

## MEMORANDUM OF AGREEMENT

This *MEMORANDUM OF AGREEMENT* ("Memorandum") is made and entered into this 29th day of April, 2009, by and between the City of Elgin, an Illinois municipal corporation ("Elgin") and Grand Trunk Corporation, a wholly owned U.S. subsidiary and owner of the U.S. rail operating subsidiaries of Canadian National Railway Company ("CN") (collectively, "GTC"), and co-applicant in the filing before the Surface Transportation Board ("STB"). 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 Elgin that these commitments by GTC resolve any outstanding concerns Elgin has related to the Transaction. The specific terms of this Memorandum between GTC and Elgin are summarized below, and will be effective upon the execution of this Memorandum by duly authorized representatives of Elgin 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 to be acquired by GTC within the City limits of Elgin 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 Mitigation

- (A) GTC will fund noise mitigation for a total distance of 1700 feet for a residential subdivision south of Irving Park Road. An exhibit which identifies the noise barrier location entitled "CN Acquisition of EJ&E Lines Elgin Voluntary Agreement Exhibit" is attached hereto as Exhibit 1. Within 180 days from the date of acquisition by GTC of control of EJ&EW, Elgin shall select one of the following two mitigation options, subject to the conditions set forth herein. The specifics of design under either option will be established in cooperation with the City and the final design subject to City approval.
- (B) Option one is that GTC shall fully fund and construct sound walls of concrete or timber panels on the GTC property line. GTC shall have the continuing obligation to maintain the sound walls for structural integrity, and Elgin shall bear the responsibility for keeping the walls free from graffiti or other visual defacement. GTC and Elgin agree to provide mutual access for this purpose to the limits of ability.
- (C) Option two is that GTC shall contribute \$700,000 toward the construction of an earthen berm by Elgin or its designee, together with mature vegetation to provide a shield for the same subdivision. GTC agrees to consider allowing a maximum of 15 feet of its right of way to be utilized for the berm, subject to GTC's engineering concurrence. GTC will grant a renewable 20-year lease at no cost to Elgin or designee for construction and maintenance. All maintenance of the vegetation will be the responsibility of Elgin, or its designee. GTC shall provide the funds necessary

90 days after review and acceptance of a construction plan and estimate for all construction. Elgin may allocate the balance of the \$700,000 in funds not committed to the berm/vegetation toward safety fencing installed and owned/maintained by the City on any property adjacent to the EJ&EW right of way within Elgin limits. Elgin shall provide documentation of the appropriate expenses to GTC within 90 days of installation.

### III Emergency Response Training

GTC will provide training at no cost to Elgin for Elgin's emergency responders. GTC will complete a training plan in conjunction with the Police Chief and the Fire Chief within 6 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.

### IV Other

GTC will work with the City of Elgin to identify available industrial development parcels and include them in our commercial portfolio.

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) Acquisition by GTC of control of the EJ&EW, pursuant to STB authorization, was effected at 11:59 P.M, January 31, 2009.

II. Upon execution of this Memorandum and the acquisition of control of EJ&EW by GTC, GTC will fulfill its commitments contained in this agreement within a three-year period after acquisition of control.

III. Elgin agrees that it shall not make further submissions in the STB proceeding (or in related appellate proceedings) without GTC's prior review and approval except in support of this agreement and/or the STB's decision approving 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 Elgin corporate authorities at a public meeting and as otherwise required by law and only after notice to, and consultation between GTC and Elgin, 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 Elgin. 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:

Erin T. Jankowski

GTC

Director

Title

Date: May 4, 2009

Agreed To:

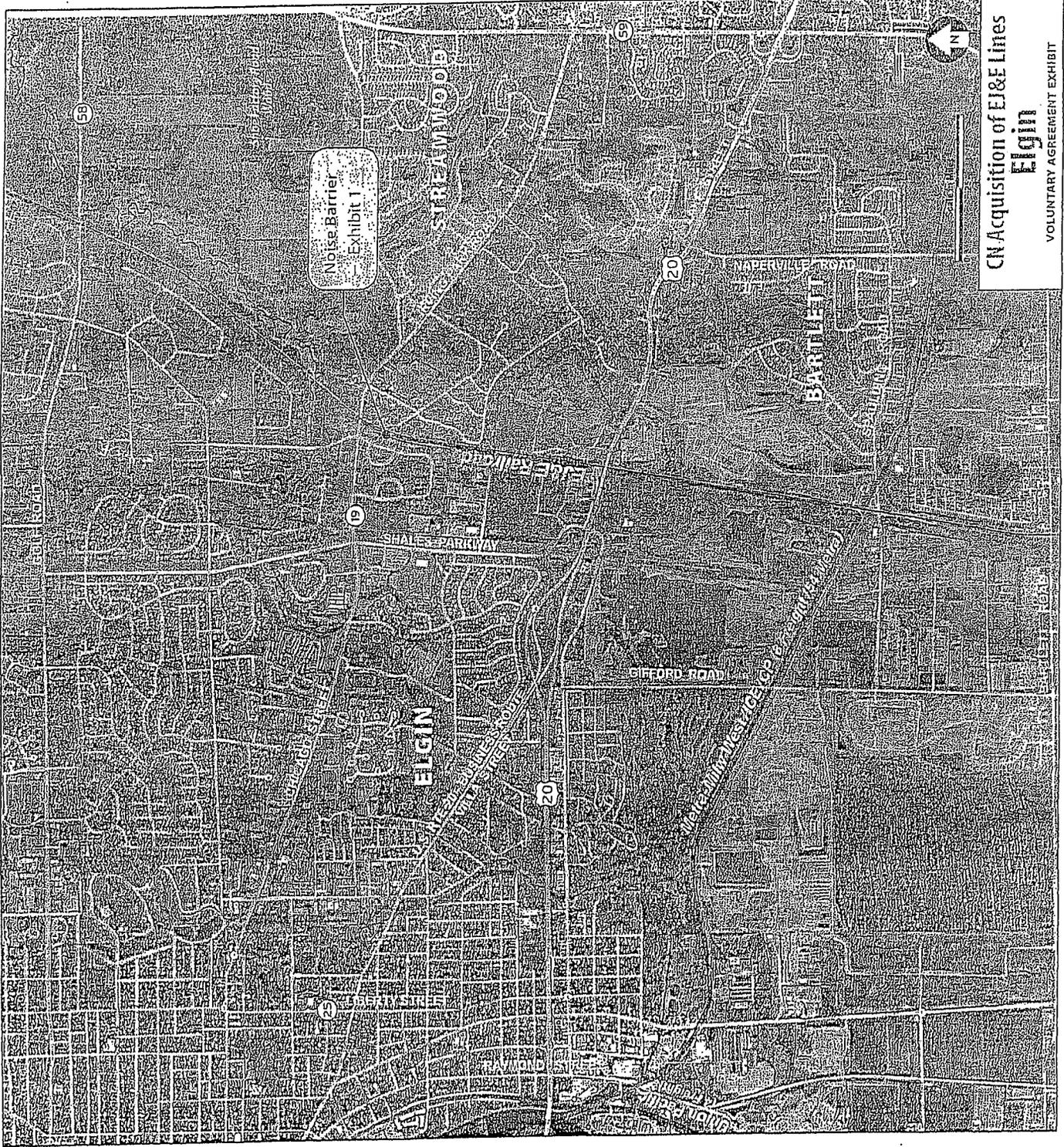
City of Elgin

By:

E. School  
Mayor

Date:

April 29, 2009



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

EXHIBIT 1