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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 the authorization of Norfolk Southern Railway and Ashland Railway for a Consolidation Project in Richland County

Date: May 21, 2009

On April 22nd, 2009, Commission staff, the Ohio Rail Development Commission (ORDC), Norfolk Southern Railway (NS), Ashland Railway (ASRY) and Springfield Township (Township) entered into an agreement (attached) whereby the Springmill North Rd (502-669K) grade crossing would be closed to vehicular traffic. The Leppo Rd grade crossings (NS 502-668D and ASRY 152-170N) would be upgraded to flashing lights and roadway gates in exchange for the closure.

Section II of the agreement specifies that it is the responsibility of the Township to close the Springmill North Rd grade crossing, and that the closure shall take place at the completion of the upgrades. The ORDC has now authorized funding for these upgrades.

These grade crossing upgrades are actual cost and will be paid for with federal funds. Staff requests an Entry directing NS and ASRY to submit plans and estimates to the Commission within 90 days and to complete the upgrades within one year. Upon approval of the plans and estimates by ORDC construction may commence. A suggested case coding and heading would be:

PUCO Case No. 09- 430 -RR-FED In the matter of the authorization of Norfolk Southern Railway and Ashland Railway for a Consolidation Project in Richland 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

Mr D. Casey Talbot

Eastman & Smith Ltd.

One SeaGate, 24th Floor

PO Box 10032

Toledo, Oh 43699-0032

Mr Thomas Beck

Richland County Engineer

77 N Mulberry St

Mansfield, Oh 44902-1208

Springfield Township Trustees

PO Box 133

Ontario, Oh 44862

Mr Peter Crane

Ashland Railway

1 Village Square

New Hope, Pa 18938

OHIO RAIL DEVELOPMENT COMMISSION INTEROFFICE COMMUNICATION

TO: George Martin, Railroad Division, PUCO

FROM: Joseph N. Reinhardt, Grade Crossing Specialist

SUBJECT: Grade Crossing Warning Projects and
Grade Crossing Closure Project

DATE: May 20, 2009

You may authorize the following warning projects and closure project to proceed with the non-field work involved with the below mentioned non-lump sum project. 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.

Project List

Norfolk Southern:

Richland County, Springmill North Road, DOT 502669K, Railroad
Grade Crossing Closure

Richland County, Leppo Road, DOT 502668D, Installation of
flashing lights and roadway gates.

Ashland Railway:

Richland County, Leppo Road, DOT 152170N Installation of
flashing lights and roadway gates.

Thank you for your assistance with these matters.

JR:jnr

c: S. Kirkland - Files (J. Reinhardt)

IN THE MATTER OF THE REQUEST
FOR A CONSOLIDATION PROJECT
FOR THE INSTALLATION OF
WARNING DEVICES AND GRADE
CROSSING CLOSURE TO VEHICLES
IN SPRINGFIELD TOWNSHIP,
RICHLAND COUNTY, OHIO

PUCO CASE NO.

SUBSIDY AGREEMENT

THIS SUBSIDY AGREEMENT is entered into on this 22ND day of APRIL, 2008 by and among the Public Utilities Commission of Ohio ("PUCO"), Ohio Rail Development Commission ("ORDC"), Norfolk Southern Railway Company, ("NS"), Ashland Railway ("ASRY"), Richland County ("COUNTY"), and Springfield Township ("TOWNSHIP").

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, PUCO has statutory authority to regulate and promote the welfare and safety of railroad employees and the traveling public pursuant to Ohio Revised Code Section 4905.04; and

WHEREAS, PUCO has authority to order closure of public grade crossings to vehicular traffic within governmental limits pursuant to Ohio Revised Code Section 4907.474; 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, TOWNSHIP hereby declares it to be in the public interest to progress this project and that consent is hereby given to ORDC/PUCO to facilitate the installation of the

grade crossing upgrades described in Section III of this Subsidy Agreement in accordance with plans, specifications and estimates to be approved by ORDC/PUCO; 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 traffic as part of the 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 TOWNSHIP. 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 CLOSURE

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

<u>Highway ID</u>	<u>AAR #</u>
Springmill North Road, TR 208	DOT 502669K

Unless otherwise directed by Springfield Township, the closure shall take place at the completion of the improvements outlined in Section III. GRADE CROSSING UPGRADE.

The TOWNSHIP 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. These costs shall be reimbursed by NS as outlined in Section IV. COST ALLOCATION; BILLING.

The TOWNSHIP 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.

TOWNSHIP and the COUNTY acknowledges that closure of the aforementioned public grade crossing will further the public safety without unreasonable inconvenience to the public, and that vehicular traffic may be easily diverted to other nearby public grade crossings.

Following receipt of public input, TOWNSHIP enacted on June 16, 2008 consent that expresses these acknowledgments, the form and substance of which are acceptable to ORDC and PUCO. In addition the COUNTY enacted a Resolution July 31, 2008 expressing the same acknowledgments.

III. GRADE CROSSING UPGRADE

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

<u>Highway ID</u>	<u>RR</u>	<u>AAR #</u>	<u>Improvement</u>
Leppo Road	ASRY 15270	151170N	Installation of flashing lights and roadway gates
Leppo Road	NS	502668D	Installation of flashing lights and roadway gates

The TOWNSHIP 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.

IV. COST ALLOCATION; BILLING

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

A payment of incentive funds in the amount of \$20,000 shall be solely provided by NS. These funds will be submitted in the form of a check to the TOWNSHIP and may be used in any manner desired by the TOWNSHIP and/or COUNTY. The check shall be submitted within 30 days of the closure of Springmill North Road.

The application of barricades and removal of the surface at the Springmill North Road crossing shall be accomplished or contracted out by Springfield Township. These costs will be reimbursed by NS to the TOWNSHIP up to \$5,000.

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

The actual costs for the improvements outlined as installation of flashing lights and roadway gates shall be borne eighty percent (90%) by the ORDC, ten percent (10%) by NS for the crossing on the NS tracks and one hundred percent (100%) by the ORDC at the ASRY

crossing. The warning devices shall be engineered per American Railway Engineering and Maintenance-of-Way Association (AREMA) standards. Actual equipment and interconnects shall be determined with preliminary engineering and coordination of engineering shall occur between NS and ASRY.

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 \$500,000.00.

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 and ASRY are authorized to purchase or furnish the items included under this Subsidy Agreement, ORDC may serve formal notice of cancellation upon NS/ASRY and the TOWNSHIP, and this Subsidy Agreement shall become null and void. ORDC/PUCO shall reimburse NS/ASRY and the TOWNSHIP 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 and ASRY 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 and ASRY for its costs in section III, as set forth above, not to exceed \$500,000.00 upon proper application therefore by NS and ASRY, 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 and ASRY 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 and ASRY shall render its billings to ORDC in accordance with said rules and regulations, and NS and ASRY shall also provide and furnish such itemized records of and substantiating data for such costs as may be required.

NS and ASRY may bill ORDC monthly or periodically for its costs when costs exceed \$1,000.00. NS and ASRY shall submit two (2) 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 and ASRY shall be made by ORDC within sixty (60) days after a final review has been performed and approved by

ORDC. The review shall occur within 180 days of submission of NS's and ASRY's final bill. NS and ASRY agree to cooperate and assist, as requested, in any such review.

At any time during normal business hours upon three (3) days written notice and as often as ORDC/PUCO may deem necessary and in such a manner as not to interfere with the normal business operations, NS and ASRY 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, ASRY and/or the TOWNSHIP 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/PUCO; (2) all financial obligations of ORDC/PUCO, 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 and ASRY have been notified by ORDC/PUCO 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 and ASRY 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 PUCO:	Public Utilities Commission of Ohio
	Railroad Division
	180 East Broad Street, 14 th Floor
	Columbus, Ohio 43215-3793

If to NS: Norfolk Southern Railway Company
Communications and Signal Department
1200 Peachtree Street, N.E., Box 123
Atlanta, Georgia 30309

If to COUNTY: Richland County Engineer's Office
Thomas E. Beck
77 N. Mulberry Street
Mansfield, Ohio 44902-1208

If to TOWNSHIP: Springfield Township Board of Trustees
P.O. Box 133
Ontario, Ohio 44862

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

NS and ASRY shall furnish notification to ORDC/PUCO, and the TOWNSHIP 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 and ASRY shall also notify ORDC/PUCO, and the TOWNSHIP 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 and ASRY shall notify ORDC/PUCO 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/PUCO that NS, ASRY or the TOWNSHIP has failed to perform satisfactorily any requirements of this Subsidy Agreement, or if NS/ASRY or the TOWNSHIP are in violation of any provision of this Agreement, or upon just cause, ORDC/PUCO may terminate the Subsidy Agreement after providing NS/ASRY and the TOWNSHIP with written notice, in accordance with the notice provisions of this Agreement, of its failure to perform satisfactorily any requirement of this Subsidy Agreement (the "Notice"), which shall provide NS/ASRY or the TOWNSHIP with a thirty (30) day period to cure any and all defaults under this Subsidy Agreement.

During the thirty (30) day cure period, NS/ASRY or the TOWNSHIP shall incur only those obligations or expenditures which are necessary to enable NS/ASRY or the TOWNSHIP to achieve compliance as set forth in the Notice. If it is determined that NS/ASRY or the TOWNSHIP cannot cure its default, NS/ASRY or the TOWNSHIP shall immediately cease work under this Subsidy Agreement, take all necessary or appropriate steps to limit disbursements and minimize costs, and NS/ASRY or the TOWNSHIP 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/PUCO 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/ASRY written notice that such funds have been made available to the ORDC by the ORDC's funding source.

VII. REPRESENTATIONS AND WARRANTIES

A. NS & ASRY: NS and ASRY represents and warrants the following:

- (1) NS/ASRY have the power and authority to enter into this Agreement; and
- (2) NS/ASRY have the authority to carry out its obligations under this Agreement; and
- (3) No personnel of NS/ASRY, any subcontractor of NS/ASRY, 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 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 Agreement. Any person who, prior to or after the execution of this Agreement, acquires any personal monetary interest, involuntarily or voluntarily, shall immediately disclose his interest to ORDC/PUCO in writing. Thereafter, such person shall not participate in any action affecting the work under this

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

VIII. OHIO ETHICS LAW REQUIREMENTS

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

IX. FALSIFICATION OF INFORMATION

NS/ASRY for itself, and the TOWNSHIP for itself, affirmatively covenant that neither has made any false statements to ORDC/PUCO in the process of obtaining this grant of funds. If NS/ASRY or the TOWNSHIP have knowingly made a false statement to ORDC/PUCO to obtain this grant of funds, the NS/ASRY and the TOWNSHIP 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/ASRY agrees that NS/ASRY, any subcontractor, and any person acting on behalf of NS/ASRY or subcontractor, shall not discriminate, by reason of race, color, religion, sex, 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/ASRY 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, age, disability, national origin or ancestry. NS/ASRY 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/ASRY 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/ASRY 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/ASRY covenants and agrees to indemnify and hold the TOWNSHIP, ORDC/PUCO 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 and ASRY's negligent, intentional, willful or wanton actions or inactions, or such actions or omissions by any subcontractors that may be hired by NS/ASRY 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. PUCO ORDER

The Parties hereto agree that this Subsidy Agreement does not represent any admission of liability on the part of any party hereto, nor does it necessarily reflect the positions that the parties would have taken had this case been litigated before the PUCO. If the ORDC/PUCO rejects all or any part of this Subsidy Agreement, any party may, in writing submitted within ten days of the PUCO's Order, elect to withdraw its consent to the agreement, in which event this Subsidy Agreement shall be deemed a nullity, and shall not constitute any part of the record in this proceeding. This Subsidy Agreement shall not be used for any purpose whatsoever by any party hereto, in any other proceeding.

The undersigned respectfully join in recommending that the PUCO issue an Order approving and adopting this Subsidy Agreement in accordance with the terms set forth herein.

XV. DUPLICATE COUNTERPARTS

This Subsidy Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which taken together shall be deemed to constitute a single agreement.

XVI. UNUSUAL CIRCUMSTANCES AFFECTING PERFORMANCE

In the event that NS/ASRY or the TOWNSHIP cannot meet any or all of the obligations placed upon it by the terms of this Subsidy Agreement, (1) NS/ASRY or the TOWNSHIP shall immediately notify ORDC/PUCO in writing, and (2) ORDC/PUCO may, at its sole discretion, make reasonable efforts to assist NS/ASRY or the TOWNSHIP in meeting its obligations under the Agreement. Any revisions to this Subsidy Agreement shall be made in writing and agreed upon by all parties. Any such revision must be approved and adopted by an Order issued by the PUCO.

If NS and ASRY are unable to complete the project and activate the automatic warning devices within the time period set forth in the Order issued by the PUCO, NS/ASRY must request an extension of time to complete the project and activate the devices. All such requests must be submitted to the PUCO in writing and must include a statement setting forth the reasons prompting the request and the time within which the project will be completed. Extensions for up to 30 days may be granted by the PUCO's attorney examiner. Any request for an extension in excess of 30 days will be considered and decided by the PUCO's commissioners. No request for an extension of time to complete a project will be considered unless it is received prior to the completion date previously established by the PUCO and unless the reasons for the request are clearly set forth therein.

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

NS/ASRY and the TOWNSHIP agree to comply with all applicable federal, state, and local laws in the conduct of the work hereunder. NS/ASRY 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/ASRY on the performance of the work authorized by this Subsidy Agreement.

XVIII. DISPUTE RESOLUTION

In the event NS/ASRY or the TOWNSHIP 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/PUCO. If the dispute cannot be resolved, NS/ASRY or the TOWNSHIP may file whatever action or take whatever other steps they believe may be necessary to resolve the dispute.

XIX. NO WAIVER

No delay or omission to exercise any right or option accruing to ORDC/PUCO or upon any breach by NS/ASRY or the TOWNSHIP 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/PUCO. 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.

XX. 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.

XXI. FORUM AND VENUE

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

XXII. 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.

XXIII. ENTIRE 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, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.

XXIV. 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.

XXV. 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 R.A. BARTLE

Title GM - Northern Region NS

Date December 2, 2008

PUBLIC UTILITIES COMMISSION
OF OHIO

By Robert E. Marvin

Print Name ROBERT E. MARVIN

Title DIRECTOR

Date 10/6/08

RICHLAND COUNTY

By Thomas E. Beck

Print Name Thomas E. Beck

Title County Engineer

Date 12/11/08

SPRINGFIELD TOWNSHIP

By Robert W. Curran

Print Name Robert W. Curran

Title Township Trustee (Chair)

Date 12/23/08

OHIO RAIL DEVELOPMENT
COMMISSION

By Matthew B. Dietrich

Print Name Matthew B. Dietrich

Title Executive Director

Date 10-1-08

ASHLAND RAILWAY

By Peter J. Crane

Print Name Peter J. Crane

Title CEO

Date 4-22-09

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

Alan H. Klodell
Assistant Attorney General Alan H. Klodell

Date 10/1/08

Subsidy Agreement NS RIC Springfield Twp.doc (revised 9-24-08)