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Public Utilities
Commission of Ohio

PUCO

Memo

To: Docketing Division

From: George Martin, Grade Crossing Planner, Rail Division *GM*

Re: In the matter of the authorization of the Wheeling & Lake Erie Railway to upgrade a corridor in the City of Medina

Date: May 14, 2010

On April 28, 2010, Commission staff entered into a Subsidy Agreement (attached) with The Ohio Rail Development Commission (ORDC), the Wheeling and Lake Erie Railway (WE), the City of Medina (City), and the Northeast Ohio Areawide Coordinating Agency (NOACA) for the purpose of upgrading a WE corridor through the City. ORDC has now secured funding for these improvements as follows:

Broadway Street	002-089N	Circuitry upgrade & traffic signal preemption
S Court Street	002-088G	Lights and gates & traffic signal preemption
Elmwood Street	002-087A	Circuitry upgrade plus lights and gates
W. Smith Road	002-086T	Lights and gates
S Huntington Street	002-085L	Circuitry upgrade & traffic signal preemption
Prospect Street	002-084E	Circuitry upgrade
Medina Street	002-083X	Lights and gates

These projects are actual cost and shall be paid for with funding from multiple sources, including federal, City, the Commission, and metropolitan planning organization funds.

Because of the significant involvement of traffic signal preemption in this project, ORDC is requesting that WE be given an 18-month timeline for the completion of work. Staff feels that this request is reasonable, and accordingly asks that the an Entry be issued with plans and estimates to be submitted to the Commission and ORDC within 90 days and completion within 18 months. Upon approval of the site plans and cost estimates by ORDC construction may commence. A suggested case coding and heading would be:

PUCO Case No. 10- *0655* -RR-FED In the matter of the authorization of the Wheeling & Lake Erie Railway to upgrade a corridor in the City of Medina

C: Legal Department

Please serve the following parties of record

Ms Susan Kirkland
Ohio Rail Development Commission
1980 West Broad St
Columbus, Oh 43223


Mr Dan Reinsel
Wheeling & Lake Erie Railway
100 E First St
Brewster, Oh 44613

Mr Patrick Patton
City Engineer
132 N Elmwood St
Medina, Oh 44256

Mr John Hosek
NOACA
1299 Superior Ave
Cleveland, Oh 44114

Ohio Edison Legal Department
1910 W Market St
Akron, Oh 44313

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

TO: George Martin, Planner, Railroad Division, PUCO
FROM: Susan Kirkland, Manager, Safety Programs, ORDC 
BY: Joseph Reinhardt, Grade Crossing Specialist
SUBJECT: City of Medina, W&LE Safety Corridor
DATE: May 12, 2010

The Ohio Rail Development Commission (ORDC) has secured funding for the corrective action needed to the Wheeling and Lake Erie Railroad (W&LE) corridor through the City of Medina. S. Elmwood Street, AAR# 002 087A, was identified by priority pick and a PUCO Order issued for warning devices to be installed by 11/20/08. Subsequently, warning device project was cancelled by PUCO as the crash data that qualified the crossing under prioritization was incorrect. Simultaneously with this project progression, the construction phase of a major highway traffic signal project was in progress. The traffic signal project did not address the required interconnection of several W&LE crossings including Elmwood Street. After considerable discussion all parties have agreed that numerous railroad improvements are critical to the proper preemption of the traffic signals.

An agreement has been executed by all parties. The crossings to be modified are outlined below:

<u>Highway ID</u>	<u>AAR #</u>	<u>Improvement</u>
Broadway Street	002 089N	Circuitry improvement & Traffic Signal Preemption
S. Court Street	002 088G	L&G & Traffic Signal Preemption
Elmwood Street	002 087A	Circuitry Improvement & L&G
W. Smith Road	002 086T	L&G
S. Huntington Street	002 085L	Circuitry Improvement & Traffic Signal Preemption
Prospect Street	002 084E	Circuitry Improvement
Medina Street	002 083X	L&G

PUCO may authorize the W&LE to proceed with the non-field work for this project. This construction authorization is made with the stipulation and understanding that any field work needs prior approval before 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. The construction portion and preliminary engineering will be financed with multiple funding sources including, federal, City, PUCO and metropolitan planning organization funds.

Because of the significant involvement of traffic signal preemption creating another layer of complexity within the project the ORDC requests that the W&LE be given an 18-month timeline for these projects.

Thank you for your assistance with this matter.

c: Dan Reinsel, Signal and Communications Supervisor, W&LE
John Hosek, NOACA
Patrick Patton, City Engineer, City of Medina
Scott Booker, PE, Director of Public Projects, CTC
Joseph Reinhardt, Project Manager, ORDC (project files)

Ord. 80-10
amended.

**IN THE MATTER OF THE REQUEST FOR
A PROJECT FOR THE INSTALLATION OF
GRADE CROSSING IMPROVEMENTS
INCLUDING PREEMPTION OF RELEVANT
TRAFFIC SIGNALS IN CITY OF MEDINA,
MEDINA COUNTY, OHIO**

PUCO CASE NO.

SUBSIDY AGREEMENT

THIS SUBSIDY AGREEMENT is entered into on this 28th day of ^{cms} May April, 2010, 2009
by and among the Ohio Rail Development Commission ("ORDC"), Public Utilities Commission of Ohio
("PUCO"), Wheeling and Lake Erie Railway Corporation, ("WLE"), the City of Medina ("CITY"), and
Northeast Ohio Areawide Coordinating Agency ("NOACA").

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, 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 CITY hereby declares it to be in the public interest that the consent of the CITY
be and such consent is hereby given to ORDC/PUCO to facilitate the installation of improvements and
preemption described in Section III of this Subsidy Agreement in accordance with plans, specifications
and estimates to be approved by ORDC/PUCO; 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 CITY. 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 SURFACE UPGRADES

WLE and the CITY will, under separate agreement, negotiate for surface improvements to the following crossings:

<u>Highway ID</u>	<u>AAR#</u>
Elmwood Street	002 087A
W. Smith Road	002 086T
S. Huntington Street	002 085L
Prospect Street	002 084E
Medina Street	002 083X

These surface improvements are necessary for the proper operation of improvements outlined in Section III of this Agreement. The surface improvements will be complete prior to the commencement of construction for any warning device improvements outlined in Section III of this Agreement.

The actual costs for the improvements set forth in Section II of this Subsidy Agreement shall be borne one hundred percent (100%) by WLE and the CITY and negotiated separately from this Subsidy Agreement.

III. GRADE CROSSING WARNING DEVICE UPGRADES AND TRAFFIC SIGNAL IMPROVEMENTS

The improvements will be accomplished as follows:

<u>Highway ID</u>	<u>AAR #</u>	<u>Improvement</u>
Broadway Street	002 089N	Railroad Circuitry and Preemption
S. Court Street	002 088G	Flashing Lights and Gates and Preemption
Elmwood Street	002 087A	Railroad Circuitry and Flashing Lights and Gates
W. Smith Road	002 086T	Flashing Lights and Gates
S. Huntington Street	002 085L	Railroad Circuitry and Preemption
Prospect Street	002 084E	Railroad Circuitry
Medina Street	002 083X	Flashing Lights and Gates

The CITY 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.

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 CITY.

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

The actual costs for the improvements outlined in Section III as installation of flashing lights and roadway gates, railroad circuitry and preemption shall be borne as follows:

<u>Highway ID</u>	<u>AAR #</u>	<u>Costs</u>
Broadway Street	002 089N	100% by ORDC and NOACA
S. Court Street	002 088G	100% by ORDC and NOACA
Elmwood Street	002 087A	Circuitry 100% by ORDC and NOACA; Lights and Gates 100% by CITY
W. Smith Road	002 086T	33% by PUCO, 33% by CITY, 34% by ORDC
S. Huntington Street	002 085L	100% by ORDC and NOACA
Prospect Street	002 084E	100% by ORDC and NOACA
Medina Street	002 083X	100% by CITY

In total the actual costs for the improvements borne by NOACA set forth in Section III of this Subsidy Agreement shall not be greater than \$770,000.00. NOACA funds for these improvements will be transferred to and administered by ORDC. ORDC will dispense all NOACA funds intended for the improvements in Section III prior to the expenditure of Federal funds for these improvements.

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 WLE is authorized to purchase or furnish the items included under this Subsidy Agreement, ORDC may serve formal notice of cancellation upon WLE and the CITY, and this Subsidy Agreement shall become null and void. ORDC shall reimburse WLE and the CITY for all costs and expenses reasonably incurred on account of the improvements prior to such cancellation, including costs associated with winding down the project.

WLE shall be responsible for initially paying all of their actual costs to install the safety improvements identified in Section III. However, the PUCO, the CITY and the ORDC shall be legally bound to reimburse the Railroad for the above-mentioned amounts upon proper application by the Railroad, consistent with the terms of this Subsidy Agreement and in accordance with all applicable state and federal regulations.

WLE shall be responsible for invoicing PUCO, the CITY and the ORDC for the above mentioned amounts for improvements described above for W. Smith Road improvements. WLE shall obtain plan

approval from PUCO, the CITY and the ORDC prior to commencement of construction of W. Smith Road improvements.

WLE shall be responsible for invoicing the CITY for 100% of the above mentioned Medina Street improvements. WLE shall obtain plan approval from the CITY and the ORDC prior to commencement of construction of Medina Street improvements.

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 WLE 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. WLE shall render its billings to ORDC in accordance with said rules and regulations, and WLE shall also provide and furnish such itemized records of and substantiating data for such costs as may be required.

WLE may bill ORDC/PUCO monthly or periodically for its costs when costs exceed \$1,000.00. WLE 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/PUCO within ninety (90) days after completion of the improvements. ORDC/PUCO 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 WLE shall be made by ORDC/PUCO within sixty (60) days after a final audit has been performed and approved by ORDC/PUCO. The audit shall occur within 180 days of submission of WLE's final bill. WLE 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/PUCO may deem necessary and in such a manner as not to interfere with the normal business operations, WLE shall make available to ORDC/PUCO, 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/PUCO 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 III of this Subsidy Agreement, the decision of the ORDC regarding same shall be final. However, WLE and/or the CITY 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 and the PUCO; (3) WLE has 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 WLE until completed.

IV. PRIMARY ROLES AND RESPONSIBILITIES

The document, "Railroad Construction Contract Administration for Federally Funded Projects, Primary Roles and Responsibilities" is incorporated by reference as if included in this Subsidy Agreement in its entirety.

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 WLE:	Wheeling and Lake Erie Railway Corporation 100 E. First Street Brewster, Ohio 44613
If to CITY :	City of Medina 132 N. Elmwood Street Medina, Ohio 44256
If to NOACA:	NOACA Ohio 1299 Superior Avenue Cleveland, Ohio 44114
If to ORDC:	Ohio Rail Development Commission 1980 West Broad Street, 2 nd Floor Columbus, Ohio 43223

WLE shall furnish notification to ORDC/PUCO and the CITY 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. WLE shall also notify ORDC/PUCO and the CITY of any stoppage and resumption of the work activity, and the reasons therefore, and the date the project work on the improvements was completed.

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

WLE 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, 2011. 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 WLE or the CITY has failed to perform satisfactorily any requirements of this Subsidy Agreement, or if WLE or the CITY is in violation of any provision of this Subsidy Agreement, or upon just cause, ORDC/PUCO may terminate the Subsidy Agreement after providing WLE or the CITY 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 WLE or the CITY with a thirty (30) day period to cure any and all defaults under this Subsidy Agreement.

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

VII. REPRESENTATIONS AND WARRANTIES

A. WLE: WLE represents and warrants the following:

- (1) WLE has the power and authority to enter into this Subsidy Agreement; and
- (2) WLE has the authority to carry out its obligations under this Subsidy Agreement; and

(3) No personnel of WLE, any subcontractor of WLE, 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/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/NOACA: ORDC/PUCO/NOACA 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

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

IX. FALSIFICATION OF INFORMATION

WLE for itself, and the CITY for itself, affirmatively covenant that neither has made any false statements to ORDC/PUCO in the process of obtaining this grant of funds. If WLE or the CITY have knowingly made a false statement to ORDC/PUCO to obtain this grant of funds, the WLE and the CITY 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. PRIMARY ROLES AND RESPONSIBILITIES

The document, "Railroad Construction Contract Administration for Federally Funded Projects, Primary Roles and Responsibilities" is incorporated by reference as if included in this Subsidy Agreement in its entirety.

XI. BUY AMERICA

WLE shall furnish steel and iron products that are made in the United States according to the applicable provisions of Federal regulations stated in 23 CFR 635.410 and State of Ohio laws, and ORC 153.011 and 5525.21, including furnishing ORDC with proper documents certifying the domestic origin of any steel or iron products that fall under this section. "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

XII. EQUAL EMPLOYMENT OPPORTUNITY

Pursuant to Ohio Revised Code Section 125.111, WLE agrees that WLE, any subcontractor, and any person acting on behalf of WLE or subcontractor, shall not discriminate, by reason of race, color, religion, sex, age, sexual orientation, gender identity, 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. WLE 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. If applicable, WLE will file 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.

XIII. OHIO ELECTIONS LAW

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

XIV. DRUG FREE WORKPLACE

In the event that work performed pursuant to the terms of this Subsidy Agreement will be done while on state property, WLE 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.

XV. HOLD HARMLESS PROVISION

WLE covenants and agrees to indemnify and hold the CITY, 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 WLE's negligent, intentional, willful or wanton actions or inactions, or such actions or omissions by any subcontractors that may be hired by WLE 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.

XVI. 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 Subsidy 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.

XVII. 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 Subsidy Agreement.

XVIII. UNUSUAL CIRCUMSTANCES AFFECTING PERFORMANCE

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

If WLE is unable to complete the project and activate the automatic warning devices within the time period set forth in the Order issued by the PUCO, WLE 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.

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

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

XX. DISPUTE RESOLUTION

In the event WLE or the CITY 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, WLE or the CITY may file whatever action or take whatever other steps they believe may be necessary to resolve the dispute, per Paragraph IV. herein.

XXI. NO WAIVER

No delay or omission to exercise any right or option accruing to Grantor upon any breach by WLE or the CITY 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.

XXII. 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.

XXIII. FORUM AND VENUE

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

XXIV. 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.

XXV. 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.

XXVI. 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.

XXVII. 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.

WHEELING & LAKE ERIE RAILWAY
CORPORATION

By Daniel Reinse

Print Name DANIEL REINSEL

Title S+C Supervisor

Date 3/23/2010

CITY OF MEDINA

By _____

Print Name _____

Title _____

Date _____

PUBLIC UTILITIES COMMISSION
OF OHIO

By _____

Print Name _____

Title _____

Date _____

OHIO RAIL DEVELOPMENT COMMISSION

By _____

Print Name Matthew R. Dietrich

Title Executive Director

Date _____

NORTHEAST OHIO AREA WIDE
COORDINATING AGENCY

By _____

Print Name _____

Title _____

Date _____

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

WHEELING & LAKE ERIE RAILWAY
CORPORATION

By _____

Print Name _____

Title _____

Date _____

CITY OF MEDINA

By _____

Print Name _____

Title _____

Date _____

PUBLIC UTILITIES COMMISSION
OF OHIO

By *[Signature]*

Print Name ROBERT E. MARVIN

Title DIRECTOR OF TRANSPORTATION

Date 3/24/10

OHIO RAIL DEVELOPMENT COMMISSION

By _____

Print Name Matthew R. Dietrich

Title Executive Director

Date _____

NORTHEAST OHIO AREA WIDE
COORDINATING AGENCY

By _____

Print Name _____

Title _____

Date _____

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

WHEELING & LAKE ERIE RAILWAY
CORPORATION

By _____

Print Name _____

Title _____

Date _____

CITY OF MEDINA

By _____

Print Name _____

Title _____

Date _____

PUBLIC UTILITIES COMMISSION
OF OHIO

By _____

Print Name _____

Title _____

Date _____

OHIO RAIL DEVELOPMENT COMMISSION

By _____

Print Name Matthew R. Dietrich

Title Executive Director

Date _____

NORTHEAST OHIO AREAWIDE
COORDINATING AGENCY

By Howard Maier

Print Name HOWARD MAIER

Title EXECUTIVE DIRECTOR

Date 4/19/10

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

WHEELING & LAKE ERIE RAILWAY
CORPORATION

By _____

Print Name _____

Title _____

Date _____

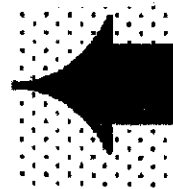
CITY OF MEDINA

By Dennis Hornell

Print Name Dennis Hornell

Title Mayor

Date 4-28-10



PUBLIC UTILITIES COMMISSION
OF OHIO

By _____

Print Name _____

Title _____

Date _____

OHIO RAIL DEVELOPMENT COMMISSION

By _____

Print Name Matthew R. Dietrich

Title Executive Director

Date _____

NORTHEAST OHIO AREAWIDE
COORDINATING AGENCY

By _____

Print Name _____

Title _____

Date _____

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

WHEELING & LAKE ERIE RAILWAY
CORPORATION

By _____

Print Name _____

Title _____

Date _____

CITY OF MEDINA

By _____

Print Name _____

Title _____

Date _____

PUBLIC UTILITIES COMMISSION
OF OHIO

By 

Print Name _____

Title _____

Date 3/2/10

OHIO RAIL DEVELOPMENT COMMISSION

By 

Print Name Matthew R. Dietrich

Title Executive Director

Date February 23, 2010

NORTHEAST OHIO AREAWIDE
COORDINATING AGENCY

By _____

Print Name _____

Title _____

Date _____

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

415118-2010



Assistant Attorney General Alan H. Klodell

Date 3/2/10

Medina Agreement 2-2010.doc