

DC
FILE

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**Public Utilities
Commission of Ohio**

Memo

To: Docketing Division
From: George Martin, Grade Crossing Planner, Rail Division *gld*
Re: In the matter of the authorization of Ohi-Rail Corporation for a Consolidation Project in Carroll County
Date: July 9, 2010

On March 3, 2010, Commission staff, the Ohio Rail Development Commission (ORDC), the Ohi-Rail Corporation (OHIC), and the Village of Minerva entered into a Subsidy Agreement (attached) in which the parties agreed to the following:

Thomas Street, DOT# 503463N, to be closed to vehicular and pedestrian traffic

SR 183/S. Market St, DOT# 503439M, reconstruction of crossing surface with the mast-mounted flashing lights relocated and curbing installed such that the devices conform to the Manual of Uniform Traffic Control Devices (MUTCD). **The jurisdiction of the Commission in this case pertains only to the relocation of the warning devices and the closure of Thomas Street.**

Section II of the Agreement states that the grade crossing closure, unless otherwise directed by the Village, shall take place at the completion of the improvement at SR 183/S. Market St.

The project costs allocated to ORDC will be paid for with federal funds, not to exceed \$200,000. Staff requests an Entry with plans and an estimate to be submitted to the Commission and ORDC with 90 days and completion within one year. Upon approval of the plan and estimate by ORDC construction may commence. A suggested case coding and heading would be:

PUCO Case No. 10- 957 -RR-RCP In the matter of the authorization of Ohi-Rail Corporation for a Consolidation Project in Carroll County

C: Legal Department

Please serve the following parties of record

Ms Susan Kirkland

Ohio Rail Development Commission

1980 West Broad St

Columbus, Oh 43223

Mr R Powell Felix

Ohi-Rail Corporation

916 Vine St

Connersville, In 47331

Mr David Harp

Village Administrator

210 E Main St

PO Box 340

Minerva, Oh 45858-0340

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

TO: George Martin, Planner, Railroad Division, PUCO
FROM: Susan Kirkland, Manager, Safety Section, ORDC
BY: Cathy Stout, Safety Section, ORDC *Cathy*
SUBJECT: Carroll County, City Village of Minerva, Consolidation Project,
Ohi-Rail Corporation (OHIC)
DATE: July 7, 2010

The Ohio Rail Development Commission (ORDC), Public Utilities Commission (PUCO), Ohi-Rail Corporation (OHIC), Wheeling & Lake Erie Railway Company (WLE) and Village of Minerva have entered into a consolidation agreement for improvements at one grade crossing and closure to vehicular and pedestrian traffic of one grade crossing.

The crossing to be closed is OHIC grade crossing located on Thomas Street (503463N). The crossing to be improved is OHIC grade crossing on SR183-9.61 / S. Market Street (503439M) which will be improved by reconstructing the grade crossing surfaces as approved by ORDC and relocation of the warning devices.

Please issue an Order for the improvements outlined above. 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.

Attachments (2): Subsidy Agreement, Diagnostic Review Form.

c: M. Fortè (file)



Diagnostic Review Team Survey

Date: 6.23.09

Location Data			
Street or Road Name: S. MARKET ST.			
Route/Road Number (i.e. Twp., Co., SR or US) 183		(include SLM if State or US route) 9.61	
AAR-DOT No.: 503 439M			
County: CAR	Township:	City: (In or Near) MINERVA	
Railroad Name: OHI-RAIL	Railroad Division: PITTSBURG, YOUNGSTOWN (PA)	Branch/Line Name: TUSC. SEC.	
Nearest RR Timetable Station: MINERVA		RR Milepost: 2.61	

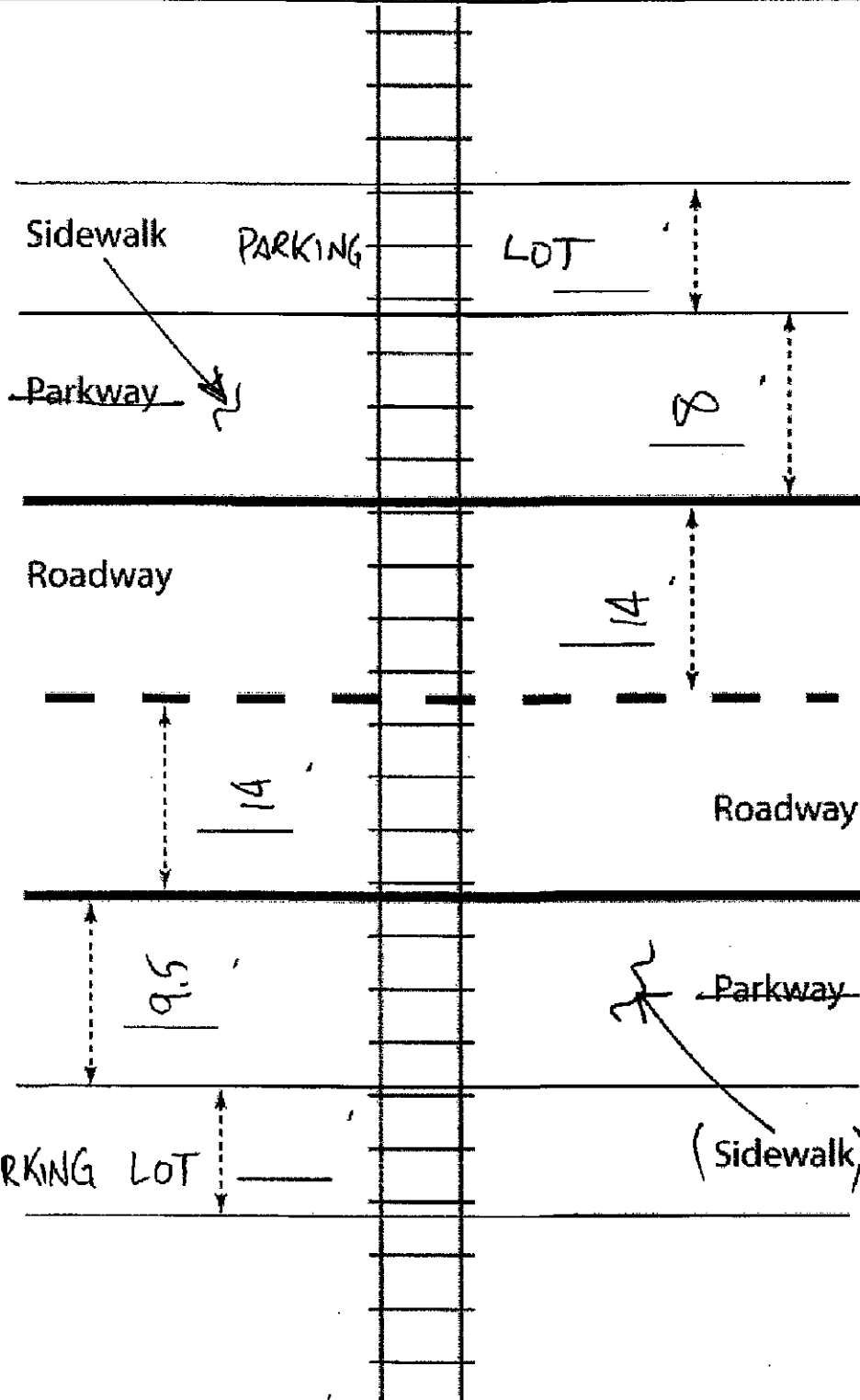
On-Site Review Team		
(Include: Name - Organization - Phone Number)		
1. MIKE FORTÉ	ORDC	614-644-0283
2. Jill Henny	PUCO	614-466-0435
3. GEORGE MARTIN	PUCO	614-752-9107
4. BUD GANE	OHI-RAIL	330-407-4455
5. Chris Jacobs	OHI-Rail	330-868-5116
6. Paul Hays	Village of Minerva	330-868-7705
7. Scott Warner	ODOT	330-308-7838
8. Joe Parisi	ODOT	330-308-7813
9.		

Existing Traffic Control Devices			
Type of Warning Devices	Installed?		Quantity/Comments
Advance Warning Signs	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	1
'Stop' Signs	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
'Stop Ahead' Signs	<input type="checkbox"/> Yes	<input type="checkbox"/> No	NA
Pavement Markings	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Crossbucks	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	2
Number of Tracks Signs	<input type="checkbox"/> Yes	<input type="checkbox"/> No	NA
Inventory Tags	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Interconnected Highway Traffic Signal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Mast-Mounted Flashing Lights	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	3
Cantilever Flashing Lights	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Number: Length:
Side Lights	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Automatic Gates	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Number: Length:
Bells	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Sidewalk Gate Arms	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
'No Turn' Signs	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	1
Illumination	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Is crossing flagged by train crew?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Other	<input type="checkbox"/> Yes	<input type="checkbox"/> No	

Safety Data (Obtain crash reports, if possible, prior to review)		
	Initial Information (from database)	Revised
Number & dates of crashes in previous 5 years	0	
Hazard Ranking	2.876	Date Run: 3.443 6.23.09
Railroad Data		
Railroad Characteristics	Initial Information (from database)	Revised
Total trains per day	1	> 1
< 1 per day		
Day thru trains	1	> 1
Night thru trains		
Daytime switching movements		
Nighttime switching movements		
Total number of tracks	1	
Number of main tracks	1	
Number of other tracks		
Maximum train speed		10
Typical train speed		4 WALKING SPEED
Amtrak		No
If non-gated crossing, is clearing sight distance adequate in all quadrants? (See Table 1) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
If multiple tracks, can two trains occupy crossing at the same time? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Can one train block the motorists' view of another train at crossing? <input type="checkbox"/> Yes (Explain below) <input type="checkbox"/> No		
Are there other track(s) crossing this same roadway within 100 ft of this crossing? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
If yes, Crossing DOT # (if different) _____		
If yes, distance _____ (take measurement between track centerlines at closest point along roadway)		
Roadway Data		
Local Highway Authority: VILLAGE OF MINERVA		
Roadway Characteristics	Initial Information (from database)	Revised
Average daily traffic	6450 (2008)	
Highway paved	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Roadway Surface: <input checked="" type="checkbox"/> Blacktop <input type="checkbox"/> Gravel <input type="checkbox"/> Concrete <input type="checkbox"/> Other _____		
Roadway width: 28 ft.		
Number of highway lanes	2	
Urban or Rural		
Vehicle Speed: 35 MPH		
School Bus Operation: <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes 2 Amount 14		
Hazardous Materials Trucks: <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes 4% Amount		
Shoulders: <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		
Is the shoulder surfaced? <input type="checkbox"/> No <input type="checkbox"/> Yes NA		
Is there existing guardrail along roadway in crossing vicinity? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes BALLARDS BY WARNING DEVICE		
Is stopping site distance adequate? (See Table 2) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If no, deficient approach(es) _____		

Quadrant <u>NW</u> Curb and Gutter: <input type="checkbox"/> Functional (Curb height = 4" or more) <input checked="" type="checkbox"/> Non-functional (Curb height = Less than 4") <input type="checkbox"/> None	Quadrant <u>SE</u> Curb and Gutter: <input type="checkbox"/> Functional (Curb height = 4" or more) <input checked="" type="checkbox"/> Non-functional (Curb height = Less than 4") <input type="checkbox"/> None
Pedestrians: <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Is sidewalk present? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	
Is there a nearby intersection that could cause queuing over the crossing? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes If yes, Distance <u>270'</u> Is this intersection signalized? <input type="checkbox"/> No <input type="checkbox"/> Yes Are the signals currently interconnected with the existing crossing warning devices? <input type="checkbox"/> No <input type="checkbox"/> Yes	
Is it the consensus of the Diagnostic Review Team that this is a potential closure project: <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Explain reasons:	
Type of Development	
<input type="checkbox"/> Open Space <input type="checkbox"/> Industrial <input type="checkbox"/> Residential	<input type="checkbox"/> Institutional <input checked="" type="checkbox"/> Commercial Location of nearby schools: <u>1 MILE DOWN TRACK TO E.</u>
Utility Information	
Is commercial power available? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Utility Provider (Company Name) <u>AEP</u> Phone Number _____ Nearest Available Power Source <u>AT CROSSING</u> What other utilities are present? <u>WATER, SEWER, - GAS?</u> Is there potential utility conflict(s) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown	
Diagnostic Team Recommendations	
	Quadrants Needed
<input type="checkbox"/> Install/upgrade active devices	
<input type="checkbox"/> Automatic Flashing Lights (AFLS)	
<input type="checkbox"/> AFLS / Cants	
<input type="checkbox"/> AFLS / Gates	
<input type="checkbox"/> AFLS / Gates / Cants	
<input type="checkbox"/> Upgrade circuitry	
<input type="checkbox"/> Sidelights	
<input type="checkbox"/> Guardrail Needed	
<input type="checkbox"/> Install/Replace curb	
<input type="checkbox"/> Other (define)	
Comments:	
<input type="checkbox"/> Install/upgrade traffic signal preemption	
<input checked="" type="checkbox"/> No improvements needed	
<input type="checkbox"/> Other (define)	

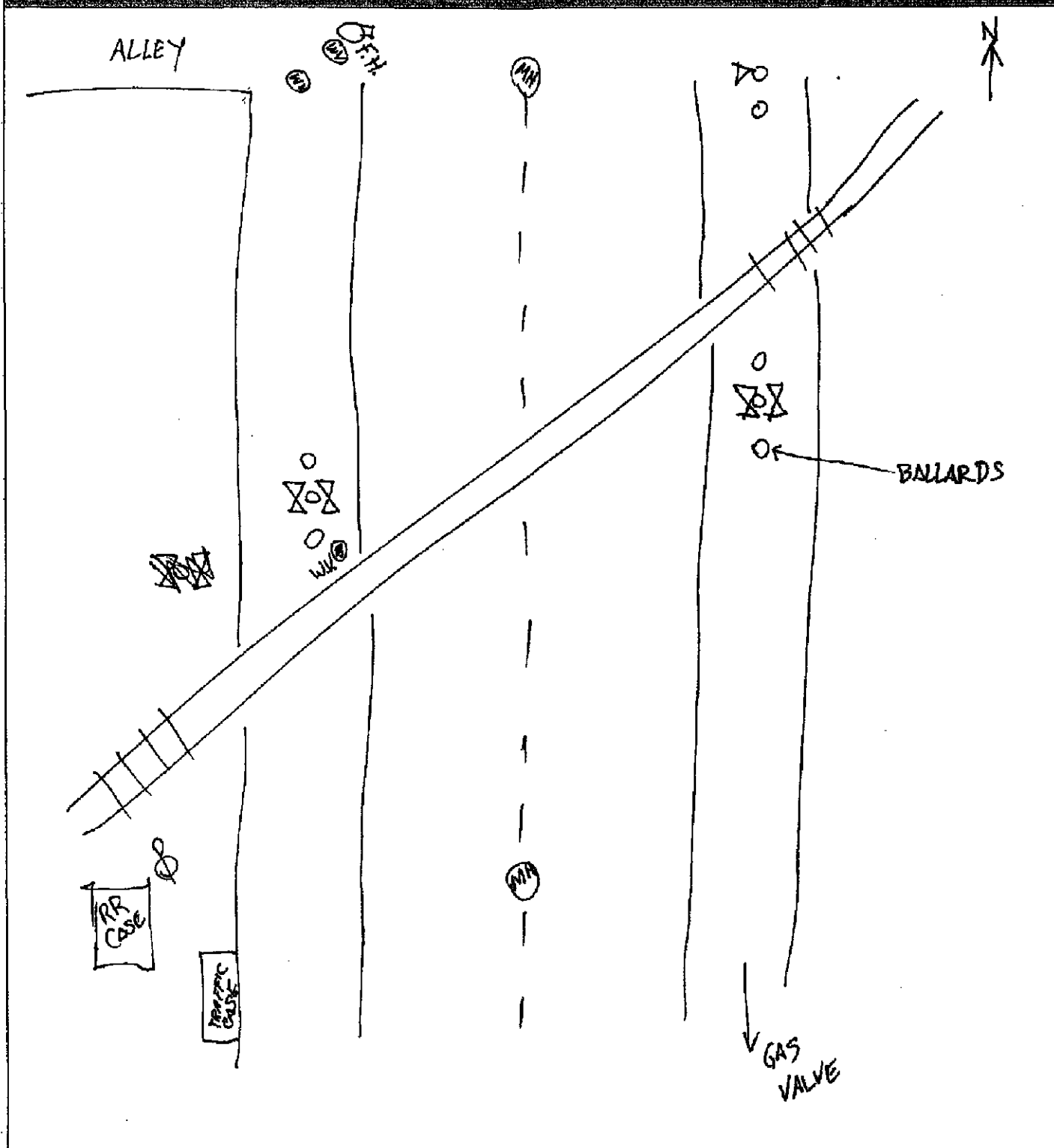
Field Dimensions



Crossing Angle ☐ 0-29° ☐ 30-59° ☒ 60-90° Measured in NW Quadrant?

Measurements by: MDF

Field Sketch



Crossing Angle ☐ 0-29° ☐ 30-59° ☒ 60-90° Measured in NW Quadrant?

Sketch by: MJE

TABLE 1

Clearing Sight Distances

Maximum Authorized Train Speed	Distance (dT) Along Railroad from Crossing (ft)
1 - 10	240
15	360
20	480
25	600
30	720
35	840
40	960
45	1080
50	1200
55	1320
60	1440
65	1560
70	1680
75	1800
80	1920
85	2040
90	2160

Source: R-H Grade Crossing Handbook Table 36 (pp. 132-133)

Notes:

All calculated distances are rounded up to the next higher 5-foot increment.

Distances indicated are for 65-ft double bottom semi-tractor trailers and level single track 90 degree crossings; and may need to be adjusted for multiple tracks, skewed crossings or approaches on grades.

Clearing Sight Distance is to be measured in each vehicle travel direction at non-gated crossings as viewed from a point 25 feet from centerline of nearest track in the center of whichever travel lane is nearest the direction along track being measured.

Table 2

Stopping Sight Distances

Highway Vehicle Speed	Distance (dH) Along Roadway from Crossing (ft)
0	n/a
5	50
10	70
15	105
20	135
25	180
30	225
35	280
40	340
45	410
50	490
55	570
60	660
65	760
70	865

Source: R-H Grade Crossing Handbook Table 36 (pp. 132-133)

Notes:

All calculated distances are rounded up to the next higher 5-foot increment.

Distances indicated are for 65-ft double bottom semi-tractor trailers on dry level pavements.

Stopping Sight Distance is to be measured on each roadway approach to crossing from stop bar.

IN THE MATTER OF THE REQUEST FOR A
CONSOLIDATION PROJECT FOR THE
RECONSTRUCTION OF ONE GRADE
CROSSING SURFACE AND CLOSURE OF
ONE GRADE CROSSING TO VEHICLES IN
VILLAGE OF MINERVA, CARROLL
COUNTY, OHIO

AGREEMENT NO. _____

SUBSIDY AGREEMENT

THIS SUBSIDY AGREEMENT is entered into on this 3rd day of March, 2010
by and among the Public Utilities Commission of Ohio (PUCO), Ohio Rail Development Commission
("ORDC"), Ohi-Rail Corporation ("OHIC"), and the Council of the Village of Minerva (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, PUCO has statutory authority to regulate and promote the welfare and safety of railroad
employees and the traveling public pursuant to Ohio Revised Code Section 4905.04; and

WHEREAS, PUCO has authority to order closure of public grade crossings to vehicular traffic
within governmental limits pursuant to Ohio Revised Code Section 4907.474; and

WHEREAS, the Federal Aid Highway Safety Act of 1973 and the Transportation Equity Act for
the 21st Century, and the Safe, Accountable, Flexible, Efficient Transportation Equity Act - A Legacy for
Users (SAFETEA-LU) and subsequent amendments thereto provide funding for the cost of installing
warning devices to eliminate hazards at public grade crossings, which funding is administered jointly by
PUCO and ORDC pursuant to Ohio Revised Code Section 4907.476; and

WHEREAS, the parties hereto propose to facilitate the improvements identified in this Subsidy
Agreement in accordance with the Federal Aid Policy Guide ("FAPG") and applicable provisions of Title
23 of the United States Code pursuant to the terms hereof; and

WHEREAS, 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 the installation of the grade
crossing upgrade described in Section III of this Subsidy Agreement in accordance with plans,
specifications and estimates to be approved by ORDC/PUCO; and

WHEREAS, the parties, intending to be legally bound, further agree that the public grade
crossings identified in Section II of this Subsidy Agreement should be permanently closed to vehicular

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 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, OHIC's grade crossings located on the following streets:

<u>Highway</u>	<u>U.S. DOT #</u>
Thomas Street	503 463N

Unless otherwise directed by the VILLAGE, the closure shall take place at the completion of the improvements outlined in Section 3- 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 from the crossing to be closed.

OHIC 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.

The VILLAGE acknowledges that closure of the aforementioned public grade crossing will further the public safety and that vehicular traffic may be diverted without unreasonable inconvenience to other nearby public grade crossings. Following receipt of public input, the VILLAGE has passed Ordinance No. 19-09, dated 8-11 that expresses these acknowledgments, the form and substance of which are acceptable to ORDC.

III. GRADE CROSSING UPGRADE

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

<u>Highway ID</u>	<u>DOT#</u>	<u>Improvement</u>
SR183-9.61/S. Market Street	503 439M	Reconstruction of grade crossing surface. The new material shall be a high type premium concrete or rubber.

The warning devices will be relocated and curbs constructed so that the project will conform to the MUTCD.

The VILLAGE shall furnish advance warning signs and pavement markings as specified in the Manual of Uniform Traffic Control Devices (MUTCD) and applicable federal regulations and shall assume all costs to maintain such signage and markings in the future. Existing signs and pavement markings shall be deemed acceptable if those items are in good condition.

IV. COST ALLOCATION; BILLING

The actual costs for the removal of the grade crossing set forth in Section II of this Subsidy Agreement shall be borne one hundred percent (100%) by OHIC.

The actual costs for the installation of the guardrails set forth in Section II of this Subsidy Agreement shall be borne one hundred percent (100%) by the VILLAGE.

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

The actual costs for the improvement outlined as reconstruction of grade crossing surface, including required warning device relocation shall be borne one hundred percent (100%) by ORDC.

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 two hundred thousand dollars (\$200,000.00).

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

OHIC 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 OHIC for its costs in section III, as set forth above, not to exceed \$200,000.00 upon proper application therefore by OHIC, 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 OHIC 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. OHIC shall render its billings to ORDC in accordance with said rules and regulations, and OHIC shall also provide and furnish such itemized records of and substantiating data for such costs as may be required.

OHIC may bill ORDC monthly or periodically for its costs when costs exceed \$1,000.00. OHIC 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 OHIC 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 OHIC's final bill. OHIC 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 may deem necessary and in such a manner as not to interfere with the normal business operations, OHIC 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, OHIC 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 Ohio Revised Code and shall not be valid and enforceable unless funds are appropriated by the Ohio General Assembly and encumbered by ORDC; (3) OHIC 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. Buying and assembling of materials shall be construed as compliance with the foregoing thirty (30) day provision. Said work shall be pursued diligently by OHIC 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 OHIC: Ohi-Rail Corporation
 916 Vine Street
 Connersville, IN 47331

 with copy to
 Ohi-Rail Corporation
 PO Box 728
 Steubenville, OH 43952

If to VILLAGE : Mayor
 Village of Minerva
 210 E. Main Street, P.O. Box 340
 Minerva, Ohio 45858-0340

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

If to PUCO: Public Utilities Commission of Ohio
 180 East Broad Street, 14th Floor
 Columbus, Ohio 43215-3793

OHIC 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. OHIC 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.

OHIC 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.

OHIC 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, 2011. If construction severed under this Subsidy Agreement is not completed by that date, it is the expressed intention of the parties to renew this Subsidy Agreement on each successive biennium period until such time as all work contemplated under this Subsidy Agreement has been satisfactorily completed. If it appears to ORDC that OHIC or the VILLAGE has failed to perform satisfactorily any requirements of this Subsidy Agreement, or if OHIC 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 OHIC or the VILLAGE 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 OHIC or the VILLAGE with a thirty (30) day period to cure any and all defaults under this Subsidy Agreement.

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

VII. REPRESENTATIONS AND WARRANTIES

A. OHIC: OHIC represents and warrants the following:

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

VIII. OHIO ETHICS LAW REQUIREMENTS

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

IX. FALSIFICATION OF INFORMATION

OHIC 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 OHIC or the VILLAGE have knowingly made a false statement to ORDC to obtain this grant of funds, the OHIC and 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, OHIC agrees that OHIC, any subcontractor, and any person acting on behalf of OHIC or subcontractor, shall not discriminate, by reason of race, color, religion, sex, sexual orientation, gender identity, age, disability, national origin, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the work under this Subsidy Agreement. OHIC 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. OHIC 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

OHIC 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, OHIC 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

OHIC 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 OHIC's negligent, intentional, willful or wanton actions or inactions, or such actions or omissions by any subcontractors that may be hired by OHIC under this Subsidy Agreement.

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

XIV. PUCO ORDER

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

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

XV. DUPLICATE COUNTERPARTS

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

XVI. UNUSUAL CIRCUMSTANCES AFFECTING PERFORMANCE

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

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

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

XVIII. DISPUTE RESOLUTION

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

XIX. NO WAIVER

No delay or omission to exercise any right or option accruing to Grantor upon any breach by OHIC 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 either party and thereafter such breach is waived in writing by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

XX. CONSTRUCTION

This Subsidy Agreement shall be governed by the laws of the State of Ohio as to all matters, including but not limited to, matters of validity, construction, effect and performance.

XXI. 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

OHIC 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.

XXIII. 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.

XXIV. SEVERABILITY

Whenever possible, each provision of this Subsidy Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Subsidy Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of

such prohibition or invalidity, without invalidating the remainder of such provisions of this Subsidy Agreement.

XXVI. ENTIRE SUBSIDY AGREEMENT

This Subsidy Agreement and its exhibits and any documents referred to herein constitute the complete understanding of the parties and merge and supersede any and all other discussions, Subsidy Agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.

XXVI. CAPTIONS

The captions in this Subsidy Agreement are for the convenience of reference only and in no way define, limit or describe the scope or intent of this Subsidy Agreement or any part hereof and shall not be considered in any construction hereof.

XXVII. AMENDMENTS OR MODIFICATIONS

Any party may at any time during the term of this Subsidy Agreement request amendment or modification. Requests for amendment or modification of this Subsidy Agreement shall be in writing to the other parties and shall specify the requested changes and the justification for such changes. All parties shall then review the request for modification. Should the parties all agree to modification of the Subsidy Agreement, then an amendment shall be drawn, approved, and executed in the same manner as this Subsidy Agreement.

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

OHI-RAIL CORPORATION

By R. Powell Felix
Print Name R. Powell Felix
Title General Manager
Date 2-23-10

PUBLIC UTILITIES COMMISSION
OF OHIO

By _____
Print Name _____
Title _____

VILLAGE OF MINERVA

By _____
Print Name _____
Title _____
Date _____

OHIO RAIL DEVELOPMENT COMMISSION

By _____
Print Name Matthew R. Dietrich
Title Executive Director

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

OHI-RAIL CORPORATION

By _____

Print Name _____

Title _____

Date _____

PUBLIC UTILITIES COMMISSION
OF OHIO

By _____

Print Name _____

Title _____

VILLAGE OF MINERVA

By David F. Haer

Print Name DAVID F. HAER

Title Village Administrator

Date 2/3/10

OHIO RAIL DEVELOPMENT COMMISSION

By _____

Print Name Matthew R. Dietrich

Title Executive Director

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

OHIO RAIL CORPORATION

By _____

Print Name _____

Title _____

Date _____

PUBLIC UTILITIES COMMISSION
OF OHIO

By  _____

Print Name ROBERT E. MARVIN

Title DIRECTOR

VILLAGE OF MINERVA

By _____

Print Name _____

Title _____

Date _____

OHIO RAIL DEVELOPMENT COMMISSION

By  _____

Print Name Matthew R. Dietrich

Title Executive Director

Date 2/23/10

Date 3 - 3 - 10

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

Assistant Attorney General Alan H. Klodell

Date _____

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


Assistant Attorney General Alan H. Klodell

Date 2/12/10