

**Public Utilities  
Commission of Ohio**

# Memo

**To:** Docketing Division  
**From:** George Martin, Grade Crossing Planner, Rail Division  
**Re:** In the matter of a Consolidation Project with Norfolk Southern Railway in the City of Middletown, Butler County  
**Date:** September 5, 2013

The Ohio Rail Development Commission (ORDC), Norfolk Southern Railway (NS), the City of Middletown (City), and Commission staff entered into a Subsidy Agreement on June 11, 2012 for a Consolidation Project whereby the grade crossing located at Grand Ave., DOT# 524680W, would be permanently closed to vehicular and pedestrian traffic. In consideration of the closure, new grade crossing surfaces would be installed at Central Ave, DOT# 524677N, and Verity Parkway, DOT# 525342C.

Staff requests that the Commission issue a Finding and Order for this project with all work to be completed within one year. A suggested case coding and heading would be:

PUCO Case No. 13-1906-RR-FED In the matter of a Consolidation Project with Norfolk Southern Railway in the City of Middletown, Butler County

RECEIVED-DOCKETING DIV  
2013 SEP -5 PM 3:04  
PUCO

C: Legal Department

Please serve the following parties of record

Ms Cathy Stout

Ohio Rail Development Commission

1980 West Broad St, Mailstop #3140

Columbus, Oh 43223

Mr D Casey Talbot

Eastman & Smith

One SeaGate, 24<sup>th</sup> Floor

PO Box 10032

Toledo, Oh 43699-0032

Ms Cayela Wimberly

Norfolk Southern Railway

1200 Peachtree St NE, Box 123

Atlanta, Ga 30309-0036

Ms Judy Gilleland

City Manager

One Donham Plaza

Middletown, Oh 45042-1901

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

**TO:** Randall Schumacher, Supervisor, Rail Division, PUCO

**FROM:** Cathy Stout, Manager, Safety Programs, ORDC *Cathy Stout*

**SUBJECT:** Butler County, City of Middletown, Consolidation Project, PID 93128

- Grand Avenue, DOT# 524680W – Closure
- Central Avenue, DOT# 524677N – Surface Reconstruction
- Verity Parkway, DOT# 525342C – Surface Reconstruction

**DATE:** September 5, 2013

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The Ohio Rail Development Commission (ORDC), Public Utilities Commission of Ohio (PUCO), City of Middletown and Norfolk Southern Railway Company (NS) entered into a Subsidy Agreement, executed on June 11, 2012, for the closure to vehicular and pedestrian traffic of Grand Avenue at the NS grade crossing DOT# 524680W.

Estimates have been provided by the railroad and approved by ORDC. A construction authorization was issued to NS for work required for the surface reconstruction on August 6, 2013. *If appropriate*, the ORDC requests that the PUCO issue an Order for the surface reconstruction work. 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: Construction Authorization

C: William Barringer, Norfolk Southern  
D. Casey Talbot, Eastman & Smith Ltd  
Shawn Starling, Norfolk Southern  
George Martin, PUCO  
ORDC Project Manager (file)



# OHIO RAIL DEVELOPMENT COMMISSION

Mail Stop #3140, 1980 West Broad Street, Columbus OH 43223

John R. Kasich, Governor • James G. Bradley, Chairman

May 15, 2013

Judy Gilleland  
City Manager  
City of Middletown  
One Donham Plaza  
Middletown, OH 45042-1901

Norfolk Southern  
c/o D. Casey Talbott  
Eastman & Smith Ltd.  
One Seagate 24<sup>th</sup> Floor P.O. Box 10032  
Toledo, OH 43699

Mr. Milan Orbovich  
Director of Transportation  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215

Re: Butler County, City of Middletown  
Subsidy Agreement

Dear Ms. Gilleland and Messrs. Talbott and Orbovich:

The Ohio Rail Development Commission (ORDC), Norfolk Southern (NS), City of Middletown (CITY) and the Public Utilities Commission of Ohio (PUCO) entered into a Subsidy Agreement, No. 17242, dated June 11, 2012, in order to govern the grade crossing surface reconstruction and grade crossing closure to vehicles and pedestrians in the City of Middletown in Butler County. Section VI of the Subsidy Agreement, "Termination", states that the intent of the parties is to renew the Subsidy Agreement should the improvements not be completed by June 30, 2013. This Letter Agreement serves to formalize this understanding between the parties extend the Subsidy Agreement in its entirety, until June 30, 2015. Should the improvements remain incomplete at that time, the parties' intent remains to extend the Subsidy Agreement as may become necessary. All other substantive clauses and provisions of the agreement are unaffected by this change.

Please sign and return one (1) copy of this Letter Agreement to Ms. Catherine Stout, Safety Manager, ORDC. Thank you.

Sincerely,

Matthew R. Dietrich  
Executive Director, ORDC



[www.rail.ohio.gov](http://www.rail.ohio.gov)

phone: 614.644.0306

IMPROVING RAIL TODAY FOR TOMORROW'S ECONOMY

Renewal: BUT Middletown, Consolidation  
May 15, 2013

NORFOLK SOUTHERN RAILWAY COMPANY

By *Robert A. Baetzle*

Print Name Robert A. Baetzle

Title General Manager

Date JUNE 5, 2013

CITY OF MIDDLETOWN

By \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

PUBLIC UTILITIES COMMISSION  
OF OHIO

By \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Renewal: BUT Middletown, Consolidation  
May 15, 2013

NORFOLK SOUTHERN RAILWAY COMPANY

By \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

CITY OF MIDDLETOWN

By *[Signature]*

Print Name Julith A. Giveland

Title City Manager

Date 6-6-13

PUBLIC UTILITIES COMMISSION  
OF OHIO

By \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Approved as to form  
*[Signature]*  
S. J. [unclear]

Renewal: BUT Middletown, Consolidation  
May 15, 2013

NORFOLK SOUTHERN RAILWAY COMPANY

By \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

CITY OF MIDDLETOWN

By \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

PUBLIC UTILITIES COMMISSION  
OF OHIO

By Mikael DeBorich

Print Name Mikael DeBorich

Title DIRECTOR

Date 5-23-2013

IN THE MATTER OF THE REQUEST FOR  
A CONSOLIDATION PROJECT FOR GRADE  
CROSSING SURFACE RECONSTRUCTIONS  
AND GRADE CROSSING CLOSURE TO  
VEHICLES AND PEDESTRIANS IN CITY OF  
MIDDLETOWN, BUTLER COUNTY, OHIO

AGREEMENT NO. 17242

### SUBSIDY AGREEMENT

THIS SUBSIDY AGREEMENT is entered into on this 11<sup>th</sup> day of June, 2012 by and among the Ohio Rail Development Commission ("ORDC"), Public Utilities Commission of Ohio ("PUCO"), Norfolk Southern Railway Company ("NS"), and the City of Middletown ("CITY"),

#### 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 ("ORC") § 4905.04; and

WHEREAS, PUCO has authority to order closure of public grade crossings to vehicular traffic within governmental limits pursuant to ORC § 4907.474; and

WHEREAS, the Federal Aid Highway Safety Act of 1973 and the Transportation Equity Act for the 21<sup>st</sup> 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 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 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 and pedestrian traffic as part of the corridor safety project to be implemented by this Subsidy Agreement; and

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



I. PURPOSE

There are numerous public highway/railroad grade crossings located within the limits of the 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 CLOSURES

The CITY agrees to permanently close, to all vehicular and pedestrian traffic of any kind, NS's grade crossing located on the following street:

<u>Highway ID</u>	<u>AAR #</u>
Grand Avenue	524 680W

The CITY 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 resulting costs to the CITY shall be reimbursed from the \$5,000 referenced in Section III. GRADE CROSSING UPGRADES, below.

The CITY 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.

Following receipt of public input, the CITY has enacted Ordinance No. O2010-58, dated 9/21/2010, that expresses its commitment to this action, the form and substance of which are acceptable to ORDC and PUCO.

III. GRADE CROSSING UPGRADES

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

<u>Highway ID</u>	<u>AAR #</u>	<u>Improvements</u>
Central Avenue	524 677N	Reconstruction of grade crossing surface. The new material shall be a high type concrete or rubber.
Verity Parkway	525 342C	Reconstruction of grade crossing surface. The new material shall be a high type concrete or rubber.

The CITY shall coordinate and fund the approaching paving up to the crossing at the time of the surface construction.

The CITY shall facilitate the relocation of any utilities on easements within the City's right of way requiring movement as part of the grade crossing safety projects.

The CITY 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.

NS and CITY shall coordinate any road closures necessary for the work to be performed in accordance with Section III and Section IV. CITY shall notify local fire, police, emergency services, and local schools prior to beginning actual road closure activities and detours. A media release should occur prior to the start the start of work, roadway closures and detours.

The CITY shall notify NS if a plan note concerning construction noise is required by local ordinance within 30 days of execution of this Subsidy Agreement.

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

1. The payment of funds in the amount of \$20,000 solely from NS which may be used in any manner desired by the CITY.
2. The payment of incentive funds in the amount of \$15,000 being comprised of \$7,500 from the ORDC and \$7,500 from NS. These funds must be used for a highway safety improvement project preapproved by ORDC/FHWA. The CITY shall provide written certification that the improvements have been completed within one (1) year of the incentive payment being made. If the safety improvements are not completed within one (1) year of the incentive payment, the ORDC will reclaim the incentive payment from the CITY.
3. The application of barricades on public property at the NS right-of-way and removal of roadway surface approaching the closed crossing. The work may be accomplished by CITY forces or contracted out by the CITY. The cost of this work shall be on a reimbursement basis from NS to CITY and is limited to \$5,000 per crossing closed.

The \$20,000 payment from NS, referenced in item 1 above, will be delivered to the CITY following the permanent closure of the Grand Avenue grade crossing unless otherwise agreed between NS and the CITY.

The \$15,000 payment, referenced in item 2 above, will be delivered to the CITY following the permanent closure of the Grand Avenue grade crossing and the written preapproval from ORDC of the highway safety improvement to which the payment will be applied.

#### IV. COST ALLOCATION

As set forth in Section II of this Subsidy Agreement, the actual costs for the guardrails, MUTCD signage, pavement removal, and removal of warning devices shall be borne one hundred percent (100%) by NS and the actual costs for the removal of advance warning signs and pavement markings shall be borne one hundred percent (100%) by CITY.

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

The actual costs for the Improvements outlined in Section III for Surface Improvements and Section IV shall be borne eighty-two percent (82%) by the ORDC and eighteen percent (18%) by NS. The total actual costs for the Improvements borne by ORDC shall not be greater than One Hundred and Ninety Thousand No/100 Dollars (\$190,000.00).

As set forth in Section III of this Subsidy Agreement, the Incentive Funds in the total amount of \$15,000.00 shall be borne fifty percent (50%) by ORDC and fifty percent (50%) by NS.

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

NS shall be responsible for initially paying all of its actual costs to install the safety improvements identified in Section II & III. However, ORDC shall be legally bound to reimburse NS for the costs of the Improvements outlined in Section III, not to exceed One Hundred and Ninety Thousand No/100 Dollars (\$190,000.00) upon proper invoices submitted by NS, consistent with the terms of this Subsidy Agreement and in accordance with all applicable Federal regulations.

NS may bill ORDC monthly or periodically for its costs when costs exceed One Thousand and No/100 U.S. Dollars (\$1,000.00). NS 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 shall be made by ORDC within sixty (60) days after a final audit has been performed and approved by ORDC. The audit shall occur within 180 days of submission of NS's final bill. NS agrees to cooperate and assist, as requested, in any such audit.

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

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

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

## V. NOTIFICATION

**If to PUCO:** Public Utilities Commission of Ohio  
Railroad Division  
180 East Broad Street, 14<sup>th</sup> Floor  
Columbus, Ohio 43215-3793

If to NS:

Norfolk Southern Railway Company  
Director, Grade Crossing Safety  
1200 Peachtree Street, NE, Box 36  
Atlanta, GA 30309-0036

&

Norfolk Southern Railway Company  
Administrator, Grade Crossing Program  
1200 Peachtree Street, NE, Box 123  
Atlanta, GA 30309-0036

If to CITY : City of Middletown  
One Donham Plaza  
Middletown, OH 45042-1901

If to ORDC: Ohio Rail Development Commission  
1980 W. Broad Street, 2<sup>nd</sup> Floor  
Columbus, Ohio 43223

Said Subsidy Agreement shall terminate at the end of the present biennium, June 30, 2013. If obligations specified under this Subsidy Agreement are 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 obligations specified under this Subsidy Agreement has been satisfactorily completed. If it appears to ORDC/PUCO that NS or the CITY has failed to perform satisfactorily any requirements of

this Subsidy Agreement, or if NS 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 NS 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 NS 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, NS or the CITY shall incur only those obligations or expenditures which are necessary to enable NS or the CITY to achieve compliance as set forth in the Notice. If it is determined that NS or the CITY cannot cure its default, NS or the CITY shall immediately cease work under this Subsidy Agreement, take all necessary or appropriate steps to limit disbursements and minimize costs, and 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 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.

It is expressly understood by the parties that none of the rights, duties, and obligations described in this Agreement shall be binding on any party until all statutory provisions of the ORC, including but not limited to § 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 §127.16 of the ORC or in the event that federal funds are used, until such time that the ORDC gives NS written notice that such funds have been made available to the ORDC by the ORDC's funding source.

## **VII. REPRESENTATIONS AND WARRANTIES**

### **A. NS: NS represents and warrants the following:**

- (1) NS has the power and authority to enter into this Subsidy Agreement; and
- (2) NS has the authority to carry out its obligations under this Subsidy Agreement; and
- (3) No personnel of NS, any subcontractor of NS, public official, employee or member of the governing body of the particular locality where this Subsidy Agreement shall be completed, who exercises any functions or responsibilities in connection with the review or approval of the work completed under this Subsidy Agreement, shall prior to the completion of said work, voluntarily or involuntarily acquire any personal monetary interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his functions or responsibilities with respect to the completion of the work contemplated under this Subsidy Agreement. Any person who, prior to or after the execution of this Subsidy Agreement, acquires any personal monetary interest, involuntarily or voluntarily, shall immediately disclose his interest to ORDC/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 Subsidy**

Agreement.

VI. OHIO ETHICS LAW REQUIREMENTS

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

IX. FALSIFICATION OF INFORMATION

NS 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 NS or the CITY have knowingly made a false statement to ORDC/PUCO to obtain this grant of funds, the NS and the CITY shall be required to return all funds immediately pursuant to ORC § 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 ORC § 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

In performing this Subsidy Agreement, the NS and the CITY shall not discriminate against any employee, applicant for employment, or other person because of race, color, religion, gender, national origin (ancestry), military status (past, present or future), disability, age (40 years of age or older), genetic information, or sexual orientation. The NS and the CITY will ensure that applicants are hired and that employees are treated during employment without regard to their race, color, religion, gender, national origin (ancestry), military status (past, present or future), disability, age (40 years of age or older), genetic information, or sexual orientation. The NS and the CITY shall incorporate the foregoing requirements of this paragraph in all of its contracts for any of the work prescribed herein (other than subcontracts for standard commercial supplies or raw materials) and will require all of its subcontractors for any part of such work to incorporate such requirements in all such subcontracts.

XI. OHIO ELECTIONS LAW

NS represents that its participation in this Subsidy Agreement does not violate ORC § 3517.13.

XII. DRUG FREE WORKPLACE

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

XIII. HOLD HARMLESS PROVISION

NS covenants and agrees to indemnify and hold the 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 NS's negligent, intentional, willful or wanton actions or inactions, or such actions or omissions by any subcontractors that may be hired by NS under this Subsidy Agreement.

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

#### **XIV. 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 NS or the CITY cannot meet any or all of the obligations placed upon it by the terms of this Subsidy Agreement, (1) NS or the CITY shall immediately notify ORDC/PUCO in writing, and (2) ORDC/PUCO may, at its sole discretion, make reasonable efforts to assist NS 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.

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

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

#### **XVII. DISPUTE RESOLUTION**

In the event NS 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, NS or the CITY 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 Grantor upon any breach by NS 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.

## **IX. 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**

NS 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.

NS 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, NS 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.

NS and the CITY affirm to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Subsidy Agreement. Notwithstanding any other terms of this Subsidy Agreement, the ORDC reserves the right to recover any funds paid for services NS or the VILLAGE performs outside the United States for which it did not receive a waiver from the Director of the Ohio Department of Administrative Services.

## **XXII. 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.

## **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.

NORFOLK SOUTHERN RAILWAY COMPANY

By [Signature]

Print Name Jerry W. Hall

Title General Manager

Date 4/5/12

CITY OF MIDDLETOWN

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 \_\_\_\_\_

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

\_\_\_\_\_  
Assistant Attorney General Alan H. Klodell

Date \_\_\_\_\_

Agreement BUT Middletown NS 5/2012.doc

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 \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

CITY OF MIDDLETOWN

By *Matthew A. Gilliland*

Print Name Matthew A. Gilliland

Title City Manager

Date 5-30-12

PUBLIC UTILITIES COMMISSION  
OF OHIO

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 \_\_\_\_\_

Approved as to form  
*Leslie S. Landen*  
LESLIE S. LANDEN, LAW DIRECTOR

Agreement BUT Middletown NS 5/2012.doc

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NORFOLK SOUTHERN RAILWAY COMPANY

By \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

CITY OF MIDDLETOWN

By \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

PUBLIC UTILITIES COMMISSION  
OF OHIO

By [Signature]

Print Name ROBERT E. MARZYN

Title DIRECTOR

Date 5/25/12

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 \_\_\_\_\_

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NORFOLK SOUTHERN RAILWAY COMPANY

CITY OF MIDDLETOWN

By \_\_\_\_\_

By \_\_\_\_\_

Print Name \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

PUBLIC UTILITIES COMMISSION  
OF OHIO

OHIO RAIL DEVELOPMENT COMMISSION

By \_\_\_\_\_

By  \_\_\_\_\_

Print Name \_\_\_\_\_

Print Name Matthew R. Dietrich

Title \_\_\_\_\_

Title Executive Director

Date \_\_\_\_\_

Date 6/11/12 \_\_\_\_\_

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

\_\_\_\_\_  
Assistant Attorney General Alan H. Klodell

Date \_\_\_\_\_

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NORFOLK SOUTHERN RAILWAY COMPANY

By \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

CITY OF MIDDLETOWN

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 \_\_\_\_\_

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

  
Assistant Attorney General Alan H. Klodell

Date 6/11/12

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