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**Public Utilities
Commission of Ohio**

PUCO

Memo

To: Docketing Division

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

Re: In the matter of the authorization of Norfolk Southern Railway to modernize grade crossing warning devices at Dorr Street, Lucas County, City of Toledo

Date: November 9, 2010

On August 3, 2010, the staff of the Commission, Norfolk Southern Railway (NS), the Ohio Rail Development Commission (ORDC), and the City of Toledo (City), entered into a Subsidy Agreement (attached), for the closure of Westwood Avenue, DOT# 509451P, and the installation of new crossing lights and gates with traffic signal preemption at Dorr Street, DOT# 867092L. Under Section II of the Agreement, the City agreed to close to vehicular and pedestrian traffic the Westwood Avenue grade crossing within 30 days of the date of the executed agreement. This has been accomplished.

The improvements at Dorr Street involve the new preemption standard published in the Ohio Department of Transportation's Traffic Engineering Manual. The timing requirements for the preemption at Dorr Street are attached. Because of the method of progression of this project, no diagnostic survey was performed, and plans will be filed reviewed when submitted.

Because this project is being coordinated with non-grade crossing projects at the NS Airline Yard in Toledo under a separate agreement with ORDC utilizing federal stimulus funds, ORDC has requested that the Commission order an in service deadline for this project of March 1, 2012.

Accordingly, staff requests an Entry with the plans and estimates to be submitted to the Commission and ORDC within 90 days and completion by March 1, 2012. A suggested case coding and heading would be:

PUCO Case No. 10-2569 RR-FED In the matter of Norfolk Southern Railway to modernize grade crossing warning devices at Dorr Street, Lucas County, City of Toledo

C: Legal Department

Please serve the following parties of record

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician Am Date Processed 11/9/10

Ms Susan Kirkland

Ohio Rail Development Commission

1980 West Broad St

Columbus, Oh 43223

Mr Rick Ray

Norfolk Southern Railway

1200 Peachtree St NE, Box 123

Atlanta, Ga 30309

Michael P Bell, Mayor

One Government Center

Suite 2250

Toledo, Oh 43604

Toledo Edison

**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 Stout*
SUBJECT: Lucas County, Norfolk Southern Railway Company,
Dorr Street, AAR DOT# 867092L, ODOT PID 89294
DATE: November 9, 2010

The Ohio Rail Development Commission (ORDC), Norfolk Southern Railway Company (NS), the Public Utilities Commission of Ohio (PUCO), and the City of Toledo entered into a Subsidy Agreement for the closure of Westwood Avenue, AAR# 509451P, and improvements at Dorr Street, AAR# 867092L. A copy of the Subsidy Agreement is attached.

The closure of Westwood Avenue has already been accomplished.

The improvements required for the Dorr Street crossing are the modernization of existing flashing lights and roadway gates and traffic signal preemption. The advanced preemption of traffic signals will proceed in accordance with the new preemption standard published in the current edition of the Traffic Engineering Manual (TEM). Timing requirements for the traffic signal preemption are attached. Please have copies of the timing requirements added to the PUCO formal docket and distribute copies of the forms to NS with the PUCO Order. Because of the method of progression of this project, a diagnostic review was not performed. A field review will be conducted when plans are submitted.

This project is being coordinated in conjunction with railroad yard improvements being funded under a separate agreement utilizing American Recovery and Reinvestment Act (ARRA) stimulus funds. We request PUCO issue an Order for the project outlined above to align with the March 1, 2012, deadline for the related ARRA project.

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, Railroad Configuration and Timing Requirements.

c. Bill Barringer, Director, Grade Crossing Safety, NS
D. Casey Talbott, Eastman & Smith, LTD
Rick Ray, Administrator, Highway Grade Crossings, NS
Barbara Jones, City of Toledo
T. Darfus (file)



OHIO DEPARTMENT OF TRANSPORTATION
OHIO RAIL DEVELOPMENT COMMISSION

HIGHWAY-RAIL GRADE CROSSING WARNING SYSTEM INTERCONNECTION
RAILROAD CONFIGURATION AND TIMING REQUIREMENTS

SEPTEMBER 15, 2009 - ISSUED
Revision 0

Railroad: Norfolk Southern

DOT: 867 092L

Crossing Name: Dorr Street

Date: 11/08/10

Issued By: ORDC / City of Toledo

This crossing warning system is proposed to be interconnected with an adjacent highway traffic control signal. In some cases, the warning system may be interconnected with two highway traffic control signals, usually one on each side of the grade crossing. The #2 interconnect circuits are only required if indicated below.

The purpose of this document is to advise the railroad of the number of interconnection circuits required and the type and timing requirements of each circuit. The railroad should refer to the OHIO DOT HIGHWAY-RAIL GRADE CROSSING WARNING SYSTEM INTERCONNECTION STANDARD Part 5 for details concerning the requirements of the interface to be provided by the railroad.

	INTERCONNECT #1	INTERCONNECT #2
TYPE OF INTERCONNECTION		
ADVANCE	X	
SIMULTANEOUS		
NOT REQUIRED		X
ADVANCE PREEMPTION TIME PER AREMA 3.3.10	44 sec	

IN THE MATTER OF THE REQUEST FOR A
CONSOLIDATION PROJECT FOR THE
MODERNIZATION OF WARNING DEVICES,
INSTALLATION OF CROSSING MATERIAL
AND GRADE CROSSING CLOSURE TO
VEHICLES AND PEDESTRIANS IN CITY OF
TOLEDO, LUCAS COUNTY, OHIO

PUCO CASE NO.

SUBSIDY AGREEMENT

THIS SUBSIDY AGREEMENT is entered into on this 3rd day of August, 2010
by and among the Public Utilities Commission of Ohio ("PUCO"), Ohio Rail Development Commission
("ORDC"), Norfolk Southern Railway Company, ("NS"), and the City of Toledo (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 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 City of Toledo hereby declares it to be in the public interest to progress this
project and that consent is hereby given to ORDC/PUCO to facilitate the installation of the grade crossing
upgrades 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 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 provide substantial improvements to the City highway system, and to enhance the safety, security, and/or convenience of the traveling public.

II. GRADE CROSSING CLOSURE

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

Highway ID

AAR #

Westwood Avenue

DOT 509 451P

This closure shall take place within 30 days after final execution of this Subsidy Agreement.

CITY shall install and maintain guardrails on each side of the tracks, on CITY property, at the grade crossing to be closed. The guardrails shall be in conformance with the Manual on Uniform Traffic Control Devices (MUTCD). CITY shall install and maintain appropriate MUTCD signage in conjunction with the guardrails. These costs shall be reimbursed by NS as outlined in Section IV. COST ALLOCATION; BILLING.

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.

CITY acknowledges that closure of the aforementioned public grade crossing will further the public safety without unreasonable inconvenience to the public, and that vehicular traffic may be easily diverted to other nearby public grade crossings. Following receipt of public input, CITY enacted on November 10, 2009 consent legislation that expresses these acknowledgments, the form and substance of which are acceptable to ORDC and PUCO.

III. GRADE CROSSING UPGRADE

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

<u>Highway ID</u>	<u>AAR #</u>	<u>Improvement</u>
Dorr Street	867 092L	Modernization of flashing lights, roadway gates and traffic signal preemption.
Dorr Street	867 092L	Installation of high performance crossing.
Westwood Avenue	509 451P	Deactivation and removal of warning devices
Westwood Avenue	509 451P	Removal of pavement and other non-track material and installation of fencing and gate

In reference to Dorrr Street (867 092L), the CITY shall furnish advance warning signs and pavement markings as specified in the Manual of Uniform Traffic Control Devices (MUTCD) and applicable federal regulations and shall assume all costs to maintain such signage and markings in the future. Existing signs and pavement markings shall be deemed acceptable if those items are in good condition.

IV. COST ALLOCATION; BILLING

The actual costs for the improvements set forth in Section II. GRADE CROSSING CLOSURE of this Subsidy Agreement shall be borne one hundred percent (100%) by NS and the CITY. The application of barricades, addition of signage and removal of the portion of surface at Westwood Avenue, not on railroad property, shall be accomplished or contracted out by CITY. These costs will be reimbursed by NS to CITY up to \$5,000.

The cost of the advance warning signs and pavement markings at the Dorrr Street crossings (876 092L) set forth in Section III. GRADE CROSSING UPGRADE of this Subsidy Agreement shall be borne one hundred percent (100%) by CITY. All remaining improvements outlined in Section III. GRADE CROSSING UPGRADE shall be accomplished by NS.

The actual costs for the "improvements" outlined in Section III shall be borne by the ORDC as projected in the preliminary estimates below.

<u>Highway ID</u>	<u>AAR #</u>	<u>Improvement</u>	<u>Cost</u>
Dorr Street	867 092L	Modernization of flashing lights, roadway gates and traffic signal preemption.	\$250,000
Dorr Street	867 092L	Installation of high performance crossing.	\$ 90,000
Westwood Avenue	509 451P	Deactivation and removal of warning devices	\$ 10,000
Westwood Avenue	509 451P	Removal of pavement and other non-track material.	\$ 37,000
Westwood Avenue	509 451P	Installation of fencing and gate	\$ 15,000

The estimate for the modernization of Dorr Street includes \$245,000 in NS costs and \$5,000 in City costs. The City shall initially invoice NS for their portion of the traffic signal preemption costs. NS shall reimburse City and subsequently invoice ORDC for actual costs expended by City.

The warning devices shall be engineered per American Railway Engineering and Maintenance-of-Way Association (AREMA) standards.

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 \$425,000.00.

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 NS is authorized to purchase or furnish the items included under this Subsidy Agreement, ORDC may serve formal notice of cancellation upon NS and CITY and this Subsidy Agreement shall become null and void. ORDC 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 Sections II. & III. However, ORDC shall be legally bound to reimburse NS for its costs in Section III., as set forth above, not to exceed \$425,000.00 upon proper application by NS, 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 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.

NS may bill ORDC monthly or periodically for its costs when costs exceed \$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 review has been performed and approved by ORDC. The review shall occur within 180 days of submission of NS's final bill. NS agrees to cooperate and assist, as requested, in any such review.

At any time during normal business hours upon three (3) business 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 Sections II. & III. of this Subsidy Agreement, the decision of the ORDC regarding same shall be final. However, NS and CITY may appeal the decision of the ORDC to a court of competent jurisdiction for further review.

No work requiring reimbursement under this Subsidy Agreement shall be commenced by the parties until all of the following have occurred: (1) this Subsidy Agreement shall have been approved by ORDC/PUCO; (2) all financial obligations of ORDC/PUCO, as provided for in this contract, are subject to the provisions of Section 126.07 of the Ohio Revised Code and shall not be valid and enforceable unless funds are appropriated by the Ohio General Assembly and encumbered by ORDC; and (3) NS has been notified by ORDC/PUCO to proceed with construction of the improvements. Work on the improvements shall commence within 30 days of the occurrence of events (1), (2) and (3) described herein. Buying and assembling of materials shall be construed as compliance with the foregoing thirty (30) day provision. Said work shall be pursued diligently by NS until completed. If in the event NS cannot begin within thirty (30) days, NS will be required to notify ORDC immediately, in writing, and provide a date that project activities can commence.

V. NOTIFICATION

All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by facsimile and confirmed by telephone or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

If to PUCO:	Public Utilities Commission of Ohio Railroad Division 180 East Broad Street, 14 th Floor Columbus, Ohio 43215-3793
If to NS:	Norfolk Southern Railway Company Communications and Signal Department 1200 Peachtree Street, N.E., Box 123 Atlanta, Georgia 30309
If to CITY:	City of Toledo One Government Center Suite 2250 Toledo, OH 43604

If to ORDC:

Ohio Rail Development Commission
1980 W. Broad Street, 2nd Floor,
Columbus, OH 43223

NS shall furnish notification to ORDC/PUCO and CITY at least five (5) working days prior to the date work is scheduled to start at the project site of the improvements so arrangements can be made for inspection. NS shall also notify ORDC/PUCO and CITY of any stoppage and resumption of the work activity, and the reasons therefore, and the date the project work on the improvements was completed.

NS shall notify ORDC/PUCO of any changes in the scope of work, cost overruns, materials, etc, which are not in the approved plans and estimates and secure approval of same before the work is performed.

VI. TERMINATION

Said Subsidy Agreement shall terminate at the end of the present biennium, June 30, 2011. If construction severed under this Subsidy Agreement is not completed by that date, it is the expressed intention of the parties to renew this Subsidy Agreement on each successive biennium period until such time as all work contemplated under this Subsidy Agreement has been satisfactorily completed. If it appears to ORDC/PUCO that NS or CITY has failed to perform satisfactorily any requirements of this Subsidy Agreement, or if NS or CITY are in violation of any provision of this Subsidy Agreement, or upon just cause, ORDC/PUCO may terminate the Agreement after providing NS and 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 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 CITY shall incur only those obligations or expenditures which are necessary to enable NS or CITY to achieve compliance as set forth in the Notice. If it is determined that NS or CITY cannot cure its default, NS or CITY shall immediately cease work under this Subsidy Agreement, take all necessary or appropriate steps to limit disbursements and minimize costs, and NS or CITY shall provide a report, as of the date of receipt of the Notice, setting forth the status of the work completed, the cost of the work completed and such other information as ORDC/PUCO shall deem pertinent.

If this Subsidy Agreement is terminated for breach or failure to satisfactorily perform, the breaching party shall reimburse the non-breaching party any of its costs not reimbursed by the ORDC.

It is expressly understood by the parties that none of the rights, duties, and obligations described in this Subsidy Agreement shall be binding on any party until all statutory provisions of the Ohio Revised Code, including but not limited to Section 126.07 and 126.08 have been complied with, and until such time that all necessary funds are made available and forthcoming from the appropriate state agency and such expenditure of funds is approved, if necessary, by the Controlling Board of the State of Ohio pursuant to Section 127.16 of the Ohio Revised Code, or in the event that federal funds are used, until such time that the ORDC gives 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.

VIII. OHIO ETHICS LAW REQUIREMENTS

NS affirms that it is not in violation of Ohio Revised Code §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 CITY have knowingly made a false statement to ORDC/PUCO to obtain this grant of funds, the NS and CITY shall be required to return all funds immediately pursuant to Ohio Revised Code Section 9.66(C) (2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to O.R.C. Section 9.66(C) (1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to O.R.C. Section 2921.13(D)(1), which is punishable by a fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

X. EQUAL EMPLOYMENT OPPORTUNITY

Pursuant to Ohio Revised Code Section 125.111, NS agrees that NS, any subcontractor, and any person acting on behalf of NS 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. NS 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. NS 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

NS 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, 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 CITY and 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. 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 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. UNUSUAL CIRCUMSTANCES AFFECTING PERFORMANCE

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

If NS is unable to complete the project and activate the automatic warning devices within the time period set forth in the Order issued by the PUCO, NS must request an extension of time to complete the project and activate the devices. All such requests must be submitted to the PUCO in writing and must include a statement setting forth the reasons prompting the request and the time within which the project will be completed. Extensions for up to 30 days may be granted by the PUCO's Attorney Examiner. Any request for an extension in excess of 30 days will be considered and decided by the PUCO's Commissioners. No request for an extension of time to complete a project will be considered unless it is received prior to the completion date previously established by the PUCO and unless the reasons for the request are clearly set forth therein.

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

NS and CITY agree to comply with all applicable federal, state, and local laws in the conduct of the work hereunder. 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 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 CITY may file whatever action or take whatever other steps they believe may be necessary to resolve the dispute.

XIII. NO WAIVER

No delay or omission to exercise any right or option accruing to Grantor upon any breach by NS or 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.

XIX. CONSTRUCTION

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

XX. 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.

XXI. 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.

XXII. ENTIRE 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, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.

XXIII. 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.

XXIV. 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 Robert E. Haffner

Title Vice President, Imp. ops

Date 6/24/2010

CITY OF TOLEDO

By _____

Print Name _____

Title _____

Date _____

PUBLIC UTILITIES COMMISSION
OF OHIO

By _____

Print Name _____

Title _____

Date _____

OHIO RAIL DEVELOPMENT COMMISSION

By _____

Print Name _____

Title _____

Date _____

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

Assistant Attorney General Alan H. Klodell

Date _____

Airline yard agreement.doc (6/22/2010)

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 _____

PUBLIC UTILITIES COMMISSION
OF OHIO

By _____

Print Name _____

Title _____

Date _____

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

Assistant Attorney General Alan H. Klodell

Date _____

Airline yard agreement.doc (6/22/2010)

CITY OF TOLEDO

By  _____

Print Name Michael P. Bell

Title Mayor

Date July 27, 2010

OHIO RAIL DEVELOPMENT COMMISSION

By _____

Print Name _____

Title _____

Date _____

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

NORFOLK SOUTHERN RAILWAY COMPANY

By _____

Print Name _____

Title _____

Date _____

CITY OF TOLEDO

By _____

Print Name _____

Title _____

Date _____

PUBLIC UTILITIES COMMISSION
OF OHIO

By [Signature]

Print Name ROBERT E. MARVIN

Title DIRECTOR

Date 6/23/10

OHIO RAIL DEVELOPMENT COMMISSION

By _____

Print Name _____

Title _____

Date _____

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

Assistant Attorney General Alan H. Klodell

Date _____

Airline yard agreement.doc (6/22/2010)

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 _____

**PUBLIC UTILITIES COMMISSION
OF OHIO**

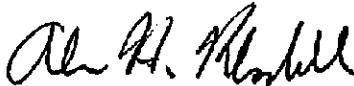
By _____

Print Name _____

Title _____

Date _____

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



Assistant Attorney General Alan H. Klodell

Date 7/2/10

Airline yard agreement.doc (6/22/2010)

CITY OF TOLEDO

By _____

Print Name _____

Title _____

Date _____

OHIO RAIL DEVELOPMENT COMMISSION

By _____

Print Name _____

Title _____

Date _____

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

NORFOLK SOUTHERN RAILWAY COMPANY

By _____

Print Name _____

Title _____

Date _____

PUBLIC UTILITIES COMMISSION
OF OHIO

By _____

Print Name _____

Title _____

Date _____

CITY OF TOLEDO

By _____

Print Name _____

Title _____

Date _____

OHIO RAIL DEVELOPMENT COMMISSION

By  _____

Print Name MATTHEW DETEEN

Title EXECUTIVE DIRECTOR

Date AUGUST 3, 2010

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

Assistant Attorney General Alan H. Klodell

Date _____

Airline yard agreement.doc (6/22/2010)