

RESOLUTION NO. 09-R-0011

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CERTAIN MEMORANDUM OF AGREEMENT WITH THE GRAND TRUNK CORPORATION

BE IT RESOLVED, by the City Council of the City of West Chicago, in regular session assembled, that the Mayor is hereby authorized to execute a certain Memorandum of Agreement with the Grand Trunk Corporation. A copy of amended lease agreement is attached hereto and incorporated herein in substantially the same form as Exhibit "A".

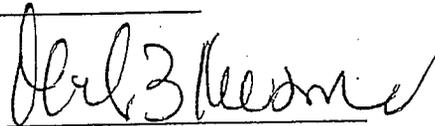
APPROVED this 2nd day of March 2009.

AYES: 7

NAYS: 6

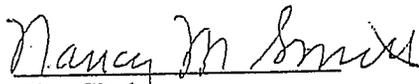
ABSTAIN: 0

ABSENT: 1



Mayor

ATTEST:


City Clerk

MEMORANDUM OF AGREEMENT

This **MEMORANDUM OF AGREEMENT** ("Memorandum") is made and entered into this 3rd day of March, 2009, by and between the **City of West Chicago** ("West Chicago"), an Illinois municipal corporation, and **Grand Trunk Corporation** (together with its U.S. rail subsidiaries, "GTC"), a wholly owned U.S. subsidiary and owner of the U.S. rail operating subsidiaries of Canadian National Railway Company ("CN"), and co-applicant in the filing before the Surface Transportation Board ("STB") in STB Finance Docket No. 35087. This Memorandum sets out certain commitments of GTC 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 proposed CN/EJ&EW transaction ("Transaction"), authorized by the STB on December 24, 2008 in STB Finance Docket No. 35087, and West Chicago's agreement that these commitments resolve outstanding concerns that West Chicago has related to the Transaction. The specific terms of this Memorandum between GTC and West Chicago are summarized below, and contained in the attached exhibits and will be effective upon the execution of this Memorandum by duly authorized representatives of West Chicago and GTC.

A.

I Quiet Zones

- (A) GTC will fund and install, at GTC's sole cost and expense, constant warning time circuitry on the EJ&E line, at the Washington street grade crossing at an estimated cost of \$60,000. (See Exhibit 1) GTC will notify West Chicago upon the completion of the installation.
- (B) GTC will fund, at its sole cost and expense, the design and construction of any additional projects that may be necessary to attain a Quiet Zone Designation by the Federal Railroad Administration within West Chicago, whether said projects are within or outside of the corporate limits of City. GTC shall provide West Chicago, within ninety (90) days of the effective date of this agreement, a report summarizing the necessary steps to accomplish such Quiet Zone Designation, along with a projected timeline.
- (C) GTC will fund, at its sole expense, any additional measures required to maintain the Quiet Zone designation on the EJ&E line to be acquired by CN should the retention of the designation be jeopardized by additional GTC train volumes on that line.

II Operations

GTC will install and maintain, at its sole cost and expense, a curve lubricator within West Chicago city limits on the EJ&E line north of Washington Street in the vicinity of York Avenue, as more fully depicted in Exhibit "2", at an estimated cost of \$20,000.

III Safety/Noise

- (A) GTC will fully fund and install, within one year after the effective date of this agreement, up to 2,000 feet of five-foot high safety fencing (estimated at \$60,000). Within ninety (90) days of the effective date of the agreement, GTC will provide West Chicago with the location and plan for construction of the fencing

for their review and concurrence (See Exhibit 3). The fencing will be constructed on GTC property, and GTC shall be responsible to maintain said fence in accordance with the West Chicago City Code standards.

- (B) Within six (6) months after the effective date of this agreement, GTC will provide West Chicago \$250,000 to administer a fund for the soundproofing of individual structures within the noise impact zone adjacent to the EJ&E line. West Chicago shall provide GTC a plan for the use of the funds within 180 days of receipt, and an annual report of the expenditure of the funds.

IV Emergency Response Training

GTC will provide training at no cost to West Chicago or the West Chicago Fire Protection District for West Chicago's emergency responders. GTC will complete a training plan in conjunction with the Police Chief and the Fire Chief within 6 months of approval from the STB 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.

V Communications

GTC will fund, at its sole cost and expense, one of the following options as dictated by the West Chicago Fire Protection District:

- (A) A specific emergency protocol and dispatching view capability on behalf of West Chicago, in conjunction with the DuPage Emergency Telephone System Board and/or the West Chicago Fire Protection District. West Chicago agrees to assist in the design, testing, and training; or
- (B) A CCTV system with video cameras as placed in locations so that the movement of trains can be reasonably be predicted at the Washington Street, Church Street, Ann Street and S. Aurora Street (unless otherwise modified per the parties' mutual agreement. Agreement) highway/rail at-grade crossings following the parameters established in the STB's December 24, 2008 Decision, mitigation item #18. S.

VI Pedestrian Subway

With West Chicago's input in its design, which will be considered by GTC, GTC will fully fund, at its sole cost and expense, the engineering and the construction of a 10-foot wide by 8-foot high pedestrian subway beneath the EJ&E line at George Street in West Chicago, complete with security lighting and anti-graffiti materials. GTC and West Chicago agree to immediately and jointly submit a request for ICC funding support, with said funds reimbursed to GTC if appropriated. Upon completion of the subway, West Chicago will assume responsibility for the maintenance and liability of the subway structure. (See Exhibit 4)

VII South Aurora Street Relocation and Grade Crossing Closure

The Illinois Commerce Commission ("ICC") has slated the crossing at South Aurora Street in West Chicago for the installation of protection devices. West Chicago and GTC will jointly seek to secure regulatory approval, if required, to apply ICC funds dedicated to the South Aurora

Street project. Within one hundred eighty (180) days of the effective date of this agreement, GTC will contribute \$350,000 toward property acquisition and the relocation, replacement and creation of a West Chicago street, in accordance with the City Code, to provide alternate access to the property owners on South Aurora Street; said funds shall be placed in a segregated escrow account earmarked for this project. The project scope also includes removal of all pavement between the tracks and Washington Street and the restoration of said area to the satisfaction of the City. West Chicago agrees that all dedicated funds from the ICC South Aurora Street improvements are to be dedicated to, and so spent on, this alternative project. Should the dedicated ICC funds and GTC contribution be insufficient to complete the project, GTC and West Chicago agree to provide equally a share of any required additional funds. GTC agrees to make contact with BNSF and request a sale of the BNSF right of way to accommodate this relocation within 30 days of the effective date of this agreement. West Chicago agrees to close and vacate the South Aurora Street crossing of the EJ&E line upon completion of the relocation.

VIII Town Road and Roosevelt Road Improvements

Within one hundred eight days (180) days of the effective date of this agreement, GTC agrees to provide \$400,000 toward the construction of a signalized intersection at Town Road and Roosevelt Road to provide alternate, safe vehicle access to the southwest quadrant of West Chicago; said funds shall be placed in a segregated escrow account earmarked for this project. West Chicago may use these funds toward engineering and construction of signals and roadway improvements at this location. West Chicago agrees to accept the responsibility for all design, construction and application work. Should the construction on the project not be commenced within 7 years of the date the funds are made available by GTC, West Chicago agrees to refund 50% of any surplus funds to GTC.

West Chicago may use this \$400,000 contribution toward engineering for a grade separation for any of the road crossings of the EJ&E within West Chicago. Should it use these funds for that purpose, West Chicago agrees that the contribution by GTC should be credited toward GTC's standard 5% portion of the separation, should it proceed. West Chicago may also use this \$400,000 contribution instead, in whole or in part, for other projects referred to in this Memorandum upon West Chicago's request and with the approval of GTC, which shall not be unreasonably withheld. This also specifically includes any West Chicago share required to complete the South Aurora Street relocation referenced in Section A.VII. West Chicago may also use these funds for additional projects or programs not identified in this Memorandum that may mitigate the impact of the Transaction on West Chicago residents, but only upon GTC approval.

IX Other

Within sixty (60) days of the effective date of this agreement, GTC will submit a valid Petition for Annexation to the City to annex its unincorporated right-of-way within West Chicago. West Chicago will be responsible for the cost and preparation of the Plat of Annexation. GTC, upon written notice from the City, shall grant surveyor access for completion of the Plat.

GTC shall be responsible for securing all necessary federal, state and local government permits, authorizations and other approvals necessary for GTC to perform the undertakings set forth in this Agreement, except to the extent set forth in the Agreement.

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:**

Acquisition by GTC of control of EJ&EW, pursuant to STB authorization, was effective January 31, 2009 at 11:59 pm.

- II. GTC will fulfill its commitments contained in this Memorandum within the three-year period following the date of acquisition of control. Within ninety (90) days of the effective date of this agreement, GTC will provide the City with an estimated timeline for implementing the commitments and undertakings set forth in this Memorandum.
- III. GTC will proceed with the commitments and undertakings it has made in this Memorandum as quickly and as diligently as possible, subject to the limitations attributable to agency approvals.
- IV. GTC agrees to reimburse West Chicago for the engineering costs incurred in connection with verifying the cost figures attributable to the undertakings set forth in this Memorandum, up to the amount of \$18,500. Further, GTC agrees to reimburse West Chicago for the legal fees associated with the review and modification of this Memorandum, at a cost not to exceed \$5,000. Said reimbursement will occur no later than ninety (90) days from the date that West Chicago submits documentation on said expenditures.
- VII. Once this Memorandum is fully executed, West Chicago agrees that it shall not make further submissions in the STB proceeding or in appellate proceedings, without GTC's prior review and approval, except in support of this Memorandum and the STB's decision approving the Transaction.

VIII. **Confidentiality**

This negotiated Memorandum and its terms shall be confidential, except to the extent disclosure may be essential for consideration by the West Chicago corporate authorities at a public meeting and as otherwise required by law, 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.

IX. **Sole Remedy**

It is the intent of the parties to this Memorandum that the STB require GTC's compliance with this Memorandum in lieu of alternate mitigation that the STB might otherwise impose regarding environmental impacts in West Chicago. SEA 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 SEA upon execution.

Agreed To:

GTC

By:

Erin T. Jubinski
GTC
Director

Title

Date: 3/04/09

Agreed To:

City of West Chicago

By:

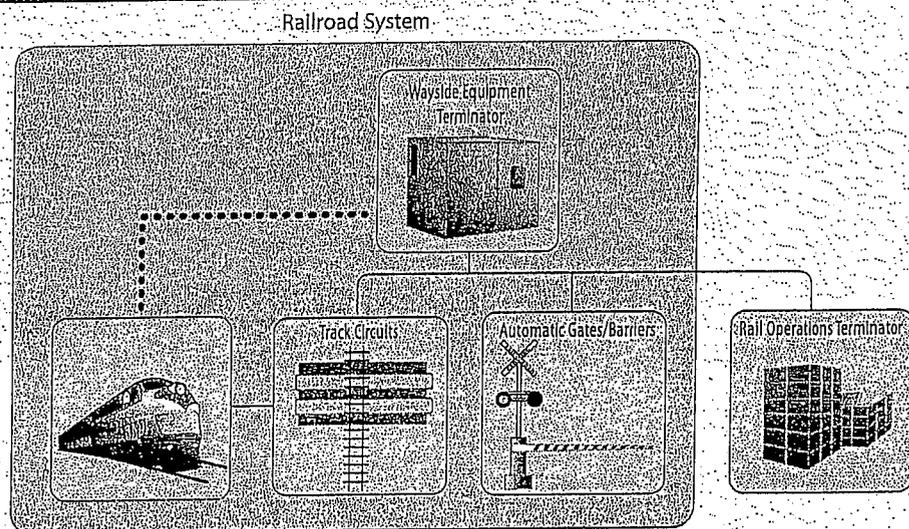
Paul Stearns
Mayor

Date: 3/02/09

EXHIBIT 1



Constant Warning Time Circuitry



Constant Warning Time Circuitry is used to monitor the speeds of approaching trains so as to lower the crossing gates at the appropriate time. Traditional gate systems have a contact on the tracks upstream of the crossing. When the train crosses the contact, the gates go down. If the train is moving at a high speed, the gates come down just before the train crosses. If the train is moving at a low speed, the gates come down long before the train actually passes. Both situations can cause dangerous situations. When the latter occurs, drivers are more likely to become impatient and drive around the gates.

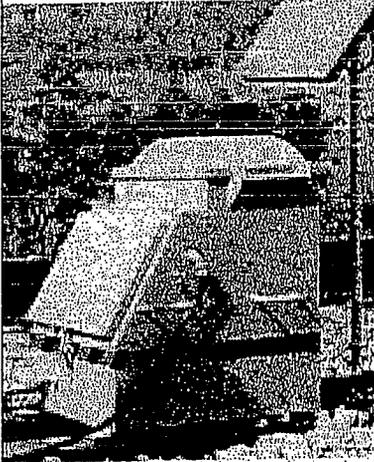
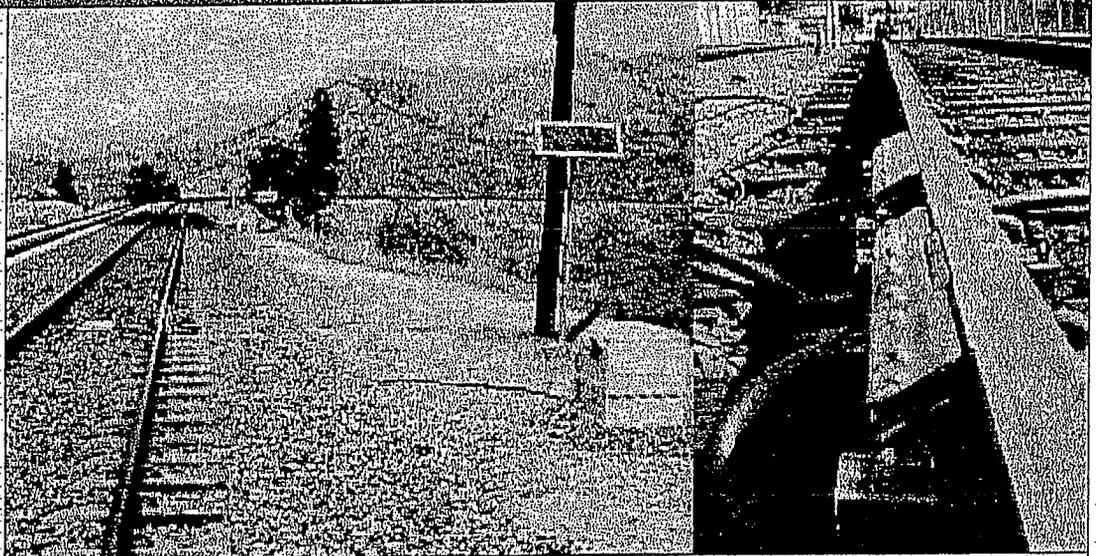
The constant warning system uses a number of track sensors or video detection to determine the speed of the train. The speed and distance are relayed back and the system determines the optimal time for the gates to come down. This improved timing promotes safer conditions for the driving public.

GTC will install constant warning time circuitry at the EJ&E grade crossing at Washington Street. GTC will be responsible for construction and maintenance.

The estimated cost of this improvement is \$60,000.



Curve Noise Reduction



Photos Courtesy of Portec Rail Products, Inc.

Curve noise reduction systems are used to reduce friction on curved sections of track. When a railcar's solid axle goes around a curve, the outside wheel actually has to cover a greater distance than the inside wheel. Because the axles are solid, the outside wheel cannot spin faster than the inside, thus it drags slightly along the rail around the curve. This additional friction can cause loud squealing noises.

A curve noise reduction system works by applying material to the sides and top of the rail. As a train approaches a curve, the system senses the approaching train. As the train passes, the first applicator (pictured in the inset above), a friction modifier is applied to the top of the rails. As the train passes the second applicator, a lubricant is applied to the side of the rail. The wheels of the train carry the lubricant into the curve so friction and noise are reduced. The system consists of the pump housings and the rail applicators.

Benefits:

- Minimizes derailment potential
- Abates noise
- Lower magnitude of ground-born vibration
- Reduces fuel consumption

A curve noise reduction system will be installed at one location within the City of West Chicago, north of Washington Street, in the vicinity of York Avenue. GTC will be responsible for installation and maintenance.

Installation is estimated to cost \$20,000.

EXHIBIT 3



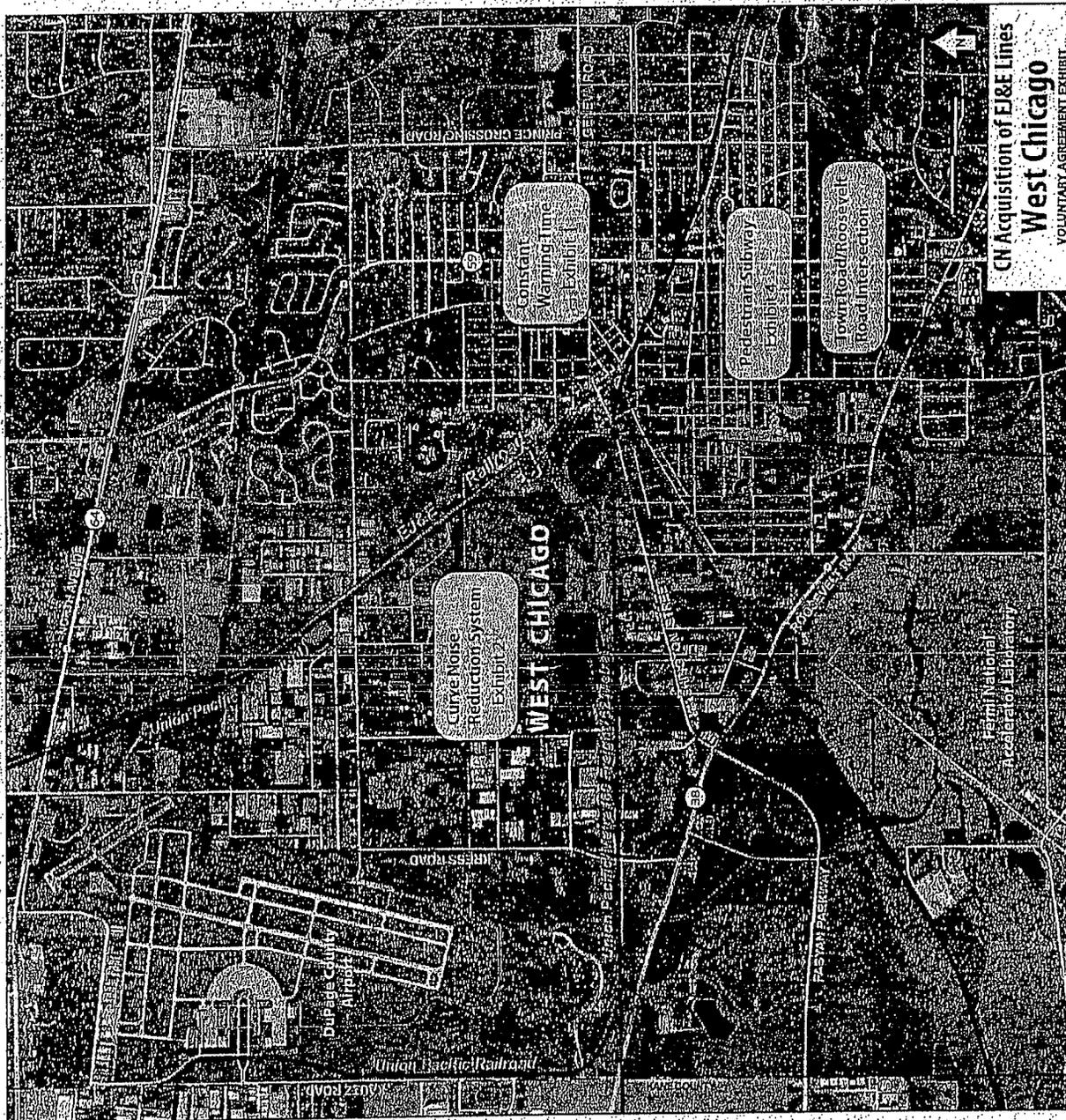
Fencing



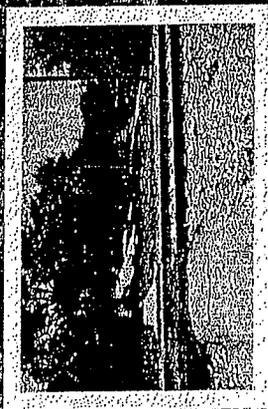
Photo by Parsons

GTC will be responsible for the construction and maintenance of safety fencing along the current EJ&EW right-of-way

GTC will be responsible for construction with costs estimated at \$60,000. This cost assumes five-foot high chain link fence will be provided for approximately 2,000 linear feet. West Chicago will work with GTC to identify the location for the fencing.

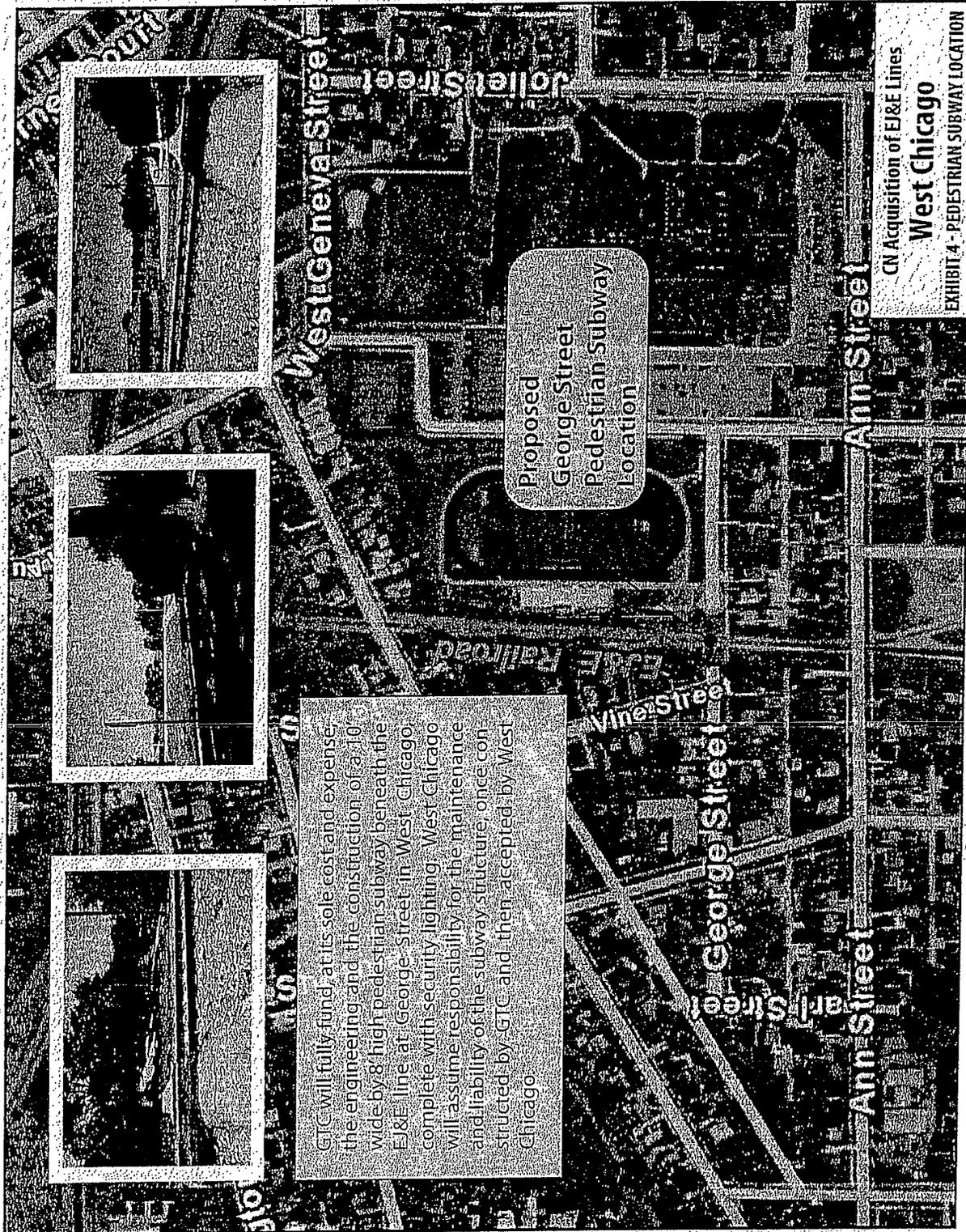


GM Acquisition of E&E Lines
West Chicago
VOLUNTARY AGREEMENT EXHIBIT



GTC will fully fund, at its sole cost and expense, the engineering and the construction of a 10-foot wide by 8-foot high pedestrian subway beneath the E&E line at George Street in West Chicago, complete with security lighting. West Chicago will assume responsibility for the maintenance and liability of the subway structure, once constructed by GTC and then accepted by West Chicago.

Proposed
George Street
Pedestrian Subway
Location



CN Acquisition of E&E Lines
West Chicago
EXHIBIT 4 - PEDESTRIAN SUBWAY LOCATION