



**Please serve the following parties of record:**

CSX Transportation, Inc.  
Benjamin Biesterveld  
Principal Engineer Public Projects  
500 Water Street-J301  
Jacksonville, FL 32202

Ohio Rail Development Commission  
Susan Kirkland  
Safety Section Manager  
1980 West Broad Street  
Columbus, Ohio 43223

Wayne Township, Darke County  
Kenneth J. Moorman  
Township Trustee  
P.O. Box 205  
Versailles, OH 45380

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of a Request for the :  
Installation of Active Warning Devices at : Case No. \_\_\_ - \_\_\_ -RR-STP  
CSX Transportation, Inc. Grade :  
Crossings, DOT#538-798C, Wolf Rd. and :  
DOT#538-785B, HB Hole Road in Wayne :  
Township, Darke County, Ohio.

**STIPULATION**

THIS SUBSIDY STIPULATION is entered into on this 23<sup>rd</sup> day of December, 2009 by and among the Public Utilities Commission of Ohio Railroad Staff ("PUCO Staff"), CSX Transportation, Inc. ("Railroad"), Ohio Rail Development Commission ("ORDC"), and Wayne Township, Darke County, Ohio ("LHA").

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, The Public Utilities Commission of Ohio ("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 PUCO is responsible for evaluating public highway railroad grade crossings to determine the need for upgrading the warning devices and apportioning the costs thereof pursuant to Ohio Revised Code 4907.471;

WHEREAS, the PUCO is responsible for the administration and implementation of the State Grade Crossing Protection Fund pursuant created under R.C. 4907.472 to help defray the public's share of costs to install or modernize warning devices at Ohio's highway railroad grade crossings;

WHEREAS, the parties hereto propose to facilitate the upgrade identified in this Subsidy Stipulation in manner approved by the PUCO/ORDC 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 hereto believe this Subsidy Stipulation to be reasonable and entitled to careful consideration by the PUCO;

WHEREAS, the parties hereby declare it to be in the public interest that they jointly and fully participate in this Subsidy Stipulation to facilitate the upgrade in accordance with plans, specifications, and estimates to be approved by the PUCO Staff and ORDC.

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

**Article I. PURPOSE**

The Subsidy Stipulation is a joint collaboration by the Railroad, the ORDC, the LHA, and the PUCO to promote the health and safety of the traveling public who are required to travel through these public highway-railroad grade crossings in Darke County, Ohio.

**Article II. PROJECT**

A. The projects work to be completed shall include the following upgrade ("Project"):

<u>Grade Crossing #</u>	<u>Location</u>	<u>Nature of Upgrade</u>
538-798C	Wolf Rd./Wayne Township/Darke County	Lights and Gates
538-785B	HB Hole Rd./Wayne Township/Darke County	Lights and Gates

B. The Project shall be completed within 12 months from the date of the PUCO order adopting this Stipulation. The terms of that PUCO order are incorporated into and made a part of this Stipulation.

**Article III. ALLOCATION OF PROJECT COSTS**

A. The costs of the Project shall be apportioned as between the ORDC, the PUCO and the Railroad, as follows:

<u>Grade Crossing</u>	<u>Railroad</u>	<u>ORDC</u>	<u>PUCO</u>
Wolf Rd. (538-798C)	10% of 100% plus maintenance	40% of Total	50% of Total
HB Hole Rd. (538-785B)	10% of 100% plus maintenance	22% of Total	68% of Total

B. The Railroad shall be responsible for initially paying all of the actual costs to upgrades of the warning devices identified above. However, the PUCO 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 Stipulation and in accordance with all applicable state regulations. In no event shall ORDC be bound to

reimburse the Railroad for an amount in excess of \$151,000.00 of the total project cost. However, if CSXT anticipates that the Project costs will be higher than expected, then CSXT may notify ORDC in writing, prior to incurring any such additional expenses, and provide ORDC with a revised estimate of the total Project costs as well as the revised amount of ORDC's prospective allocated portion for consideration of payment by ORDC.

C. The LHA shall, within 30 days of the adoption of this Subsidy Stipulation, certify in writing to the PUCO the authority to participate in this Project as described herein. The PUCO shall have no obligation to expend funds hereunder until the LHA have submitted documentation in proper form as described in this section.

D. The PUCO has agreed to provide funds from the State Grade Crossing Protection Fund, pursuant to Ohio Rev. Code 4907.472, to cover that portion of the upgrade cost to be borne by the PUCO proposed above. The actual respective dollar amount, which the Railroad, the ORDC, and the PUCO shall bear, will be based upon the actual cost noted in the plans and estimates to be approved by the PUCO Staff/ORDC and incurred by the Railroad for this Project.

E. All plans, specifications, estimate of cost, acceptance of work, and procedures in general, to facilitate the construction of the safety upgrade described above, shall conform in all respects to federal laws, rules, regulations, orders, and approvals applicable to State Aid projects. The Railroad shall render billings to the PUCO Staff and the ORDC in accordance with said rules and regulations, and shall provide and furnish such itemized records of and substantiating data for such cost that may be required.

F. The LHA shall furnish advance warning signs and pavement markings as specified in the Manual on Uniform Traffic Control Devices ("MUTCD") and shall assume all costs to maintain such signage and markings in the future at each of the subject grade crossings. The LHA shall arrange for the relocation, rearrangement or alteration of all utilities of any nature, which are located on public right of way, and which will affect by or interfere with the construction of the said Project. Said relocation, rearrangement or alteration will be done at such time as requested by the PUCO Staff and will be performed solely at the expense of the utility and at no cost to this Project or the Railroad.

#### **Article IV. BILLING**

A. The Railroad may bill the PUCO and the ORDC monthly or periodically for its costs when costs exceed \$1,000.00. The Railroad shall submit three (3) 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 the actual costs and showing all details shall be submitted to the PUCO Staff and the ORDC, within ninety (90) days after completion of each project, the PUCO Staff and the ORDC shall pay all bills within sixty (60) days after receipt thereof, except that the PUCO may hold a retainer on all bills not to exceed eight percent (8%) until final payment. The PUCO Staff and the ORDC shall make final payment for all amounts due the Railroad within sixty (60) days after a final audit has been performed and approved by the PUCO Staff and the ORDC. The Railroad 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 the PUCO staff and the ORDC may deem necessary and in such a manner as not to interfere with the normal business operations, the Railroad shall make available to the PUCO Staff and the ORDC for examination, and to appropriate state agencies or

officials, all of its records with respect to matters covered by this Subsidy Stipulation including, but not limited to, records of personnel and conditions of employment and shall permit the PUCO Staff and the 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 Project, as set in this Subsidy Stipulation, the decision of the PUCO regarding the same should be final.

B.No Project activity reimbursable under this Stipulation, including, without limitation, preliminary engineering, shall be commenced until all of the following have occurred: (1) this Stipulation shall have been approved and the Railroad directed to submit plans and estimates by the PUCO; (2) all financial obligations of the PUCO, ORDC and LHA, as provided for in this Stipulation 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 the PUCO Staff or the ORDC; and, (3) the Railroad has been notified by the PUCO Staff to proceed with construction of the Project work. Work on the improvements shall commence within 30 days of the occurrence of events (1), (2), and (3) described herein. Said work shall be pursued diligently by the Railroad until completed.

**Article V.      NOTIFICATION**

All notices, consents, demands, requests and other communications which may or are required hereunder by the Railroad 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.

RAILROAD:              CSX Transportation, Inc.  
Benjamin Biesterveld  
Principal Engineer Public Projects  
500 Water Street-J301  
Jacksonville, FL 32202  
(904) 359-1158  
(904) 366-4042 (fax)  
[Benjamin\\_Biesterveld@CSX.com](mailto:Benjamin_Biesterveld@CSX.com)

PUCO:                    Public Utilities Commission of Ohio  
Jill Henry  
Rail Specialist  
Transportation Department, Rail Division  
180 East Broad Street  
Columbus, Ohio 43215-3793  
(614) 466-0435  
(614)995-5535 (fax)  
[jill.henry@puc.state.oh.us](mailto:jill.henry@puc.state.oh.us)

ORDC: Ohio Rail Development Commission  
Susan Kirkland  
Safety Section Manager  
1980 West Broad Street  
Columbus, Ohio 43223  
(614) 644-0286  
(614) 728-4520 (fax)  
[Susan.Kirkland@dot.state.oh.us](mailto:Susan.Kirkland@dot.state.oh.us)

CITY: Wayne Township, Darke County  
Kenneth J. Moorman  
Township Trustee  
P.O. Box 205  
Versailles, OH 45380  
(937) 621-0783

## **Article VI. TERMINATION**

This Subsidy Stipulation shall terminate at the end of the present biennium, June 30, 2011. If construction covered under this Subsidy Stipulation is not completed by that date, it is the expressed intention of the parties to renew this Subsidy Stipulation on each successive biennium period until such time as all work contemplated under this Subsidy Stipulation has been satisfactorily completed. If it appears to the PUCO/ORDC that the Railroad, or the LHA have failed to perform satisfactorily any requirements of this Subsidy Stipulation, or if the Railroad, or the LHA are in violation of any provision of this Subsidy Stipulation, or upon just cause, the PUCO/ORDC may:

A. Terminate the Subsidy Stipulation after providing the Railroad or the LHA with written notice, in accordance with the notice provisions of this Subsidy Stipulation, of its failure to perform satisfactorily any requirement of this Subsidy Stipulation (the "Notice"), which shall provide the Railroad, or the LHA with a thirty (30) day period to cure any and all defaults under this Subsidy Stipulation; or

B. Immediately terminate the Subsidy Stipulation. During the thirty (30) day cure period, the PUCO, the ORDC, the Railroad, or the LHA shall incur only those obligations or expenditures that are necessary to enable the Railroad or the LHA to achieve compliance as, set forth in the Notice. If it is determined that the Railroad or the LHA cannot cure its default, the Railroad shall immediately cease work under this Subsidy Stipulation, take all necessary or appropriate steps to limit disbursements and minimize cost, and the Railroad 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 the PUCO/ORDC shall deem pertinent.

C. This Subsidy Stipulation and any renewal thereof is subject to a determination by the PUCO/ORDC that sufficient funds and the authority to spend funds have been provided by the Ohio General Assembly to the PUCO/ORDC for the purposes of this Subsidy Stipulation and to the certification of funds by the Office of Budget and Management as required by the Ohio Revised Code, Section 126.07. If the PUCO/ORDC determines that sufficient funds have not been appropriated for the purposes of this Subsidy Stipulation, or if the Office of Budget and Management fails to certify the availability of funds, this Subsidy Stipulation shall be terminated.

## **Article VII. REPRESENTATIONS AND WARRANTIES**

A. RAILROAD: The Railroad represents and warrants the following:

(1) The Railroad has the power and authority to enter into this Subsidy Stipulation; and

(2) The Railroad has the authority to carry out its obligations under this Subsidy Stipulation;  
and

(3) No personnel of the Railroad, any subcontractor of the Railroad, public official, employee or member of the governing body of the particular locality where this Subsidy Stipulation shall be completed, who exercises any functions or responsibilities in connection with the review or approval of the work completed under this Subsidy Stipulation, 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 Stipulation. Any person, who, prior to or after the execution of this Subsidy Stipulation, acquires any personal monetary interest, involuntarily or voluntarily, shall immediately disclose his interest to the PUCO in writing. Thereafter, such person shall not participate in any action affecting the work contemplated under this Subsidy Stipulation unless the 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. PUCO/ORDC: PUCO/ORDC represents and warrants that they have the power and authority to enter into this Subsidy Stipulation and to carry out their obligations pursuant to the terms of this Subsidy Stipulation.

C. LHA represents and warrants that it is authorized to enter into this Stipulation and to carry out its obligations as delineated herein.

## **Article VIII. CERTIFICATION OF FUNDS**

It is expressly agreed by the parties that none of the rights, duties, and obligations herein shall be binding on either party if award of this Agreement would be contrary to the terms of Ohio Revised Code Sections 3517.13, 127.16, or Chapter 102.

It is expressly understood and agreed by the parties that none of the rights, duties, and obligations described in this Agreement shall be binding on any party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to, R.C. 126.07, have been complied with, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the state of Ohio, or

in the event that grant funds are used, until such time as the PUCO gives the Railroad written notice that such funds have been made available to the PUCO by the FHWA.

**Article IX. RECORD KEEPING**

During performance of this Stipulation and for a period of three years after its completion, the Railroad shall maintain auditable records of all work performed under and charges pertaining to this Stipulation and shall make such records available to the PUCO as the PUCO may reasonably require.

**Article X. RIGHTS TO DATA**

The PUCO shall have unrestricted authority to reproduce, distribute and use (in whole or in part) any reports, data or materials prepared by the Railroad pursuant to this Stipulation.

**Article XI. FALSIFICATION OF INFORMATION**

The Railroad and the LHA affirmatively covenant that neither has made any false statements to the PUCO and the ORDC in the process of obtaining this grant of funds. If the Railroad and/or the LHA has/have knowingly made a false statement, the Railroad and the LHA 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.

**Article XII. EQUAL EMPLOYMENT OPPORTUNITY**

Pursuant to Ohio Revised Code Section 125.111, the Railroad agrees that the Railroad, any subcontractor, and any person acting on behalf of the Railroad or subcontractor, shall not discriminate, by reason of race, color, religion, sex, age, disability, national origin, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the work under this Subsidy Stipulation. The Railroad 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 Stipulation because of race, color, religion, sex, age, disability, national origin, or ancestry. The Railroad 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.

**Article XIII. DRUG FREE WORKPLACE**

For any work under this Subsidy Stipulation that is performed on government property, the Railroad shall enforce its policy that its employees, while engaged in such work, shall not purchase, transfer, and use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

**Article XIV. HOLD HARMLESS PROVISION**

The Railroad covenants and agrees to indemnify and hold the LHA, the ORDC, the 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 Stipulation and caused by the Railroad's negligent, intentional, willful or wanton actions or inactions, or such actions or omissions by any subcontractors that may be hired by the Railroad under this Subsidy Stipulation. In case any action involving any work covered by this Subsidy Stipulation is brought by or against any party or parties, said party or parties shall promptly notify the other party or parties of such action.

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

A. General. The signatory parties agree to comply with all federal, state and local laws, rules, regulations, and auditing standards, which are applicable to their performance under this Stipulation.

B.Ethics. In accordance with Executive Order 2007-01S, the PUCO, by executing this document, certify: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflict of interest laws including, without limitation, R.C. 102.01, et seq., R.C. 2921.01, 2921.42, 2921.421 and 2921.43, and 3517.13(I) and (J), and (3) will take no action inconsistent with those laws and the order, as any of them may be amended or supplemented from time to time. The PUCO understand that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this Stipulation and the grant of funds made pursuant to this Stipulation and may result in the loss of other contracts or grants with the state of Ohio.

**Article XVI. CONFIDENTIALITY OF INFORMATION**

The parties agree that they shall not use any information, systems, or records made available to any other party for any purpose other than to fulfill the obligations specified herein, unless required by law. The parties agree to be bound by the same standards of confidentiality that apply to the employees of each party and the state of Ohio. The terms of this section shall be included in any subcontracts executed by any party for work to be performed under this Stipulation.

**Article XVII. ENTIRETY OF AGREEMENT**

This Stipulation and its exhibits and any documents referred to herein constitute the entire agreement of the parties and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof. This Stipulation shall not be modified, amended, or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties. A waiver by any party of any breach or default by the other party shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

**Article XVIII. CAMPAIGN CONTRIBUTIONS**

The Railroad hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of R.C. 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of R.C. 3517.13.

**Article XIX. AMENDMENTS OR MODIFICATIONS**

Neither this Stipulation, nor any rights, duties, nor obligations hereunder, may be assigned or transferred, in whole or in part, by any signatory party, without the written consent of the PUCO.

**Article XX. DEBARMENT**

The Railroad represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either R.C. 153.02 or R.C. 125.25. If this representation and warranty is found to be false, this Agreement is void *ab initio* and the Railroad shall immediately repay to the PUCO any funds paid under this Stipulation.

**Article XXI. DECLARATION REGARDING MATERIAL ASSISTANCE/  
NONASSISTANCE TO A TERRORIST ORGANIZATION**

The Railroad hereby represents and warrants to the PUCO that it has not provided any material assistance, as that term is defined in R.C. 2909.33(C), to any organization identified by, and included on, the United States Department of State Terrorist Exclusion List and that it has truthfully answered "no" to every question on the "Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization." The Railroad further represents and warrants that it has provided or will provide such to the PUCO and/or the Ohio Business Gateway (<http://obg.ohio.gov/DMA2007.shtml>) prior to execution of this Stipulation. If these representations and warranties are found to be false, this Stipulation is void *ab initio* and the Railroad shall immediately repay to the Commission any funds paid under this Stipulation.

**Article XXII. HEADINGS**

Section headings contained in this Stipulation are inserted for convenience only and shall not be deemed a part of this Stipulation.

**Article XXIII. GOVERNING LAW**

This Stipulation 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.

**Article XXIV. PARTIAL INVALIDITY**

A judicial or administrative finding, order, or decision that any part of this Stipulation is illegal or invalid shall not invalidate the remainder of the Stipulation.

**Article XXV. DUPLICATE COUNTERPARTS**

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

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

**On behalf of Wayne Township:**

By: \_\_\_\_\_

\_\_\_\_\_  
[Print Name]

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**On behalf of the Public Utilities  
Commission of Ohio :**

By: \_\_\_\_\_

\_\_\_\_\_  
Robert E. Marvin

[Print Name]

Title: Director of Transportation

Date: \_\_\_\_\_

**On behalf of CSX Transportation, Inc.:**

By: Dale W. Ophardt

\_\_\_\_\_  
[Print Name]

Dale W. Ophardt  
Title: Assistant Vice President Engineering

Date: 12-22-09

**On behalf of the Ohio Rail Development  
Commission:**

By: \_\_\_\_\_

\_\_\_\_\_  
[Print Name]

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

**On behalf of Wayne Township:**

By: Kenneth J. Moorman

Kenneth J. Moorman  
[Print Name]

Title: Trustee

Date: 12-11-09

**On behalf of the Public Utilities  
Commission of Ohio :**

By: \_\_\_\_\_

Robert E. Marvin  
[Print Name]

Title: Director of Transportation

Date: \_\_\_\_\_

**On behalf of CSX Transportation, Inc.:**

By: \_\_\_\_\_

\_\_\_\_\_  
[Print Name]

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**On behalf of the Ohio Rail Development  
Commission:**

By: \_\_\_\_\_

\_\_\_\_\_  
[Print Name]

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

**On behalf of Wayne Township:**

By: \_\_\_\_\_

\_\_\_\_\_  
[Print Name]

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**On behalf of the Public Utilities  
Commission of Ohio:**

By: Robert E. Marvin

Robert E. Marvin  
\_\_\_\_\_  
[Print Name]

Title: Director of Transportation

Date: 12-23-09

**On behalf of CSX Transportation, Inc.:**

By: \_\_\_\_\_

\_\_\_\_\_  
[Print Name]

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**On behalf of the Ohio Rail Development  
Commission:**

By: Matthew R. Dietrich

MATTHEW R. DIETRICH  
\_\_\_\_\_  
[Print Name]

Title: EXECUTIVE DIRECTOR

Date: December 15, 2009