

AGENDA
SPECIAL TRANSPORTATION AND ROAD IMPROVEMENT COMMITTEE
Village of Hoffman Estates
December 3, 2012

6:50 p.m. Budget Public Hearing – Helen Wozniak Council Chambers

7:00 p.m. - Helen Wozniak Council Chambers

Members:	Gary Stanton, Chairperson	Jacquelyn Green, Trustee
	Karen Mills, Vice Chairperson	Anna Newell, Trustee
	Ray Kincaid, Trustee	Gary Pilafas, Trustee
		William McLeod, Mayor

I. Roll Call

NEW BUSINESS

1. Request approval of the first amendment to the Memorandum of Agreement with Canadian National.

II. Adjournment

**COMMITTEE AGENDA ITEM
VILLAGE OF HOFFMAN ESTATES**

SUBJECT: Request approval of the first amendment to the Memorandum of Agreement with Canadian National

MEETING DATE: December 3, 2012

COMMITTEE: Special Transportation and Road Improvement

FROM: Michael Hankey

PURPOSE: Approval of the first amendment (attached) to the Memorandum of Agreement with Canadian National to include noise mitigation in lieu of the noise wall is requested.

BACKGROUND: In December 2008, the Village approved a Memorandum of Agreement (MOA) with Canadian National Railroad (CN) containing sections that addressed a number of items (attached). These included: preserving the existing Quiet Zone by upgrading the crossing; allowing construction of a path for pedestrians and bicyclists across the railroad property; installation of a warning sign due to limited visibility of the tracks for westbound traffic on Shoe Factory Road; provision for a fence separating the railroad property from Cannon Crossings Park; design and construction of noise walls adjacent to Deer Crossing, the Winding Trails and Hunters Ridge area, and Bridlewood Farms located in unincorporated Cook County; and emergency responder training and technology to let dispatchers know if a crossing is blocked. The noise wall design to be prepared by CN was subject to the review and approval of the Village Board. Following input from residents, additional technical analyses of the noise walls, and discussions with CN, a proposal to replace the construction of noise walls with a noise mitigation program was identified during 2012.

DISCUSSION: The Village Board approved a recommendation to substitute a noise mitigation program for construction of noise walls at its meeting on November 19, 2012. An amendment to the original agreement is necessary, which CN has prepared (attached) for review and approval. Village staff provided comment on the proposed amendment which has been incorporated into the CN document.

Under the terms of the amendment, once it is approved by the Village and the railroad, CN would have up to 30 days to provide \$1,950,000 to the Village for the noise mitigation program. The

DISCUSSION: (Continued)

funds are to be used for the same intentions as outlined in the original MOA. A separate plan and program for the use of the funds will be created by the Village. CN desires to disburse these funds by the end of 2012.

Following receipt of the funds, the Village then has 30 days to provide a draft of a noise mitigation plan to CN for its review and concurrence. The general plan is to use the CN funds for the purposes of a noise mitigation reimbursement program for eligible homes, for visual screening / landscaping, and for administrative and professional services incurred by the Village which are required to document to CN how the funds are used. The approach will be similar to plans used by other communities. Of the \$1,950,000 total funds from CN, approximately \$1,575,000 is estimated to be used for the above described purposes in the Deer Crossing, Hunters Ridge, and Winding Trails subdivisions and approximately \$375,000 is estimated to be used for the above described purposes in the Bridlewood subdivision in unincorporated Cook County. The noise mitigation program itself will include the process to be used by the Village to distribute funds for eligible purposes. Modifications to eligible homes include acoustic rated windows and doors, sealing openings, as well as landscaping. The program is currently under development and will generally follow the outline presented at the Transportation and Road Improvement Committee meeting on November 12, 2012. The homes closest to the tracks in the first tier will be eligible to receive higher reimbursement than those across the street in the second tier. Once an amendment to the MOA is approved by both CN and the Village, CN will notify the Surface Transportation Board and provide a copy for its files.

Discussions have occurred with Cook County regarding application of the noise mitigation program to unincorporated Bridlewood subdivision. Under the proposed approach, Cook County would inform Bridlewood residents of the Village's decision to proceed with a noise mitigation program in lieu of noise walls. Homeowners in Bridlewood could choose to participate in the noise mitigation program just as eligible Village homeowners. A meeting is scheduled for mid-December with Cook County staff to discuss the program administration and to determine if an intergovernmental agreement will be needed.

FINANCIAL IMPACT:

The amendment to the MOA defines the timing of payment of the noise mitigation funds to the Village and the development of the program. The noise mitigation funds will be used to reimburse eligible homeowners for qualifying improvements up to the maximum amount identified in the program as well as visual screening / landscaping. A portion of the CN funds will be used to help reimburse Village staff time for administrative and professional services related to the noise mitigation funds, reimbursement program, and documentation.

RECOMMENDATION:

Request approval of the first amendment to the Memorandum of Agreement with CN to replace the installation of noise walls with a noise mitigation program.

Attachments

FIRST AMENDMENT TO MEMORANDUM OF AGREEMENT

This **FIRST AMENDMENT TO MEMORANDUM OF AGREEMENT** (“Amendment”) is made and entered into this ____ day of December, 2012, by and between the **Village of Hoffman Estates, Illinois** (“Village”) an Illinois municipal corporation, and **Grand Trunk Corporation** (together with its U.S rail operating subsidiaries, “GTC”), a wholly owned U.S. subsidiary and owner of the U.S railroad operating subsidiaries of Canadian National Railway Company and co-applicant before the Surface Transportation Board (“STB”) in STB Finance Docket No. 35087 (“Transaction”).

WHEREAS, Village and GTC entered into a Memorandum of Agreement dated December 15, 2008 (“Memorandum”) specifying the rights and obligations of the parties as they relate to the Transaction; and

WHEREAS, Village and GTC have determined to amend the Memorandum as set forth here.

NOW, THEREFORE, the parties hereto, intending to be mutually and lawfully bound, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby agree as follows:

1. Section A III (C) of the Memorandum shall be stricken in its entirety, and be deemed of no further force or effect, and shall be replaced in its entirety with the following provision, which shall henceforth be Section A III (C), Section A III (C) (1) and Section A III (C) (2):

(C) Within thirty (30) days of execution of this Amendment, GTC agrees to pay One Million Nine Hundred Fifty Thousand Dollars (\$1,950,000.00) to Village. Village shall apply the payment provided for in this Section III (C) in accordance with the intentions of Section III of this Memorandum, “Safety/Noise”, as follows:

(1). Within thirty (30) days of receipt of the funds provided in Section A III (C), Village agrees to provide GTC with a copy of its plan for the distribution of these funds. The plan will generally identify the use of the funds for a noise mitigation program and Village’s administrative and professional services utilized to document the use of the funds. GTC will promptly review said plan and submit comments relative to the plan’s adherence to the spirit of Section III of the Memorandum.

(2). Village agrees to start distribution of funds as soon as practical and will complete distribution within twenty four (24) months. The Village will provide GTC with semi-annual statements detailing the distribution of funds for this purpose.

2. Section A III (D) of the Memorandum shall be stricken in its entirety, and be deemed of no further force or effect.

3. Exhibit 5 of the Memorandum shall be stricken in its entirety, and be deemed of no further force or effect.

4. Section B II. under Conditions for GTC's Obligations Under This Memorandum of Agreement shall be stricken in its entirety, and be deemed of no further force or effect.

5. All other terms and conditions of the Memorandum shall remain in full force and effect.

Agreed to:

Village of Hoffman Estates

Grand Trunk Corporation

By: _____
Village President

By: _____
Title:

Date: _____

Date: _____

MEMORANDUM OF AGREEMENT

This **MEMORANDUM OF AGREEMENT** ("Memorandum") is made and entered into this 15th day of December, 2008, by and between the **Village of Hoffman Estates** ("Hoffman Estates"), an Illinois municipal corporation, and **Grand Trunk Corporation** (together with its U.S. operating subsidiaries, "GTC"), a wholly owned U.S. subsidiary and owner of the U.S. rail operating subsidiaries of Canadian National Railway Company and co-applicant in the filing before the Surface Transportation Board ("STB") in STB Finance Docket No. 35087. 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 proposed CN/EJ&EW transaction ("Transaction"), should that Transaction be authorized by the STB in STB Finance Docket No. 35087, and the corresponding agreement by Hoffman Estates that these commitments by GTC resolve any outstanding concerns Hoffman Estates has related to the Transaction with respect to these issues. The specific terms of this Memorandum between GTC and Hoffman Estates are summarized below, and contained in the attached exhibits and will be effective upon the execution of this Memorandum by duly authorized representatives of Hoffman Estates and GTC.

A.

I. Quiet Zones

- (A) GTC will fund the cost up to \$250,000 to Hoffman Estates for the installation of pedestrian gates at Shoe Factory Road for a new sidewalk and bicycle path crossing. Hoffman Estates will be responsible for all design, permitting, and construction subject to concurrence of GTC. Should GTC's expenditures for this project and that in Section I.B. be less than the maximums stated (\$450,000), GTC will contribute the remaining funds towards the cost of constructing a 10-foot wide bicycle path within the railroad of way, including the crossing of the track.
- (B) GTC will fund the cost of a concrete median barrier at Shoe Factory Road to be installed by Hoffman Estates (See Exhibit 1). GTC will provide reimbursement for the cost of this item up to \$200,000.
- (C) GTC will fund additional measures required to maintain the existing Quiet Zone designation on the EJ&EW line to be acquired by CN within the Village limits of Hoffman Estates should the retention of the designation be jeopardized by additional train volumes on the line resulting from the transaction. In the event Hoffman Estates is notified or otherwise becomes aware that additional measures must be taken to maintain such Quiet Zone, GTC agrees to immediately commence the provision of such additional measures within ninety (90) days after written notice from Hoffman Estates, or at such earlier date as may be required by any federal, state or local authority having jurisdiction over

the Quiet Zone designation. This provision will be limited for a period of 10 years from the date of acquisition by GTC of control of EJ&EW.

II. Operations/Property

GTC will perform a crossing rehabilitation of the surface at Shoe Factory Road, at an estimated cost of \$120,000 (See Exhibit 2).

III. Safety/Noise

- (A) GTC will provide \$50,000 for Hoffman Estates to construct and maintain 1,400 feet of safety fencing in Cannon Crossings Park. GTC agrees that the fencing shall be at least five (5) feet in height and located upon its property line. GTC will provide access to its property for both construction and maintenance (See Exhibit 3).
- (B) GTC will fund fully the cost of design, permitting, and construction of a variable message sign at Shoe Factory Road (estimated at \$75,000). GTC will make funds available to Hoffman Estates to complete this installation within twelve (12) months of the date of acquisition by GTC of control of EJ&EW (See Exhibit 4).
- (C) GTC will fund, construct and maintain the structural integrity of sound walls for a total distance of 6000 feet (at a cost estimated to be \$2,500,000) at locations designated in the attached exhibit (See Exhibit 5). These locations include residential areas in Hoffman Estates, as well as the Bridlewood subdivision in the unincorporated area north of Shoe Factory Road. The specifics of design will be established in cooperation with the Village and the final design subject to Village approval. GTC acknowledges that the projected cost of \$2,500,000 is an estimate only and agrees that it shall bear the actual cost necessary to construct such sound walls. GTC shall have the continuing obligation to maintain the sound walls for structural integrity, and Hoffman Estates shall bear the responsibility for keeping the walls free from graffiti or other visual defacement. GTC and Hoffman Estates agree to provide mutual access for this purpose to the limits of ability.
- (D) GTC agrees that within 180 days of the date of its acquisition of control of EJ&EW, GTC shall deliver a plan for the specific construction timetable for the improvements required in this Section III. GTC will complete all construction activity within three years of the date that the plan has been reviewed and approved by Hoffman Estates.

IV. Emergency Response Training

GTC will provide training at its sole cost to Hoffman Estates for Hoffman Estates' emergency responders. GTC will complete a training plan in conjunction with the Police Chief and the Fire Chief within 3 months after acquisition of EJ&EW. All training will be completed within a 3-year period following acquisition by GTC of control of EJ&EW. This does not preclude additional training in years following that three-year period, for new employees and as refresher.

V. Communications

GTC will fund at its sole expense a specific emergency protocol and dispatching view capability on behalf of Hoffman Estates in cooperation with Northwest Central Dispatch Communications Center. GTC agrees to bear the cost of the hardware, software and communication equipment which the parties jointly deem necessary and appropriate in order to provide specific emergency protocol and dispatching view capabilities at the Northwest Central Dispatch. Hoffman Estates agrees to assist in the design, testing and training with the Northwest Central Dispatch.

VI. Additional Considerations

GTC will convey an easement at no charge for the pedestrian/bicycle crossing anticipated at Shoe Factory Road. Any improvement within the easement area shall be constructed in accordance with AREMA specifications, and subject to GTC engineering review. This provision shall be limited to a period of ten years from the date of acquisition by GTC of control of EJ&EW.

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) STB approval of the application by GTC to acquire control of the EJ&E West Company, provided that such approval does not include the imposition upon GTC of any condition for mitigation in Hoffman Estates that is materially inconsistent with, in lieu of, or supplemental to the commitments in this Agreement; and
 - (B) Acquisition by GTC of control of the EJ&EW, pursuant to STB authorization.
- II. As promptly as commercially reasonable, but not later than three years after acquisition of control of EJ&EW, GTC shall fulfill all of its commitments contained herein.
- III. Hoffman Estates agrees that it shall not make further submissions in the proceeding without GTC's prior review and approval except in support of this agreement and prompt STB approval of the Transaction.

IV. Confidentiality

This negotiated Memorandum and its terms shall be confidential, except to the extent disclosure may be necessary for consideration by the Hoffman Estates corporate authorities at a public meeting and as otherwise required by law including the Illinois Freedom of Information Act, 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.

It is the intent of the parties to this Memorandum that the STB require GTC's compliance with this agreement in lieu of inconsistent mitigation that the STB might otherwise impose regarding environmental impacts within the Village limits of Hoffman Estates. SEA has asked that it be provided 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

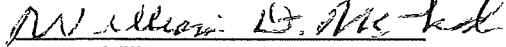
By: 

Title: SVP Southern Region

Date: 12/19/08

Agreed To:

Village of Hoffman Estates

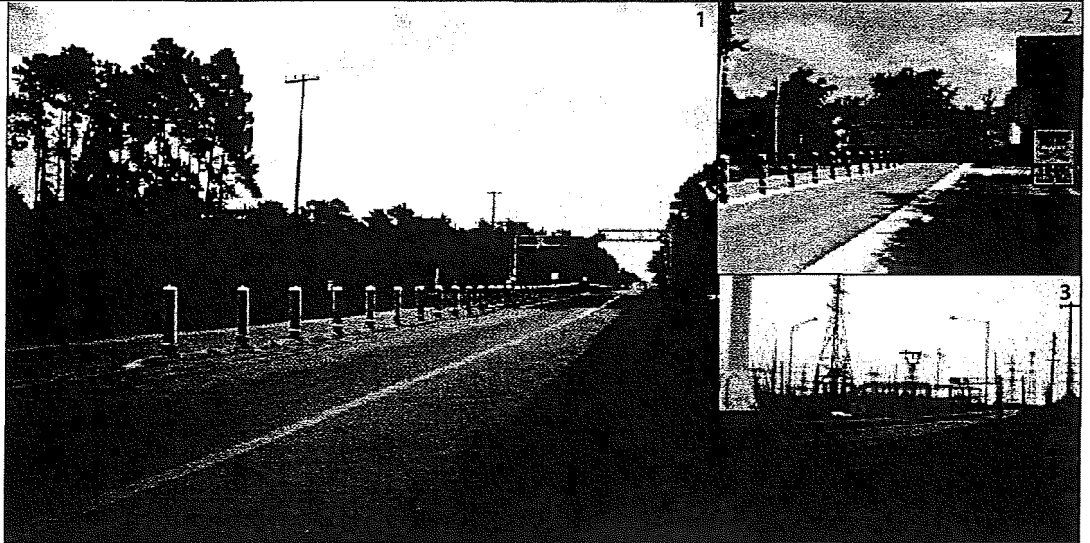
By: 
Village President

Date: 12-15-08

EXHIBIT 1



Median Barrier



1,2: Photos courtesy of Qwick Kurb
3: Photo by Parsons

Median Barriers are designed to promote safe crossings at at-grade railroad crossings. The barrier discourages vehicles from crossing into the oncoming lane to circumnavigate a gate that is already down. A Federal Railroad Administration study shows that median barriers reduce motorist drive-arounds by more than 75 percent.

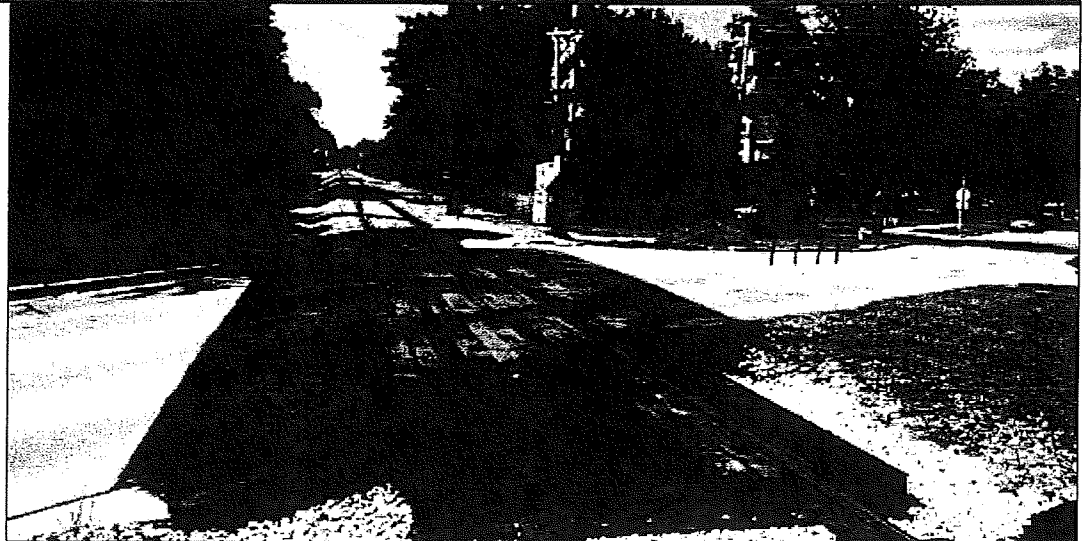
The installation can either be a non-mountable raised median (3) or a raised mountable separator along with formidable markers mounted on flexible posts on top of the separator (1,2). The raised mountable separator deters drivers from crossing the midline. The markers make the barrier very visible and help add to the barrier effect.

The Village of Hoffman Estates will be responsible for the construction and maintenance of a median barrier along Shoe Factory Road.

GTC will be responsible for construction costs up to \$200,000.



Crossing Rehabilitation



Railroad crossing rehabilitation includes installing panels between the rails to allow for smoother crossing. This also allows for quieter crossing.

Benefits include:

- Smoother ride over the track crossing
- Durability
 - Built of high-strength materials
 - Able to withstand heavy vehicles
- Safety
 - Non-skid surface matches existing roads
- Quick and easy installation

GTC will replace the crossing panels at Shoe Factory Road. GTC will be responsible for construction and maintenance.

The estimated cost of this improvement is \$120,000.



Safety Fencing



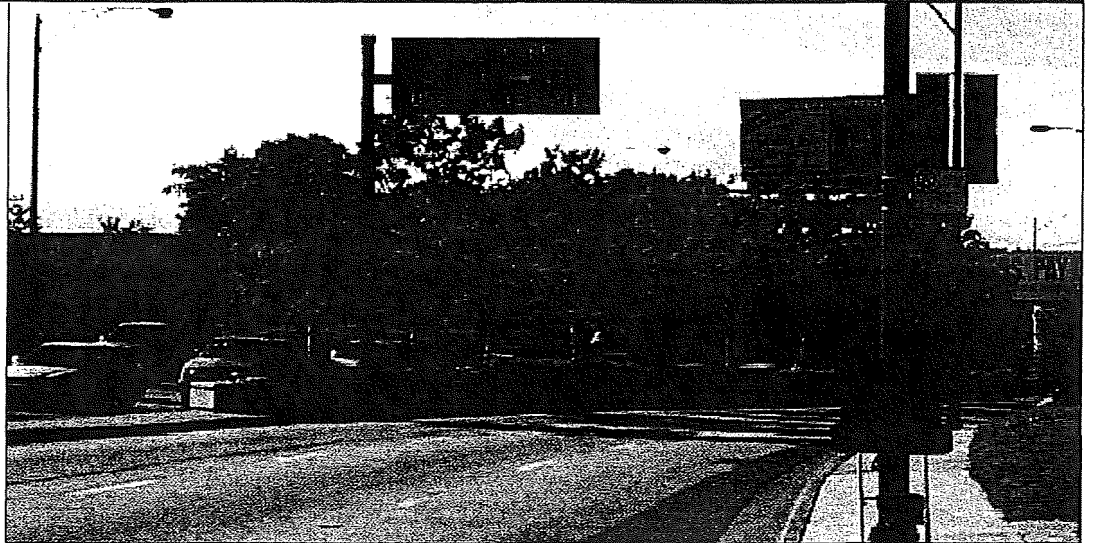
Photo by Parsons

The Village of Hoffman Estates will be responsible for the construction and maintenance of safety fencing along the current EJ&EW right-of-way adjacent to Cannon Crossings Park.

GTC will be responsible for construction costs up to \$50,000. This cost assumes five-foot high chain link fence will be provided for 1,400 linear feet.



Variable Message Sign



The Village of Hoffman Estates will be responsible for the construction and maintenance of a variable message sign along Shoe Factory Road, east of the EJ&EW. GTC will fund fully the cost of design, permitting, and construction of the variable message (estimated \$75,000).

http://www.its.dot.gov/jpodocs/repts_te/13587.html



Noise Barriers

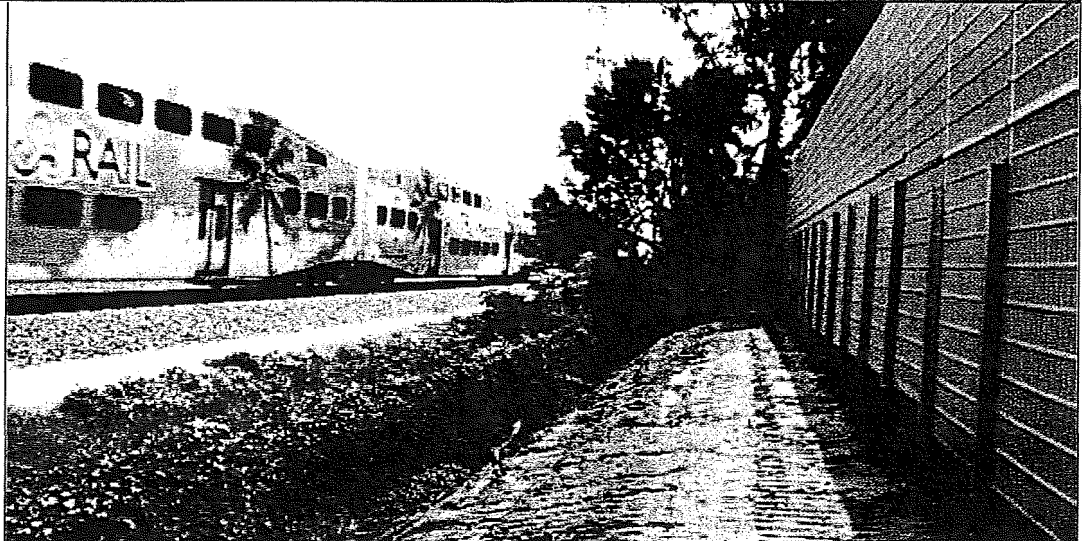


Photo by Sound Fighter Systems

Noise barriers are used to attenuate the sound of trains as they pass through sensitive land use areas. The theory is to block sound waves after they are emitted from the source. Noise barriers may be made of masonry wall, earthwork, steel, concrete, masonry, wood, plastics, or composites. The height is determined by the source of the noise and the position of the receiver.

GTC will be responsible for the construction of noise barriers along the current EJ&EW right-of-way at the residential developments located between Golf Road and I-90.

GTC will be responsible for construction costs up to \$2.5 million. This cost assumes noise barriers will be provided for 6,000 linear feet.

GTC will be responsible for the maintenance of the structural integrity of the noise barriers. The Village of Hoffman Estates will be responsible for the maintenance of the visual appearance of the noise barriers.

