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Public Utilities
Commission of Ohio

PUCO

Memo

To: Docketing Division**From:** George Martin, Grade Crossing Planner, Rail Division**Re:** In the matter of a Consolidation Project with Norfolk Southern Railway in the Village of McComb, Hancock County**Date:** ~~April 30, 2009~~ MAY 1, 2009 Gm

The Ohio Rail Development Commission (ORDC) and Norfolk Southern Railway (NS) have negotiated the closure of the N. Walnut St (472-480R) grade crossing in the Village of McComb (Village), Hancock County. In exchange for this closure, the existing mast mounted flashing lights and roadway gates at N. Walnut St will be relocated to Church St. (472-479W). The parties entered into an agreement on this project on April 13, 2009 (attached).

Staff requests an Entry with plans and estimates to be submitted by NS to the Commission and ORDC within 90 days, and the relocation of the devices to be accomplished within one year. Under Section II of the agreement, the grade crossing closure shall take place at the completion of the grade crossing upgrades (the agreement also involves surface reconstruction at two additional crossings. This is not referenced in this memo as the Commission has no jurisdiction over surface reconstruction). A suggested case coding and heading would be:

PUCO Case No. 09- 374 -RR-FED In the matter of a Consolidation Project with Norfolk Southern Railway in the Village of McComb, Hancock County

C:Legal Department

Please serve the following parties of record

Ms Susan Kirkland

Ohio Rail Development Commission

50 W Broad St, 15th Floor

Columbus, Oh 43215

Mr Rick Ray

Norfolk Southern Railway

1200 Peachtree St NE, Box 123

Atlanta, Ga 30309


Mayor, Village of McComb

210 E Main St

PO Box 340

McComb, Oh 45858-0340

**OHIO RAIL DEVELOPMENT COMMISSION
INTER-OFFICE COMMUNICATION**

TO: George Martin, Planner, Railroad Division, PUCO
FROM: Susan Kirkland, Manager, Safety Section, ORDC 
BY: Tod Darfus, Project Manager, Safety Section, ORDC
SUBJECT: Hancock County, Village of McComb, N. Walnut Street, Church Street, Park Drive and Main Street
Norfolk Southern Consolidation Project
DATE: April 29, 2009

The Ohio Rail Development Commission (ORDC) and Norfolk Southern Railroad Corporation (NS) have negotiated the closure of one (1) redundant grade crossing in the Village of McComb, Hancock County, Ohio.

In exchange for the closure of N. Walnut Street, AAR# 472 480R, the ORDC and NS will fund:

1. The removal and relocation of flashing lights and roadway gates from N. Walnut Street to Church Street, AAR #472 479W,
2. The reconstruction of grade crossing surface at Park Drive/SR186, AAR# 472 473F,
3. The reconstruction of grade crossing surface at Main Street/SR235, AAR 472 474M.

The warning device relocation and grade crossing surface reconstructions will be funded at an 80/20 percent split with NS. NS shall cover preliminary engineering at 100%. In addition, NS and the ORDC shall provide the following incentives as outlined in the Subsidy Agreement executed by all parties on April 13, 2009.

1. The payment of incentive funds in the amount of \$25,000 solely from NS. These funds may be used in any manner desired by the township.
2. The application of barricades on public property at the NS right-of-way and removal of roadway surface approaching the closed crossing. The work may be accomplished by township forces or contracted out by the township. The cost of this work shall be on a reimbursement basis from NS to township and is limited to \$5,000.

The PUCO was inadvertently omitted from the Subsidy Agreement. This error was not noticed until after execution. A copy of the agreement is attached for your files. Although this is irregular, it is our intent to move forward with the agreement as executed in view of the extensive negotiations involved in reaching consensus with the community in this matter.

Please issue an Order for the project outlined above. This construction authorization is made with the stipulation and understanding that any field work needs prior approval before the work begins. This authorization is made with the stipulation and understanding that an approved estimate may contain entries for items or activities that may be cited and found to be ineligible for federal participation during the project audit.

Thank you for your assistance with these matters.

c: D. Casey Talbott (Eastman & Smith, LTD), Rick Ray (NS), T. Darfus (file)

IN THE MATTER OF THE REQUEST FOR A
CONSOLIDATION PROJECT FOR THE
INSTALLATION OF WARNING DEVICES
AND GRADE CROSSING CLOSURES TO
VEHICLES IN VILLAGE OF MCCOMB,
HANCOCK COUNTY, OHIO

AGREEMENT NO. 15745

SUBSIDY AGREEMENT

THIS SUBSIDY AGREEMENT is entered into on this 13 day of APRIL, ²⁰⁰⁹~~2008~~,
by and among the Ohio Rail Development Commission ("ORDC"), Norfolk Southern Railway Company,
("NS"), and the Council of the Village of McComb (VILLAGE).

WITNESSETH:

WHEREAS, Rule 4901-1-30 of the Ohio Administrative Code provides that any two or more parties to a proceeding may enter into a written or oral stipulation concerning the issues presented in such proceeding; and

WHEREAS, ORDC has statutory authority to develop, promote, and support safe, adequate, and efficient rail service throughout the State of Ohio; and

WHEREAS, the Federal Aid Highway Safety Act of 1973 and the Transportation Equity Act for the 21st Century, and the Safe, Accountable, Flexible, Efficient Transportation Equity Act - A Legacy for Users (SAFETEA-LU) and subsequent amendments thereto provide funding for the cost of installing warning devices to eliminate hazards at public grade crossings, which funding is administered jointly by PUCO and ORDC pursuant to Ohio Revised Code Section 4907.476; and

WHEREAS, the parties hereto propose to facilitate the improvements identified in this Subsidy Agreement in accordance with the Federal Aid Policy Guide ("FAPG") and applicable provisions of Title 23 of the United States Code pursuant to the terms hereof; and

WHEREAS, the VILLAGE hereby declares it to be in the public interest that the consent of the VILLAGE be and such consent is hereby given to ORDC to facilitate the installation of the grade crossing upgrade described in Section III of this Subsidy Agreement in accordance with plans, specifications and estimates to be approved by ORDC; and

WHEREAS, the parties, intending to be legally bound, further agree that the public grade crossings identified in Section II of this Subsidy Agreement should be permanently closed to vehicular and pedestrian traffic as part of the corridor safety project to be implemented by this Subsidy Agreement; and

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

I. PURPOSE

There are numerous public highway/railroad grade crossings located within the limits of the VILLAGE. The purpose of this Subsidy Agreement is to enhance the safety of the traveling public who are required to regularly travel through these public grade crossings.

II. GRADE CROSSING CLOSURES

The VILLAGE agrees to permanently close, to all vehicular and pedestrian traffic of any kind, NS's grade crossings located on the following streets:

<u>Highway ID</u>	<u>AAR #</u>
N. Walnut Street	472480R

Unless otherwise directed by the VILLAGE, the closure shall take place at the completion of the improvements outlined in Section 3- Grade Crossing Upgrades. The \$25,000 incentive payment from NS shall not be made to the VILLAGE until N. Walnut Street is permanently closed.

The VILLAGE shall install guardrails on each side of the tracks, at the grade crossing to be closed. The guardrails shall be in conformance with the Manual on Uniform Traffic Control Devices (MUTCD). Appropriate MUTCD signage shall be installed in conjunction with the guardrails.

The VILLAGE shall remove the advance warning signs and pavement markings from the crossing to be closed.

NS shall remove all pavements from the crossing area within railroad right-of-way and remove all existing warning devices from the crossing to be closed.

The VILLAGE acknowledges that closure of the aforementioned public grade crossing will further the public safety and that vehicular traffic may be diverted without unreasonable inconvenience to other nearby public grade crossings. Following receipt of public input, the VILLAGE has enacted a Resolution 0-2003-37 dated 12-8-03 that expresses these acknowledgments, the form and substance of which are acceptable to ORDC.

III. GRADE CROSSING UPGRADES

In consideration of the commitment by the VILLAGE to permanently close the grade crossing to all vehicular and pedestrian traffic of any kind designated in Section II, the improvements will be accomplished as follows (the "improvement"):

<u>Highway ID</u>	<u>AAR #</u>	<u>Improvement</u>
Church Street	472479W	Removal and relocation of flashing lights and roadway gates at Walnut Street to Church Street
Park Drive, SR 186	472473F	Reconstruction of grade crossing surface. The new material shall be a high type premium concrete or rubber

Main Street, SR 235

472474M

Reconstruction of grade crossing surface. The new material shall be a high type premium concrete or rubber

The VILLAGE shall furnish advance warning signs and pavement markings as specified in the Manual of Uniform Traffic Control Devices (MUTCD) and applicable federal regulations and shall assume all costs to maintain such signage and markings in the future. Existing signs and pavement markings shall be deemed acceptable if those items are in good condition.

In addition, NS and the ORDC to provide the following incentives:

1. The removal and relocation of the warning devices at Walnut Street to Church Street;
2. The reconstruction of the grade crossing surfaces at SR 186 and SR 235. The new material shall be a high type premium concrete or rubber;
3. The payment of incentive funds in the amount of \$25,000 solely from NS. These funds may be used in any manner desired by the VILLAGE;
4. The application of barricades on public property at the NS right-of-way and removal of roadway surface approaching the Walnut Street crossing. The work may be accomplished by VILLAGE forces or contracted out by the VILLAGE. The cost of this work shall be on a reimbursement basis from NS to VILLAGE and is limited to \$5,000.

IV. COST ALLOCATION; BILLING

The actual costs for the improvements set forth in Section II of this Subsidy Agreement shall be borne one hundred percent (100%) by NS and the VILLAGE as set forth in Section II.

The cost of the advance warning signs and pavement markings set forth in Section III of this Subsidy Agreement shall be borne one hundred percent (100%) by the VILLAGE.

The actual costs for the improvements outlined as installation of flashing lights and roadway gates shall be borne eighty percent (80%) by the ORDC and twenty percent (20%) by NS. NS shall cover preliminary engineering at one hundred percent (100%).

The actual costs for the improvements outlined as reconstruction of grade crossing surface shall be split between NS and ORDC on a labor/materials basis.

In total the actual costs for the improvements borne by ORDC set forth in Section III of this Subsidy Agreement shall not be greater than \$250,000.00.

The costs assigned to ORDC shall be satisfied through the expenditure of Federal funds administered by ORDC and subject to approval by the Federal Highway Administration ("FHWA"). In the event that delays or difficulties arise in securing necessary Federal approvals which, in the opinion of ORDC, render it impracticable to utilize Federal funds for the construction of this project, then at any time before NS is authorized to purchase or furnish the items included under this Subsidy Agreement, ORDC may serve formal notice of cancellation upon NS and the VILLAGE, and this Subsidy Agreement shall become null and void. ORDC shall reimburse NS and the VILLAGE for all costs and expenses

reasonably incurred on account of the improvements prior to such cancellation, including costs associated with winding down the project.

NS shall be responsible for initially paying all of their actual costs to install the safety improvements identified in Section II & III. However, ORDC shall be legally bound to reimburse NS for its costs in section III, as set forth above, not to exceed \$250,000.00 upon proper application therefore by NS, consistent with the terms of this Subsidy Agreement and in accordance with all applicable Federal regulations.

All plans, specifications, estimates of costs, acceptance of work, and procedures in general, to facilitate the construction of the safety improvements described above, shall conform in all respects to applicable Federal laws, rules, regulations, orders, and approvals applicable to Federal-Aid projects. ORDC shall reimburse NS in accordance with FAPG 140, Subchapter B. and 23 C.F.R., Part 646, or any subsequent amendments thereto, in such amounts and form as are proper and eligible for payment from Federal-Aid highway funds. NS shall render its billings to ORDC in accordance with said rules and regulations, and NS shall also provide and furnish such itemized records of and substantiating data for such costs as may be required.

NS may bill ORDC monthly or periodically for its costs when costs exceed \$1,000.00. NS shall submit five (5) copies of its bill and in accordance with said rules and regulations as they have been issued or as thereafter may be supplemented or revised. A final bill covering actual cost and showing details shall be submitted to ORDC within ninety (90) days after completion of the improvements. ORDC shall pay all bills within sixty (60) days after receipt thereof, except that ORDC may hold a retainer on all bills not to exceed eight percent (8%) until final payment. Final payment for all amounts due NS shall be made by ORDC within sixty (60) days after a final audit has been performed and approved by ORDC. The audit shall occur within 180 days of submission of NS's final bill. NS agrees to cooperate and assist, as requested, in any such audit.

At any time during normal business hours upon three (3) days written notice and as often as ORDC may deem necessary and in such a manner as not to interfere with the normal business operations, NS shall make available to ORDC, for examination, and to appropriate state agencies or officials, all of its records with respect to matters covered by this Subsidy Agreement including, but not limited to, records of personnel and conditions of employment and shall permit ORDC to audit, examine and make excerpts or transcripts from such records.

In the event of a controversy as to the eligibility for reimbursement of any charges claimed against the improvement as set forth in Section II & III of this Subsidy Agreement, the decision of the ORDC regarding same shall be final. However, NS and/or the VILLAGE may appeal the decision of the ORDC to a court of competent jurisdiction for further review.

No work requiring reimbursement under this Subsidy Agreement shall be commenced by the parties until all of the following have occurred: (1) this Subsidy Agreement shall have been approved by ORDC; (2) all financial obligations of ORDC, as provided for in this contract, are subject to the provisions of Section 126.07 of the Ohio Revised Code and shall not be valid and enforceable unless funds are appropriated by the Ohio General Assembly and encumbered by ORDC; (3) NS has been notified by ORDC to proceed with construction of the improvements. Work on the improvements shall commence within 30 days of the occurrence of events (1), (2) and (3) described herein. Buying and

assembling of materials shall be construed as compliance with the foregoing thirty (30) day provision. Said work shall be pursued diligently by NS until completed.

V. NOTIFICATION

All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by facsimile and confirmed by telephone or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

If to NS: Norfolk Southern Railway Company
Communications and Signal Department
1200 Peachtree Street, N.E., Room 8077
Atlanta, Georgia 30309-3597

If to VILLAGE : Mayor, Village of McComb
210 E. Main Street, P.O. Box 340
McComb, Ohio 45858-0340

If to ORDC: Ohio Rail Development Commission
50 West Broad Street
LeVeque Tower, 15th Floor
Columbus, Ohio 43215

NS shall furnish notification to ORDC and the VILLAGE at least five (5) working days prior to the date work is scheduled to start at the project site of the improvements so arrangements can be made for inspection. NS shall also notify ORDC and the VILLAGE of any stoppage and resumption of the work activity, and the reasons therefore, and the date the project work on the improvements was completed.

NS shall furnish written or FAX notification to the VILLAGE at least fourteen (14) working days prior to starting any work requiring the establishment of a detour for highway traffic.

NS shall notify ORDC of any changes in the scope of work, cost overruns, materials, etc, which are not in the approved plans and estimates and secure approval of same before the work is performed.

VI. TERMINATION

Said Subsidy Agreement shall terminate at the end of the present biennium, June 30, 2009. If construction severed under this Subsidy Agreement is not completed by that date, it is the expressed intention of the parties to renew this Subsidy Agreement on each successive biennium period until such time as all work contemplated under this Subsidy Agreement has been satisfactorily completed. If it appears to ORDC that NS or the VILLAGE has failed to perform satisfactorily any requirements of this Subsidy Agreement, or if NS or the VILLAGE is in violation of any provision of this Subsidy Agreement, or upon just cause, ORDC may terminate the Subsidy Agreement after providing NS or the VILLAGE with written notice, in accordance with the notice provisions of this Subsidy Agreement, of its

failure to perform satisfactorily any requirement of this Subsidy Agreement (the "Notice"), which shall provide NS or the VILLAGE with a thirty (30) day period to cure any and all defaults under this Subsidy Agreement.

During the thirty (30) day cure period, NS or the VILLAGE shall incur only those obligations or expenditures which are necessary to enable NS or the VILLAGE to achieve compliance as set forth in the Notice. If it is determined that NS or the VILLAGE cannot cure its default, NS or the VILLAGE shall immediately cease work under this Subsidy Agreement, take all necessary or appropriate steps to limit disbursements and minimize costs, and NS or the VILLAGE shall provide a report, as of the date of receipt of the Notice, setting forth the status of the work completed, the cost of the work completed and such other information as ORDC shall deem pertinent.

If this Subsidy Agreement is terminated for breach or failure to satisfactorily perform, the breaching party shall reimburse the non-breaching party any of its costs not reimbursed by the ORDC.

It is expressly understood by the parties that none of the rights, duties, and obligations described in this Subsidy Agreement shall be binding on any party until all statutory provisions of the Ohio Revised Code, including but not limited to Section 126.07 and 126.08 have been complied with, and until such time that all necessary funds are made available and forthcoming from the appropriate state agency and such expenditure of funds is approved, if necessary, by the Controlling Board of the State of Ohio pursuant to Section 127.16 of the Ohio Revised Code, or in the event that federal funds are used, until such time that the ORDC gives NS written notice that such funds have been made available to the ORDC by the ORDC's funding source.

VII. REPRESENTATIONS AND WARRANTIES

A. NS: NS represents and warrants the following:

- (1) NS has the power and authority to enter into this Subsidy Agreement; and
- (2) NS has the authority to carry out its obligations under this Subsidy Agreement; and
- (3) No personnel of NS, any subcontractor of NS, public official, employee or member of the governing body of the particular locality where this Subsidy Agreement shall be completed, who exercises any functions or responsibilities in connection with the review or approval of the work completed under this Subsidy Agreement, shall prior to the completion of said work, voluntarily or involuntarily acquire any personal monetary interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his functions or responsibilities with respect to the completion of the work contemplated under this Subsidy Agreement. Any person who, prior to or after the execution of this Subsidy Agreement, acquires any personal monetary interest, involuntarily or voluntarily, shall immediately disclose his interest to ORDC in writing. Thereafter, such person shall not participate in any action affecting the work under this Subsidy Agreement unless the ORDC determines that, in light of the personal monetary interest disclosed, his participation in any such action would not be contrary to the public interest.

- B. ORDC: ORDC represents and warrants that it has the power and authority to enter into this Subsidy Agreement and to carry out its obligations under this Subsidy Agreement.

VIII. OHIO ETHICS LAW REQUIREMENTS

NS affirms that it is not in violation of Ohio Revised Code §102.04, as that section is applicable to this Subsidy Agreement and NS.

IX. FALSIFICATION OF INFORMATION

NS for itself, and the VILLAGE for itself, affirmatively covenant that neither has made any false statements to ORDC in the process of obtaining this grant of funds. If NS or the VILLAGE have knowingly made a false statement to ORDC to obtain this grant of funds, the NS and the VILLAGE shall be required to return all funds immediately pursuant to Ohio Revised Code Section 9.66(C) (2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to O.R.C. Section 9.66(C) (1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to O.R.C. Section 2921.13(D)(1), which is punishable by a fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

X. EQUAL EMPLOYMENT OPPORTUNITY

Pursuant to Ohio Revised Code Section 125.111, NS agrees that NS, any subcontractor, and any person acting on behalf of NS or subcontractor, shall not discriminate, by reason of race, color, religion, sex, sexual orientation, gender identity, age, disability, national origin, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the work under this Subsidy Agreement. NS further agrees that the contractor and any subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Subsidy Agreement on account of race, color, religion, sex, sexual orientation, gender identity, age, disability, national origin or ancestry. NS represents that it has a written affirmative action program for the employment and effective utilization of disadvantaged persons and will file a description of that program and a progress report on its implementation, annually, with the Ohio Civil Rights Commission and the minority business development office.

XI. OHIO ELECTIONS LAW

NS represents that its participation in this Subsidy Agreement does not violate Section 3517.13 of the Revised Code.

XII. DRUG FREE WORKPLACE

In the event that work performed pursuant to the terms of this Subsidy Agreement will be done while on state property, NS hereby certifies that its rules require all of its employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

XIII. HOLD HARMLESS PROVISION

NS covenants and agrees to indemnify and hold the VILLAGE, ORDC and their agents and employees harmless from and against any loss, claim, cause of action, damages, liability (including, without limitation, strict or absolute liability in tort or by statute imposed), charge, cost or expense (including, without limitation, counsel fees to the extent permitted by law), predicated on personal injury or death, or loss of or damage to property, and arising from any work performed pursuant to this Subsidy Agreement and caused by NS's negligent, intentional, willful or wanton actions or inactions, or such actions or omissions by any subcontractors that may be hired by NS under this Subsidy Agreement.

In case any action involving any work covered by this Subsidy Agreement is brought by or against any party or parties, said party or parties shall promptly notify the other party or parties of such action.

XIV. UNUSUAL CIRCUMSTANCES AFFECTING PERFORMANCE

In the event that NS or the VILLAGE cannot meet any or all of the obligations placed upon it by the terms of this Subsidy Agreement, (1) NS or the VILLAGE shall immediately notify ORDC in writing, and (2) ORDC may, at its sole discretion, make reasonable efforts to assist NS or the VILLAGE in meeting its obligations under the Subsidy Agreement. Any revisions to this Subsidy Agreement shall be made in writing and agreed upon by all parties.

XV. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS

NS and the VILLAGE agree to comply with all applicable federal, state, and local laws in the conduct of the work hereunder. NS accepts full responsibility for payments of all unemployment compensation, insurance premiums, workers' compensation premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by NS on the performance of the work authorized by this Subsidy Agreement.

XVI. DISPUTE RESOLUTION

In the event NS or the VILLAGE desires clarification or explanation of, or disagrees with, any matter concerning the Subsidy Agreement, or the interpretation or application of any and all federal or state statutes, rules, regulations, laws or ordinances, the matter must be submitted in writing to ORDC. If the dispute cannot be resolved, NS or the VILLAGE may file whatever action or take whatever other steps they believe may be necessary to resolve the dispute.

XVII. NO WAIVER

No delay or omission to exercise any right or option accruing to Grantor upon any breach by NS or the VILLAGE shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed necessary by ORDC. Further, if any term, provision, covenant or condition contained in this Subsidy Agreement is breached by either party and thereafter such breach is waived in writing by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

XVIII. CONSTRUCTION

This Subsidy Agreement shall be governed by the laws of the State of Ohio as to all matters, including but not limited to, matters of validity, construction, effect and performance.

XIX. FORUM AND VENUE

All actions brought against the ORDC regarding this Subsidy Agreement shall be forumed and venued in a court of competent subject matter jurisdiction in Franklin County, Ohio.

XX. SEVERABILITY

Whenever possible, each provision of this Subsidy Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Subsidy Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Subsidy Agreement.

XXI. ENTIRE SUBSIDY AGREEMENT

This Subsidy Agreement and its exhibits and any documents referred to herein constitute the complete understanding of the parties and merge and supersede any and all other discussions, Subsidy Agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.

XXII. CAPTIONS

The captions in this Subsidy Agreement are for the convenience of reference only and in no way define, limit or describe the scope or intent of this Subsidy Agreement or any part hereof and shall not be considered in any construction hereof.

XXIII. AMENDMENTS OR MODIFICATIONS

Any party may at any time during the term of this Subsidy Agreement request amendment or modification. Requests for amendment or modification of this Subsidy Agreement shall be in writing to the other parties and shall specify the requested changes and the justification for such changes. All parties shall then review the request for modification. Should the parties all agree to modification of the Subsidy Agreement, then an amendment shall be drawn, approved, and executed in the same manner as this Subsidy Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Subsidy Agreement to be executed as of the date and year set forth below.

NORFOLK SOUTHERN RAILWAY COMPANY

By Robert A. Bartle

Print Name ROBERT A. BARTLE

Title General Manager

Date 1-30-09

COUNCIL OF VILLAGE OF MCCOMB

By Gordon L. Myers

Print Name GORDON L. MYERS

Title Pres

Date 4/13/09

OHIO RAIL DEVELOPMENT COMMISSION

By Matthew R. Dietrich

Print Name Matthew R. Dietrich

Title Executive Director

Date 1-5-09

APPROVED AS TO FORM WITH REGARD
TO OHIO RAIL DEVELOPMENT
COMMISSION ONLY:

Alan H. Klodell

Assistant Attorney General Alan H. Klodell

Date 12/26/08

Agreement HAN Village of McComb NS.doc (amended 12-22-08)