# RESOLUTION NO. 08-35

## A RESOLUTION AUTHORIZING THE EXECUTION OF A MEMORANDUM OF AGREEMENT BETWEEN THE VILLAGE OF FRANKFORT AND CANADIAN NATIONAL (CN) RAILWAY COMPANY

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WHEREAS, on December 1, 2008, the Committee of the Whole Committee, comprised of the Village President and the Board of Trustees of the Village of Frankfort, held a public meeting; and

WHEREAS, the Committee of the Whole Committee directed Village staff to undertake negotiations with Canadian National Railway officials to reach agreement on traffic, noise and safety issues anticipated as a result of the proposed acquisition of the EJ & E Railroad by Canadian National; and

WHEREAS, a Memorandum of Agreement was negotiated between the Village of Frankfort and the Canadian National Railway Company outlining specific terms of mitigation efforts.

**NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF FRANKFORT, WILL & COOK COUNTIES, ILLINOIS AS FOLLOWS:**

That the Village President be and is hereby authorized and directed to execute, on behalf of the Village of Frankfort, said Memorandum of Agreement with the Canadian National Railway Company regarding its pending acquisition of the EJ & E Railroad, and that the Village Clerk is hereby authorized and directed to attest to the President's signature.

PASSED AND APPROVED this 15th day of December, 2008.

JIM HOLLAND
VILLAGE PRESIDENT

ATTEST:

ROBERT J. KENNEDY
VILLAGE CLERK

# *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 Frankfort* ("Frankfort"), 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. rail operating subsidiaries of Canadian National Railway Company and co-applicant before the Surface Transportation Board ("STB") in STB Finance Docket No. 35087, and shall apply to the successors and assigns of such parties. 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 Frankfort that these commitments by GTC resolve any outstanding concerns Frankfort has related to the Transaction. The specific terms of this Memorandum between GTC and Frankfort are summarized below, and contained in the attached exhibits and will be effective upon the execution of this Memorandum by duly authorized representatives of Frankfort and GTC.

A.

I **Quiet Zones**

A. GTC will support and provide at its sole cost and expense technical input to Frankfort's application for a Quiet Zone. GTC will bear such cost until the application for the Quiet Zone has been approved by the appropriate authorities having jurisdiction over the same.

B. GTC will fund and install at GTC's sole cost constant warning time (CWT) circuitry on the EJ&E line in four locations in Frankfort, at the crossings at Wolf Road, Sauk Trail, Pfeiffer Road and Harlem Avenue, at an estimated cost of $240,000. (See Exhibit 1) (116th Street and Center Road have CWT circuitry already installed.)

C. GTC will fund all other mitigation items required (including four-quadrant gate systems, as well as medians or channelization devices) to achieve and maintain Quiet Zone status at the at-grade crossings in Frankfort, including correction of the Wolf Road bike path crossing.

D. Once the Quiet Zone has been approved, GTC will fund additional measures required to maintain the Quiet Zone designation on the EJ&EW line to be acquired by GTC within the village limits of Frankfort should retention of the designation be jeopardized by additional GTC train volumes on that line.

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

## II Safety/Noise

A. GTC will fund, construct and maintain a total of 2,000 feet of safety fencing in Main Park and Heritage Knolls Park at an estimated cost of $65,000. (See Exhibit 2) Should Frankfort choose to have installed PVC-type safety fencing in Heritage Knolls Park, then Frankfort would be responsible for the difference between the installation cost of chain-link fencing that GTC would otherwise provide, as described in Exhibit 2, and the installation cost of PVC fencing.

B. GTC will provide $2.7 million to Frankfort for the installation of noise mitigation, whether sound walls, fences, berms and/or vegetation. Where necessary or cost-efficient, and with GTC's approval (not to be withheld unreasonably), sound walls may be constructed on GTC property. These funds may also be used, at the discretion of Frankfort, to improve safety crossings and/or maintain quiet zones. Funds not used for this purpose within 5 years following GTC's acquisition of control shall be returned to GTC. Except for maintaining the structural integrity of sound walls (if installed) on GTC property, all maintenance for sound walls (including removal of graffiti and/or other defacement) or vegetation that Frankfort chooses to install is the obligation of Frankfort. Frankfort shall provide GTC annual reports of the expenditure of the GTC-contributed funds for the matters in this paragraph.

C. Wheel Impact Load Detectors (WILD) and other similar kinds of safety-protective devices (such as hot-box, hot-wheel, and dragging-equipment detectors) shall be appropriately placed and integrated into GTC's operations on the EJ&EW line to be acquired by GTC, including through Frankfort.

## III Emergency Response Training

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

## IV Communications

GTC will fund at its sole expense a specific emergency protocol and dispatching view capability on behalf of Frankfort. GTC agrees to bear the cost of the hardware, software and communications equipment, which the parties jointly deem necessary. Frankfort agrees to assist in the design, testing and training.

V Other

A. GTC will convey an easement at no charge for a planned pedestrian crossing at Wolf Road.

B. GTC will provide $110,000 to Frankfort to be used for the sole purpose of purchasing an emergency-response vehicle or safety equipment. Funds not used for this purpose within 3 years following the acquisition by GTC of control over EJ&EW shall be returned to GTC.

C. GTC agrees to abide by attached Train Blockage Protocol in the event of blocked crossings. (See Exhibit 3)

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 in STB Finance Docket No. 35087 to acquire control of EJ&EW, provided that such approval does not include the imposition upon GTC of any condition for mitigation in Frankfort that is materially inconsistent with, in lieu of, or supplemental to the commitments in this Agreement (including but not limited to an imposed condition requiring further study and evaluation of impacts and mitigation options for Frankfort); and

(B) Acquisition by GTC of control of the EJ&EW, pursuant to STB authorization.

(C) Frankfort 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.

(D) As promptly and commercially reasonable, but not later than the end of 3 years after the acquisition by GTC of control of EJ&EW, GTC shall fulfill all of its commitments contained herein.

II. Confidentiality

This negotiated Memorandum and its terms shall be confidential, except to the extent disclosure may be essential for consideration by the Frankfort 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.

## III. 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 Frankfort. 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:

Village of Frankfort

By: _____
Mayor

Date: _____

GTC

By: _____

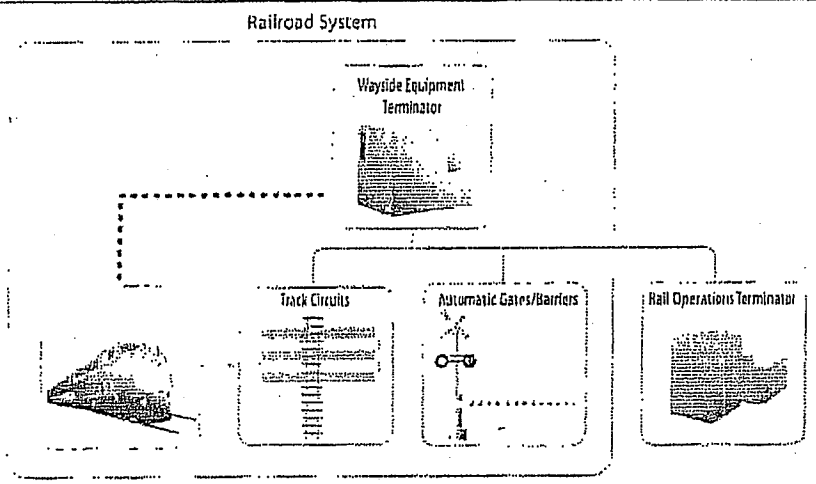
Title: Vice President

Date: December 16, 2008

Attest:

_____
Village Deputy Clerk

# 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 crossings at Wolf Road, Sauk Trail, Pfeiffer Road, and Harlem Avenue. GTC will be responsible for construction and maintenance.

The estimated cost of this improvement is $240,000

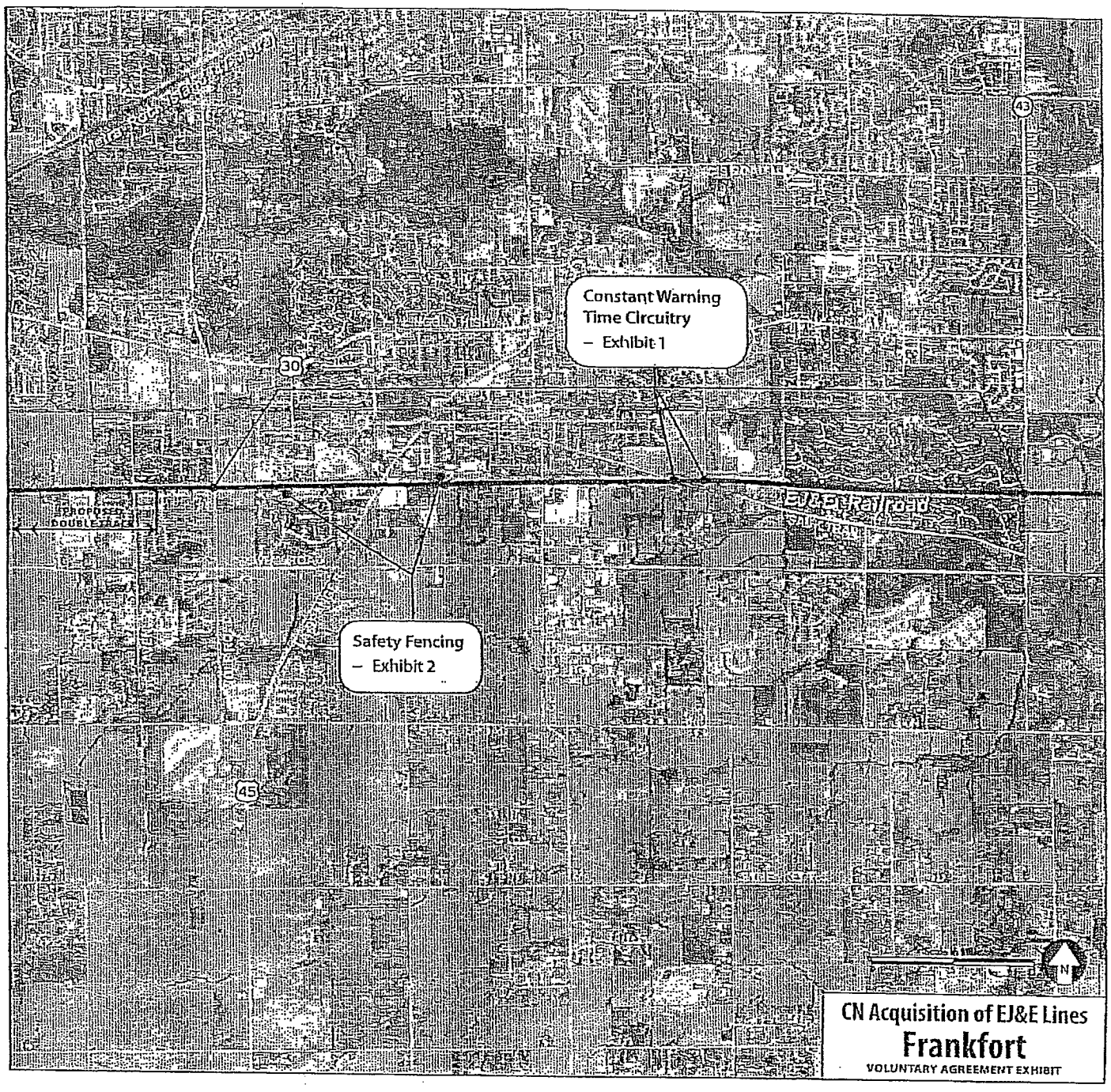
Frankfort Voluntary Agreement
EXHIBIT 2

# Fencing

*Photo by Parsons*

GTC will be responsible for the construction and maintenance of safety fencing along the current EJ&EW right-of-way adjacent to Main Park and Heritage Knolls Park.

GTC will be responsible for construction costs up to $65,000. This cost assumes five-foot high chain link fence will be provided for 2,000 linear feet.




CN Acquisition of EJ&E Lines

**Frankfort**

VOLUNTARY AGREEMENT EXHIBIT

Exhibit 3

# PROTOCOL ESTABLISHING MUNICIPAL CONTACT HIERARCHY TO THE CANADIAN NATIONAL RAILWAY IN THE EVENT A CN TRAIN BLOCKS A ROADWAY IN THE VILLAGE OF FRANKFORT

In establishing the following protocol for municipal contact to the Canadian National Railway (CN) in the event a roadway in the Village of Frankfort (Village) is blocked due to a stopped train or a signal malfunction, the CN reinforces the importance of rail freight to the US economy and the movement of interstate commerce by rail. Furthermore, the CN and the Village of Frankfort recognize that train operations occur in a multimodal environment where traffic conflicts and other causes lead to train stoppages.

The CN is committed to being a responsible corporation by improving communications between itself and the municipality, investigating the root cause of blocked roadway crossings, and staying engaged with municipal representatives to resolve issues of concern.

Accordingly, the CN and the Village agree to the following protocol:

1) In the event that a crossing on the CN or EJ&E lines within, or adjacent to, the Village is blocked for longer than 10 minutes without train movement; or a signal malfunction causes the railroad crossing arms to block the roadway, the Village of Frankfort Police Department shall call the CN police communications center at 1-800-465-9239. The Frankfort Police Department shall provide a call back phone number, which may be the Dispatcher, patrol officer, or supervisor. The CN Police will call back the Village of Frankfort in a timely manner informing them of the reason for the blockage and the estimated time to clear the roadway, so that the Frankfort Police Department can better allocate resources and inform the public.

2) In the event that blockages persist or this protocol is not being followed, the Village may contact the CN Government Affairs Manager and request a meeting in the Village with a CN management representative. A CN Government Affairs Manager shall meet with Village representatives at least twice a year to discuss blockages, and other issues related to railroad operations that are of concern to the Village, unless both the CN and Village agree that a meeting is not necessary.

3) In the event that the root causes of blocked crossings, or another recurring, operational problem, remain unresolved, the CN will make itself available to mediation intervention to discuss and resolve the outstanding problems. It is anticipated that mediator would come from the STB or the ICC.

4) Nothing herein is intended to limit the right of the Village to seek relief respecting this protocol from the Surface Transportation Board or any other governmental agency or tribunal having jurisdiction.

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LAURA L. MALINOWSKI

Counsel to the Firm
R. PETER GROMETER

NOV 16 '09 PM 1:43

November 11, 2009

Mr. Jerry Ducay
Village of Frankfort
432 W. Nebraska
Frankfort, IL 60423

Re: Escrow Agreement for Frankfort Residents' Railroad Mitigation Fund

Dear Mr. Ducay:

Enclosed herewith please find a fully executed original Escrow Agreement with regard to the above mentioned file.

Should you have any questions, please feel free to contact our office.

Very truly yours,

MAHONEY, SILVERMAN & CROSS, LLC

By: _____
Jean A. Kenol

JAK/rd
Enclosure

# ESCROW AGREEMENT FOR FRANKFORT RESIDENTS' RAILROAD MITIGATION FUND

THIS AGREEMENT (the "Agreement") is made and entered into in Frankfort, Will County, Illinois, this 19th day of October 2009, by and among the Village of Frankfort, an Illinois municipal corporation ("FRANKFORT"), Grand Trunk Corporation, a Delaware corporation and wholly owned subsidiary of Canadian National Railway Company, a Canadian corporation ("collectively CN"), and Old Plank Trail Community Bank, an Illinois corporation ("BANK").

WITNESSETH:

WHEREAS, on or about January 31, 2009, CN acquired control of the Elgin, Joliet & Eastern Railway Company ("EJ&E"), which owns, operates and maintains rail lines that traverse FRANKFORT;

WHEREAS, on December 15, 2008, CN and FRANKFORT entered into a Memorandum of Agreement (the "MOU Agreement") that, among other things, required CN to deposit TWO MILLION SEVEN HUNDRED THOUSAND DOLLARS ($2,700,000.00) to fund noise mitigation projects benefiting properties in Frankfort abutting the EJ&E rail lines potentially affected by the expected increase in rail traffic along this rail line;

WHEREAS, FRANKFORT desires to facilitate the disbursement of the funds and to coordinate the installation and design of the landscaping with the residents of FRANKFORT;

WHEREAS, FRANKFORT has identified the properties within FRANKFORT eligible to receive noise mitigation funding as well as the maximum funding available for each property from the fund;

WHEREAS, from time to time as requested by FRANKFORT, CN will incrementally fund the noise mitigation fund until its financial commitment for this purpose under the MOU Agreement has been satisfied;

WHEREAS, FRANKFORT has developed a protocol where the owner(s) of the property eligible to receive funds from this escrow ("Owners") will directly contact Jerry Ducay for the work on the eligible property based upon plans prepared by the Owner(s) and reviewed and approved by FRANKFORT; and

WHEREAS, based upon FRANKFORT's protocol, authorization and approval of the work by the Owner(s) of the affected property, FRANKFORT will distribute directly to the Owner(s)' contractor the cost for conforming to the approved noise mitigation which, however, will not exceed the amount allowed by FRANKFORT for the specific property.

NOW THEREFORE, FRANKFORT, CN and the BANK agree as follows:

1. Incorporation of recitals

That the Recitals contained in the Preamble to this Agreement are incorporated herein as if fully set forth in this Section 1.

2. Escrow

On the effective date of this Agreement, CN shall deposit with BANK, the total sum of Two Hundred and Fifty Thousand Dollars and 00/100 ($250,000.00). Said sum shall be held by the Bank in a segregated, interest bearing Municipal Now Account referred to herein as the "Railroad Mitigation Fund" (the "Fund"). Upon request by FRANKFORT, CN will deposit additional money in this fund up to the sum of $2,700,000.00 as required under the Agreement, in satisfaction of Section II. (B) of the MOU Agreement.

3. Use of Fund

The Fund shall be used solely in accordance with the terms of this Agreement to pay the Owner for landscaping and noise mitigation as it relates to EJ&E's railway up to the limits established by FRANKFORT for each affected property. The monies including interest earned in the Fund may be disbursed by FRANKFORT without prior notice to CN to reimburse the Owner for the planning, engineering, design, procurement, construction, and installation of improvements associated with the landscaping and noise mitigation of EJ&E's railway. FRANKFORT may disburse the Fund to make such improvements on its own volition.

4. Disbursement of Funds

Upon completion and FRANKFORT's inspection of the improvements referred to in Paragraph 3, FRANKFORT shall draw on the Fund to pay an Owner his/her/their mitigation amount, provided the amount drawn for any Owner shall not exceed FOURTEEN THOUSAND DOLLARS ($14,000.00) per Owner.

All payments from the Fund shall be completed not later than January 31, 2014. The balance of the Fund, if any, on February 1, 2014, shall be paid to CN.

All the parties to this Agreement acknowledge that the Bank is acting only as a depository of the funds under its standard Municipal Now Account Agreement which shall name FRANKFORT as depositor for funds deposited by CN pursuant to this Agreement, and that FRANKFORT is acting only for the purpose of ascertaining that the above items or matters have been completed or performed and disburse these sums payable to the affected Owner(s)' contractors.

Payments from the Fund shall be made upon a draft drawn by FRANKFORT or at the direction from FRANKFORT or its legal representatives, assigns or duly authorized agents in accordance with the Municipal Now Account Agreement. BANK shall not be responsible to make any inquiry to CN prior to honoring any draft or direction by FRANKFORT. BANK shall not be responsible to look into the validity of the payment or right of the payee to receive the payment.

5. Miscellaneous

a. This Agreement, as well as the MOU Agreement (including its exhibits), contain the entire agreement among the parties. Oral statements or prior written matter not specifically incorporated into this Agreement has no force or effect. No variation, modification, or change to this Agreement binds any party unless set forth in a document signed by all parties or their duly authorized agents, officers, or representatives.

b. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. The obligations under the terms of the Agreement are performable in Will County, Illinois, and any and all payments under the terms of the Agreement are to be made in Will County, Illinois. Any dispute involving this Agreement shall be resolved in the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois, which the parties stipulate is an appropriate venue.

c. If any provision in this Agreement is found to be invalid, illegal, or unenforceable, its invalidity, illegality, or unenforceability will not affect any other provision, and this Agreement must be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

d. Any notice, required or permitted to be given under this Agreement shall be in writing and deemed to have been given when deposited in a United States Post Office, registered or certified mail, postage prepaid, return receipt requested and addressed as follows:

If to Company: Grand Trunk Corporation
Director – U.S. Government Affairs.
17641 S. Ashland Avenue
Homewood, IL 60430
708.332.3508

If to Village: Village Administrator – Jerry Ducay
Village of Frankfort
432 West Nebraska Street
Frankfort, Illinois 60423
(815) 469-2177

If to Bank

Old Plank Trail Community Bank, NA
c/o Paul Slade, President
20012 Wolf Road
Mokena, Il 60448
815-462-5505

e. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required.

f. BANK has executed this Agreement for the purpose of acknowledging the reason that FRANKFORT and CN caused the Fund to be established. Nothing herein shall be deemed to modify or control over the terms of the standard Municipal Now Account Agreement between FRANKFORT and BANK relative to the Fund.

**IN WITNESS WHEREOF,** the parties hereto have mutually executed this Agreement as of the day and year first above written.

**GRAND TRUNK CORPORATION**

By: _____
Printed Name: Gordon T Trafton II
Title: Sr. VP-Strategic Acquisitions & Intergration
Dated: October 27, 1009

**VILLAGE OF FRANKFORT, an Illinois municipal corporation**

By: _____
Printed Name: Jim Holland
Title: Village President
Dated: 10.21.2009

**OLD PLANK TRAIL COMMUNITY BANK**

By: _____
Printed Name: Paul Slade
Title: Presidnet
Dated: November 5, 2009