

CITY OF WARRENVILLE
DU PAGE COUNTY, ILLINOIS

RESOLUTION NO. 2009-17

**RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT
BY AND BETWEEN THE CITY OF WARRENVILLE AND
GRAND TRUNK CORPORATION (CANADIAN NATIONAL RAILWAY)**

WHEREAS, the City Council believes and hereby declares it is in the best interests of the City to approve an memorandum of agreement with CN Railway for noise mitigation and establishment of a Quiet Zone, a copy of said agreement is attached hereto as Exhibit 1 and made a part hereof;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WARRENVILLE, DU PAGE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION ONE: That a memorandum of agreement with CN Railway for noise mitigation and establishment of a Quiet Zone, a copy of said agreement is attached hereto as Exhibit 1, shall be, and it is hereby approved, and the Mayor and City Clerk shall be, and they are hereby authorized and directed to execute said agreement in substantially the form attached hereto.

SECTION TWO: That this resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED and APPROVED this 15th day of June, 2009.

AYES: Ald. Schultz, Wiesbrock, Bevier, Leonard, Halley, and Weidner

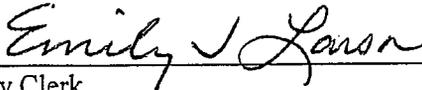
NAYS: None

ABSENT: Ald. Aschauer and Barry



Mayor

ATTEST:



City Clerk

MEMORANDUM OF AGREEMENT

This **MEMORANDUM OF AGREEMENT** ("Memorandum") is made and entered into this xxth day of June, 2009, by and between the **City of Warrenville**, an Illinois municipal corporation ("Warrenville") 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") and on behalf of its successors, affiliated corporations, parent corporations, subsidiaries, divisions, transferees, agents, assigns, and related entities (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 Warrenville that these commitments by GTC resolve any outstanding concerns Warrenville has related to the Transaction. The specific terms of this Memorandum between GTC and Warrenville are stated below, and will be effective upon the execution of this Memorandum by duly authorized representatives of Warrenville and GTC.

A.

I **Public Crossing/Quiet Zones**

- (A) GTC and Warrenville have agreed to support an application to convert Batavia Road from a private crossing to a public crossing and to support an application for a quiet zone at Batavia Road. Warrenville will be responsible for concluding an agreement with the US Department of Energy (current licensee for the private crossing agreement), and assuming responsibility for the public crossing. Warrenville will be responsible for preparation of the applications for the public road designation and the quiet zone, and GTC agrees to support the applications. GTC will assume responsibility for the ongoing maintenance of the crossing protection devices and the crossing surface within the width of the ties once the crossing is certified as public. Warrenville will be responsible for maintenance of the roadway surface within the railroad right of way on either side of the ties.
- (B) Should the Quiet Zone designation through the entirety of Warrenville require the installation of any improvements at Batavia Road, GTC shall be responsible for the cost of the improvements, subject to a maximum of \$60,000.
- (C) GTC will fund additional measures required to maintain the new Quiet Zone designation on the EJ&E line acquired by GTC within the City limits of Warrenville 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 January 31, 2009 (the date of acquisition by GTC of control of the EJ&E line pursuant to STB authorization).

II Noise Mitigation

- (A) GTC will fund noise mitigation for the residential subdivisions within Warrenville. GTC will pay a total of \$1,200,000 in funds to Warrenville for the provision of noise mitigation under the selection or combination of two options, subject to the conditions set forth herein. The specifics of design under either/both options will be established in cooperation with GTC and the City. GTC will provide the funds within 90 days of a written request by Warrenville along with supporting design details.
- (B) To the extent that the cost of the design improvements chosen by the City is less than \$1,200,000, the difference between the \$1,200,000 and the amount expended by the City on the design improvements shall be placed in a segregated fund to be used exclusively for the maintenance, repair, or replacement of the design improvements.
- (C) Option 1: Warrenville or its designee may install landscaping berms, vegetation shields, or other sound-attenuating materials or devices adjacent to the residential subdivisions, either on the CN leasehold or on adjacent private property. All maintenance of the vegetation will be the responsibility of Warrenville, or its designee.
- (D) Option 2: Warrenville may use the funds to establish a dedicated account for the soundproofing of individual structures, the creation of individual residence vegetation shields, or other sound-attenuating materials or devices adjacent to the EJ&E line. Warrenville shall provide GTC a yearly report of the expenditure of the funds.
- (E) GTC agrees to consider allowing a maximum of 15 feet of its right of way to be utilized for the berm, vegetation shield or other sound-attenuating materials or devices only, subject to GTC's engineering concurrence (not to be unreasonably withheld or delayed, with objections to be limited to issues adversely affecting GTC's existing or future rail operations or signals). GTC will grant a renewable 20-year lease at no cost to Warrenville or designee for construction and maintenance of the berm, vegetation shield or other sound-attenuating materials or devices, subject to termination by GTC in any area needed by GTC for railroad infrastructure and associated clearances, which have been approved, if necessary, by the appropriate regulatory agency. A draft of the lease is attached. GTC and the City agree to execute a lease and confirm a specific protocol for reviewing and approving improvements in the leasehold within 120 days from the date of execution.

III Emergency Response Training

GTC will provide training at no cost to Warrenville for Warrenville'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 for new employees and as refresher.

IV Communications

GTC will fund at its sole expense an emergency protocol and dispatching view capability on behalf of Warrenville. GTC will create and provide the software, hardware, and

communication equipment necessary. Warrenville agrees to assist in the design of the system, and in any necessary testing and training. Should Warrenville ultimately determine that it no longer desires installation of the developed protocol and dispatching view capability, CN will have no further obligation under this Section A.IV.

V Safety/Noise

- (A) GTC will fully fund and install up to 1000' of 6 foot chain link safety fencing on railroad property for safety separation between the EJ&EW line and the Warrenville Park District property. GTC will reach an agreement with the Warrenville Park District before the final execution of this Agreement that will provide that the Warrenville Park District will assume responsibility for ongoing maintenance of the fence 90 days after completion of the installation.

B.

CONDITIONS FOR GTC'S OBLIGATIONS UNDER THIS MEMORANDUM OF AGREEMENT

The commitments of GTC set forth in this Agreement are conditioned upon the following:

- I. GTC will fulfill its commitments contained in this agreement within the three-year period following execution of this Memorandum, unless otherwise specifically provided.
- II. Warrenville 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.

III. Confidentiality

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

Date: JUNE 18, 2009

Agreed To:

City of Warrenville

By:

David
Mayor

Date: JUNE 17, 2009