

FILE

RECEIVED-DOCKETING DIV

2012 JAN 17 PM 2:46

18
**Public Utilities
Commission of Ohio**

PUCO

Memo

To: Docketing Division

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

Re: In the matter of a Consolidation Project with the Maumee & Western Railroad in the Village of Antwerp, Paulding County

Date: January 17, 2012

The Ohio Rail Development Commission (ORDC), the Village of Antwerp (Village), and the Maumee & Western Railroad (MAW) entered into a Subsidy Agreement on August 5, 2011, for a Consolidation Project whereby the Village agrees to permanently close the Madison St, DOT# 477826H, grade crossing in exchange for the surface reconstruction of the Harmann St/CR 48, DOT# 477820S, grade crossing.

ORDC has requested that the Commission issue a nine month order for the completion of this project. A suggested case coding and heading would be:

PUCO Case No. 12- 339 -RR-FED In the matter of a Consolidation Project with the Maumee & Western Railroad in the Village of Antwerp, Paulding County

C: Legal Department

Please serve the following parties of record.

Ms Susan Kirkland

Ohio Rail Development Commission

1980 W Broad St, 2nd Floor

Columbus, Oh 43223

Mr Pete Bell

Maumee & Western Railroad

RR#1, 4310 N. Street

Connersville, In 47331

Village of Antwerp

118 N Main St

PO Box 1046

Antwerp, Oh 45813

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

TO: Leah Thomas-Dalton, Deputy Chief, PUCO

FROM: Susan Kirkland, Manager, Safety Section, ORDC

BY: Cathy Stout, ORDC

SUBJECT: Paulding County, Maumee and Western Railroad Corporation (MAW),
Harrmann Street, CR 43, DOT# 477 820S, PID 88196

DATE: January 17, 2012

The ORDC, MAW and the Village of Antwerp entered into a Subsidy Agreement on August 5, 2011 for a consolidation project for grade crossing surface reconstruction at Harrmann Street, CR 48, DOT# 477 820S and closing of grade crossing to vehicles and pedestrians at Madison Street, DOT# 477826H. A copy of the Subsidy Agreement is attached.

The ORDC respectfully requests that PUCO issue a nine-month Order for surface reconstruction at Harrmann Street, CR 48, DOT# 477 820S. 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.

Attachment: Subsidy Agreement

c: George Martin, PUCO
Tod Darfus, ORDC (file)

IN THE MATTER OF THE REQUEST FOR
A CONSOLIDATION PROJECT FOR GRADE
CROSSING SURFACE RECONSTRUCTION
AND GRADE CROSSING CLOSURE TO
VEHICLES AND PEDESTRIANS IN VILLAGE
OF ANTWERP, PAULDING COUNTY, OHIO

AGREEMENT NO. _____

SUBSIDY AGREEMENT

THIS SUBSIDY AGREEMENT is entered into on this 5th day of August, 2011
by and among the Ohio Rail Development Commission ("ORDC"), Maumee & Western Railroad,
("MAW"), and the Village of Antwerp ("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 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 ("ORC") §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 payment of incentive funds for highway improvements 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 crossing identified in Section II of this Subsidy Agreement should be permanently closed to vehicular traffic as part of the Consolidation 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, MAW's grade crossing located on the following street:

Highway ID
Madison Street

AAR #
477 826H

The closure shall take place at the completion of the improvements outlined in Section III – GRADE CROSSING UPGRADES.

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.

MAW 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.

Following receipt of public input, the VILLAGE has enacted an Ordinance No. 2010-18, dated September 20, 2010, that expresses their commitment to this action, the form and substance of which is acceptable to ORDC. Ordinance No. 2010-18 is attached as Exhibit A.

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 improvement will be accomplished as follows (the "improvement"):

<u>Highway ID</u>	<u>AAR #</u>	<u>Improvement</u>
Harrmann Street, CR43	477 820S	Reconstruction of grade crossing surface. The new material shall be a high type concrete.

The VILLAGE shall furnish advance warning signs and pavement markings as specified in the 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 installation of guardrails set forth in Section II of this Subsidy Agreement shall be borne one hundred percent (100%) by Village as set forth in Section II.

The actual costs for the removal of pavements in the railroad right-of-way and grade crossing warning devices set forth in Section II of this Subsidy Agreement shall be borne one hundred percent (100%) by MAW as set forth in Section II.

The actual costs for the improvements set forth in Section III as reconstruction of grade crossing surface shall be borne one hundred percent (100%) by the ORDC.

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.

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 \$94,000.

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 MAW is authorized to purchase or furnish the items included under this Subsidy Agreement, ORDC may serve formal notice of cancellation upon MAW and the VILLAGE, and this Subsidy Agreement shall become null and void. ORDC shall reimburse MAW 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.

MAW 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 MAW for its costs in section III, as set forth above, not to exceed \$94,000 upon proper application therefore by MAW, 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 MAW 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. MAW shall render its billings to ORDC in accordance with said rules and regulations, and MAW shall also provide and furnish such itemized records of and substantiating data for such costs as may be required.

MAW may bill ORDC monthly or periodically for its costs when costs exceed \$1,000.00. MAW

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 MAW 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 MAW's final bill. MAW agrees to cooperate and assist, as requested, in any such audit. ORDC agrees to cover all of ORDC's cost for such an 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, MAW 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, MAW 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 ORC and shall not be valid and enforceable unless funds are appropriated by the Ohio General Assembly and encumbered by ORDC; (3) MAW 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, force majeure events excepted. Buying and assembling of materials shall be construed as compliance with the foregoing thirty (30) day provision. Said work shall be pursued diligently by MAW 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 MAW: Maumee and Western Railroad
300 East Walnut Street
Croydon, Indiana 47112

And a copy to:
Maumee & Western Railroad Corporation
4301 N. Western Avenue
Connersville, IN 47331

If to VILLAGE: Village of Antwerp
118 N. Main Street
PO Box 1046
Antwerp, Ohio 45813
Fax: 419-258-1564

If to ORDC: Ohio Rail Development Commission
1980 West Broad Street, 2nd Floor
Columbus, Ohio 43223

MAW 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. MAW 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.

MAW 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.

MAW 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, 2013. 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 MAW or the VILLAGE has failed to perform satisfactorily any requirements of this Subsidy Agreement, or if MAW 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 MAW or the VILLAGE as applicable, with prior 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 MAW or the VILLAGE as applicable with a thirty (30) day cure period subsequent to this notice to cure any and all defaults under this Subsidy Agreement.

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

VII. REPRESENTATIONS AND WARRANTIES

A. MAW: MAW represents and warrants the following:

- (1) MAW has the power and authority to enter into this Subsidy Agreement; and
- (2) MAW has the authority to carry out its obligations under this Subsidy Agreement; and
- (3) No personnel of MAW, any subcontractor of MAW, 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

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

IX. FALSIFICATION OF INFORMATION

MAW 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 MAW or the VILLAGE have knowingly made a false statement to ORDC to obtain this grant of funds, the MAW or 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, MAW agrees that MAW, any subcontractor, and any person acting on behalf of MAW 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. MAW 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. MAW 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

MAW 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, MAW 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

MAW 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 MAW's negligent, intentional, willful or wanton actions or inactions, or such actions or omissions by any subcontractors that may be hired by MAW 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. 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.

XV. UNUSUAL CIRCUMSTANCES AFFECTING PERFORMANCE

In the event that MAW or the VILLAGE as applicable cannot meet any or all of the obligations placed upon it by the terms of this Subsidy Agreement, (1) MAW or the VILLAGE shall immediately notify ORDC in writing, and (2) ORDC may, at its sole discretion, make reasonable efforts to assist MAW 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.

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

MAW and the VILLAGE each agree for themselves to comply with all applicable federal, state, and local laws in the conduct of the work hereunder. MAW 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 MAW on the performance of the work contemplated to be performed by or on behalf of MAW, authorized by this Subsidy Agreement.

XVII. DISPUTE RESOLUTION

In the event MAW or the VILLAGE as applicable 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, MAW or the VILLAGE may file whatever action or take whatever other steps they believe may be necessary to resolve the dispute.

XVIII. NO WAIVER

No delay or omission to exercise any right or option accruing to ORDC upon any breach by MAW 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 any party and thereafter such breach is waived in writing by the other party to whom the breached duty was owed, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

XIX. 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.

XX. 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.

XXI. BUY AMERICA

MAW 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.

The MAW shall use its best efforts to purchase goods from other companies doing business in the State of Ohio, for the purpose of performing work under this Agreement. Further, in the performance of the work contemplated under this Subsidy Agreement, the MAW and all contractors, subcontractors, material men, or suppliers, shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States.

The MAW affirms to have read and understands Executive Order 2010-09S issued by Ohio Governor Ted Strickland and shall abide by those requirements in the performance of this Agreement, and shall perform no services required under this Subsidy Agreement outside of the United States. The Executive Order is provided as an attachment and also is available at the following website:

<http://www.governor.ohio.gov/Default.aspx?tabid=1495>

The MAW also affirms, understands, and agrees to immediately notify the ORDC of any change or shift in the location(s) of services performed by the ORDC or its subcontractors under this Subsidy Agreement, and no services shall be changed or shifted to a location(s) that are outside of the United States.

If the MAW or any of its subcontractors perform services under this Subsidy Agreement outside of the United States, the performance of such services shall be treated as a material breach of the Subsidy Agreement. The ORDC is not obligated to pay and shall not pay for such services. If the MAW or any of its subcontractors perform any such services, the MAW shall immediately return to the ORDC all funds paid for those services. The ORDC may also recover from the MAW all costs associated with any corrective action the ORDC may undertake, including but not limited to an audit or a risk analysis, as a result of the MAW performing

services outside the United States.

The ORDC may, at any time after the breach, terminate the Agreement, upon written notice to the MAW. The ORDC may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of the Subsidy Agreement and costs associated with the acquisition of substitute services from a third party.

If the ORDC determines that actual and direct damages are uncertain or difficult to ascertain, the ORDC in its sole discretion may recover a payment of liquidated damages in the amount of five percent (5%) of the value of the Subsidy Agreement.

The ORDC in its sole discretion, may provide written notice to MAW of a breach and permit the MAW to cure the breach. Such cure period shall be no longer than twenty-one (21) calendar days. During the cure period, the ORDC may buy substitute services from a third party and recover from the MAW any costs associated with acquiring those substitute services.

Notwithstanding the ORDC permitting a period of time to cure the breach or the MAW's cure of the breach, the ORDC does not waive any of its rights and remedies provided the ORDC in this Subsidy Agreement, including but not limited to recovery of funds paid for services the MAW performed outside of the United States, costs associated with corrective action, or liquidated damages.

XXII. 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.

XXIII. 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.

XXIV. 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.

XXV. 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.

XXVI. 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.

MAUMEE & WESTERN RAILROAD

By Spencer Wendler

Print Name Spencer Wendler

Title CEO

Date 7-28-11

VILLAGE OF ANTWERP

By _____

Print Name _____

Title _____

Date _____

OHIO RAIL DEVELOPMENT COMMISSION

By _____

Print Name Matthew R. Dietrich

Title Executive Director

Date _____

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

Assistant Attorney General Alan H. Klodell

Date _____

Agreement PAU Antwerp SA 7/2011.docx

XXVI. 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.

MAUMEE & WESTERN RAILROAD

By _____

Print Name _____

Title _____

Date _____

VILLAGE OF ANTWERP

By Ray DeLong

Print Name RAY DeLong

Title Village Mayor

Date 7/5/2011

OHIO RAIL DEVELOPMENT COMMISSION

By _____

Print Name Matthew R. Dietrich

Title Executive Director

Date _____

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

Assistant Attorney General Alan H. Klodell

Date _____

Agreement PAU Antwerp SA 7/2011.docx

XXVI. 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.

MAUMEE & WESTERN RAILROAD

By _____

Print Name _____

Title _____

Date _____

VILLAGE OF ANTWERP

By _____

Print Name _____

Title _____

Date _____

OHIO RAIL DEVELOPMENT COMMISSION

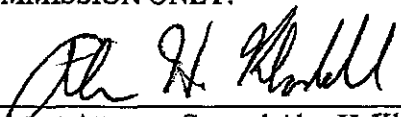
By  _____

Print Name Matthew R. Dietrich

Title Executive Director

Date 8-5-11

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



Assistant Attorney General Alan H. Klodell

Date 8/5/11

Agreement PAU Antwerp SA 7/2011.docx

EXHIBIT A

ORDINANCE NO. 2010-18

**AN ORDINANCE ACCEPTING THE PROPOSAL OF ORDC FOR
THE IMPROVEMENT OF A GRADE CROSSING SURFACE AT
HARRMANN STREET/COUNTY ROAD 43 AND CLOSURE OF
THE MADISON STREET GRADE CROSSING IN THE VILLAGE
OF ANTWERP, OHIO**

WHEREAS, in order to provide consent for the permanent closure to vehicular and pedestrian traffic of a public grade crossing as recommended by the Ohio Rail Development Commission ("ORDC"), and Maumee and Western Railroad ("MAW Railroad"), the Council of the Village of Antwerp has reviewed the proposal set forth herein, and;

WHEREAS, a proposal has been made to change the character of Madison Street, DOT# 477 826H by prohibiting through vehicular and pedestrian traffic over the at-grade, MAW Railroad crossing thereby benefitting the safety of the traveling public, and;

WHEREAS, if vehicular and pedestrian traffic at the grade crossing is discontinued, the Village of Antwerp ("VILLAGE"), and ORDC have agreed to arrange for the accommodation, funding, and installation of improvements to the VILLAGE highway system, and;

WHEREAS, the VILLAGE agrees with the foregoing and desires to provide its consent to permit permanent closure of the aforementioned public grade crossing subject to the terms and conditions set forth herein, and;

WHEREAS, the proposal has been submitted to the VILLAGE and the VILLAGE finds the proposal to be in the best interest of the community and will enhance the safety of the traveling public and will result in a needed improvement to the VILLAGE's highway system.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Antwerp, Paulding County, Ohio:

SECTION 1. That this Council hereby declares it to be in the public interest that the consent of the VILLAGE be and hereby is given to the MAW Railroad to construct the herein described improvement in accordance with plans, specifications and estimates as approved by the Executive Director of ORDC.

SECTION 2. That this Council hereby authorizes and approves changing the character of Madison Street, by barricading and prohibiting traffic across the at-grade railroad crossing traversing the street. Said changes will not occur until improvements in SECTION 3 are complete.

SECTION 3. That this Council hereby accepts the offer of the ORDC to provide funding to install or facilitate the following safety improvements to the VILLAGE highway system:

Harrmann Street, County Road 43, DOT# 477 820S: Grade crossing surface reconstruction improvement.

SECTION 4. The VILLAGE agrees to perpetuate and maintain all advance warning signs and pavement markings on the approaches to the at-grade crossings in conformance with the Ohio Manual of Uniform Traffic Control Devices, as adopted under section 4511.11 of the Ohio Revised Code. The VILLAGE further agrees to provide for the maintenance of highway traffic during the

construction of the improvements by either closing the road with no signed detour or by designating a temporary detour with all necessary incidentals and assuming and bearing the cost of erecting, maintaining and removing signs and barricades required to close the crossing and detour traffic.

SECTION 5. That the VILLAGE administration is hereby authorized to execute any and all documents and to do all other things they deem necessary to effectuate the purposes of this Legislation, including entering into any contractual agreements with MAW Railroad and ORDC.

SECTION 6. It is found and determined that all formal actions of the Council concerning or relating to the passage of this Ordinance were adopted in an open meeting of the Council, and that all deliberations of the Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including all lawful ordinances and any applicable provisions in Section 121.22 of the Ohio Revised Code.

SECTION 7. This Ordinance shall be in full force and effect from and after the earliest period allowed by law.

Passed: 9-20, 2010


Ray DeLong, Mayor
Village of Antwerp, Ohio

Attest:


Loretta Baker, Fiscal Officer

1st reading: 7-19-10

2nd reading: 8-16-10

3rd reading: 9-20-10