

## Appendix 10

### Inter-Office Communication ODOT Office of Payroll and Project Accounting Encumbrance Request

# **OHIO DEPARTMENT OF TRANSPORTATION INTER-OFFICE COMMUNICATION**

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To: Matt Downs, Administrator, Office of Payroll & Project Accounting, ATTN: Jeff Shaner  
From: Michael Forte, Grade Crossing Specialist  
Date: November 18, 2010

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Re: Encumbrance Request for Railroad Reimbursement  
Agreement No. 00001-A  
STA-Canal St/WLE  
PID 89720  
State Job Nbr. 440715  
FAN E110(130)

New:   X    
Mod:       

Vendor Name: Wheeling & Lake Erie Railway  
Vendor Address: 135 S Lasalle Dept 1986  
Chicago, IL 60674

OAKS No: 0000089796  
Add Code: 002

Object Code:

**Encumbrance Request Name:** Wheeling & Lake Erie

**Funding Event Name:** Railroad

Amount to be Encumbered: \$190,000.00

Actual Cost Amount: \$ Railroad Estimate

## Appendix 11

### ODOT Purchase Order

STATE OF OHIO  
**PURCHASE ORDER**  
OHIO DEPARTMENT OF TRANSPORTATION

ODOT P.O. NUMBER: 572179  
OAKS P.O. NUMBER: 0000024019  
P.O. DATE: 04/27/2009  
CHANGE ORDER: RR

PID NUMBER		CONTRACT/BID/OIH		CONTROL BOARD NBR.		DOC. AMOUNT	
86543		DOTC5590-1				\$ 190,000.00	
PROJECT NUMBER	SIB LOAN NUMBER	AGREEMENT NUMBER	COUNTY	ROUTE	SECTION		
			UNI	WST	LAKE		

**VENDOR INFORMATION:**

NAME: CSX TRANSPORTATION INC  
ADDRESS: PO BOX 116651

OAKS VENDOR NUMBER: 0000091362  
ADDRESS CODE: 005

CITY, STATE: ATLANTA, GA  
ZIP CODE: 30368-6651

**DESCRIPTION:**

INSTALL RAILROAD WARNING DEVICES AT WESTLAKE-LEE ROAD

LINE NUMBER	FUND	FISCAL YEAR	SAC	SPRC	RCAT	ACTIVITY	ACCOUNT CODE
01	7002	2009	4FP7	0006	NOCC	0071	573067
ELIGIBILITY		FAN		STATE JOB NBR		LINE AMOUNT	
E		DOT1 E090 000 695		466757		\$ 190,000.00	

RECEIVED  
ORDC  
2009 APR 31 AM 11:02  
*my*

## Appendix 12

### ODOT GASB34 – Asset Management Form

## Asset Management Information

PID #: 81168 District: 4 Cty/Rt/Sec: MAH-1st CSX

	C1	C2	C3	C4	C5	C6	C7
		Capital	Maintenance		Addition	Replacement	
	%	%	%	Total	%	%	Total
R1 Bridge	_____	_____	_____	0	_____	_____	0
R2 Pavement	_____	_____	_____	0	_____	_____	0
R3 Other	<u>100</u>	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX
<b>Total</b>	<u>100</u>	<b>"Other" Description:</b> _____					

	Priority	General	Total
	%	%	%
If Pavement	_____	_____	0

Date: 09/08/10 Prepared By: M. Forte'

Notes:

**Form Explanation:**

In column C1, indicate the % breakdown of the project between Bridge, Paving and Other

The %'s in column C1 for Bridge, Paving and Other must total 100%

In columns C2 and C3 indicate the % breakdown of the % in C1

Column C2 plus column C3 for row R1 must total 100%

Column C2 plus column C3 for row R2 must total 100%

Capital and maintenance % are not applicable for row R3 "Other"

Fill in %'s in columns C5 and C6 ONLY if there is a capital % in column C2

Column C5 plus column C6 for row R1 must total 100%

Column C5 plus column C6 for row R2 must total 100%

Use only whole numbers

Revised 11/24/04

## Appendix 13

### Sample Railroad Master Agreement

# MASTER AGREEMENT

Agreement No. 00019-A

## AGREEMENT

THIS AGREEMENT, made this 28<sup>th</sup> day of MAY 2010 between the State of Ohio, Acting by and through the Public Utilities Commission of Ohio, and the Ohio Rail Development Commission, hereinafter referred to as the STATE,\* and the Youngstown & Austintown Railroad, hereinafter referred to as the RAILROAD.

WITNESSETH:

WHEREAS, Section 4907.471 of the Ohio Revised Code requires the STATE to survey all public highway-railroad grade crossings in the State of Ohio to determine the probability of crashes at each grade crossing, and to systematically provide for the upgrade of the existing warning devices (PROGRAM).

WHEREAS, the Federal Transportation Equity Act of the 21st Century and/or the State Grade Crossing Protection, and subsequent amendments, provide funds for costs of grade crossing projects such as is contemplated herein;

WHEREAS, the PROGRAM is to be financed from the Federal-aid funds, and/or State funds made available under Section 4907.471 of the Ohio Revised Code;

WHEREAS, the RAILROAD agrees to cooperate with the STATE in the implementation of the PROGRAM in furtherance of the public safety;

WHEREAS the STATE and RAILROAD will execute such other agreements to supplement the Master Agreement for the PROGRAM, as may be deemed necessary by the STATE, to specify details for the upgrade of the existing warning devices at each designated grade crossing, said upgrade hereinafter referred to as the IMPROVEMENT.

WHEREAS, it is desired by the parties hereto to implement the PROGRAM and accomplish the IMPROVEMENTS at said highway-railroad grade crossings and to determine and agree upon the manner of performing all such work necessary and incident thereto, the respective responsibilities of said parties, and the proportion of the costs and expenses to be paid by each of the parties and the mode and time of payment therefore.

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\* References to "STATE" contained throughout this agreement shall, where applicable, also refer to the Ohio Rail Development Commission which serves as the Commission's designee to assist the Commission in implementing the Federally Funded Grade Crossing Safety Programs.

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

### ***SECTION I.***

The work and the construction to be performed under this agreement is for the purpose of implementing the PROGRAM, including the preparation of plans, specifications and estimates and the purchase of materials for the IMPROVEMENTS in accordance with plans and specifications meeting the standards approved by the Association of American Railroads, complete in operating condition, with track bonding and other facilities necessary for proper operation of the IMPROVEMENTS.

### ***SECTION II***

The RAILROAD shall be responsible for general engineering supervision of the IMPROVEMENTS under the terms of this agreement, and shall prepare or cause to be prepared and submit to the STATE, for STATE and/or Federal approval, complete plans, specifications and estimates for said IMPROVEMENTS to be installed and operated at designated grade crossings, prepared in sufficient detail to define and describe the class, kind, quality and quantity of materials, parts and mechanisms required in connection therewith, so that there may be effective competition so far as possible, in the purchase of materials or parts to be installed. The RAILROAD shall furnish such engineering services as may be necessary to install the IMPROVEMENTS, subject to inspection and approval by the STATE.

### ***SECTION III***

After the STATE and/or the Federal Highway Administration have approved the plans, specifications and estimates prepared as herein set forth, and after the funds necessary to purchase and install the IMPROVEMENTS have been properly allotted and encumbered therefore, and the RAILROAD has been notified by the STATE, the RAILROAD shall furnish, either by purchase or from its warehouse stock, all materials for and install or cause to be installed the IMPROVEMENTS at said grade crossings, complete with electrical service ready for operation, subject to the inspection and approval of the STATE. The RAILROAD shall further furnish flagmen or take such other measures as are necessary to promote safe and orderly flow of highway traffic during installation of said IMPROVEMENTS as may be requested by the STATE.

Notwithstanding the above, should the parties so agree in a Letter Agreement with regard to a particular crossing, the STATE may furnish all materials for, and/or install or cause to be installed, the IMPROVEMENTS, to the extent provided for in said Letter Agreement.

#### ***SECTION IV***

The RAILROAD shall commence the preparation of plans within sixty (60) days after the RAILROAD is notified by the STATE of approval of the project. Plans shall thereafter be submitted within the time frame directed by the STATE, and the installation of the IMPROVEMENTS shall be completed within any time frame specified by the state. The RAILROAD shall be responsible for payment in a timely manner of all bills for supplies, materials, equipment, labor and other costs incurred to complete the IMPROVEMENTS, and shall not permit liens or any other type of encumbrance to be placed upon all or any portion of the IMPROVEMENTS installed pursuant to this AGREEMENT. The STATE, through its authorized agents, shall have the right to inspect the crossing site prior to performance of any PROGRAM work and at any stage during the installation of IMPROVEMENTS at grade crossing(s). The RAILROAD shall notify the STATE reasonably in advance of the date upon which construction work will be started, so arrangements can be made for inspection.

#### ***SECTION V.***

The Federal Highway Administration Policy Manual, FHPM: 6-6-2-1 identifies these IMPROVEMENTS in paragraph 4, a, (3).

The entire actual cost of each IMPROVEMENT, subject to all necessary approvals, payments and conditions herein, shall be paid by the STATE from PROGRAM funds. The RAILROAD shall initially bear all cost and expense of the IMPROVEMENT subject to reimbursement by the STATE as provided within the AGREEMENT.

The RAILROAD may bill the STATE monthly for its costs for each IMPROVEMENT when such costs exceed \$1,000. Progressive invoices may be submitted for work done during the previous month or period showing portion of estimated costs completed. The STATE shall pay all properly submitted bills within sixty (60) days after receipt thereof. A final bill detailing the actual cost of all work performed and showing all details regarding materials and other costs shall be submitted to the STATE within ninety (90) days after completion of said work. The STATE, at its discretion, may hold a retainer, in an amount not to exceed eight percent (8%) of the cost of such IMPROVEMENTS, until final payment. Upon completion of installation of the IMPROVEMENTS and submission of a final billing by the RAILROAD, the STATE shall conduct a final audit of all program activity. Final payment for all amounts due the RAILROAD shall be paid by the STATE within sixty (60) days after final audit has been made and approved.

#### ***SECTION VI.***

It is understood that all plans, specifications, estimates, construction, acceptance of work and procedure in general are subject at all times to all Federal laws, rules, regulations, orders and approvals applying to a Federal project, and the STATE shall reimburse the RAILROAD in accordance with FHPM 1-4-3 OF THE Federal Highway

Administration or subsequent amendments thereto such amounts as are proper and eligible for payment. The RAILROAD shall render its billing in accordance with said rules and regulations as they have been issued and have been or may be supplemented or revised, and the RAILROAD further agrees to provide itemized records of and substantiating dates for such costs, and evidence of compliance with such rules, regulations, etc. as may be required by the STATE.

#### ***SECTION VII.***

After completion of the IMPROVEMENTS, the RAILROAD shall operate, maintain and renew, at its sole expense, all IMPROVEMENTS and other of its facilities constructed or changed under the terms of this AGREEMENT in good operating order. Nothing stated herein shall deny the RAILROAD the right to seek reimbursement of the costs for the maintenance and renewal of the IMPROVEMENTS and other of its facilities constructed or changed under the terms of this agreement, if such reimbursement is then provided for by Federal Highway administration Regulations and/or the Ohio revised Code.

#### ***SECTION VIII.***

The RAILROAD covenants and agrees to indemnify and hold the STATE, their agents and employees harmless against any loss, claim, cause of action, damage, liability (including, with limitation, strict or absolute liability in tort or by statute imposed), charge cost or expense (including, without limitation, legal fees to the extent permitted by law) arising during and from the installation of the IMPROVEMENTS and caused by the RAILROAD's negligent, intentional, willful or wanton actions or inactions, including such actions or the failures to act of any subcontractors or other employees hired by the RAILROAD, under this AGREEMENT.

In the event that any action involving any IMPROVEMENTS is brought by or against either party hereto, such party shall promptly notify the other party of such action.

Each party hereby waives, but only as against the other, any and all damages or right to claim damages to any of its property growing out of or in any way connected with the PROGRAM.

#### ***SECTION IX.***

If at any time the need for the IMPROVEMENTS should cease to exist at a grade crossing, the RAILROAD may, with the approval of the STATE, remove all such IMPROVEMENTS, and if in good working condition, install such IMPROVEMENTS at any other grade crossing in Ohio as may be agreed upon by the parties hereto.

**SECTION X.**

In the event that delays or difficulties arise in securing necessary approvals which, in the opinion of the STATE, render it impracticable to utilize current funds for the development of the PROGRAM and construction of the IMPROVEMENTS, then at any time before the RAILROAD is authorized to purchase or furnish the items included under this AGREEMENT, the STATE may serve formal notice of cancellation upon the RAILROAD, and this AGREEMENT shall become null and void. In such event, the RAILROAD shall be reimbursed for all authorized costs properly incurred up to the point of cancellation.

This AGREEMENT shall be binding upon the successors and assigns of the RAILROAD. It is understood by the hereto that this AGREEMENT, and any subsequent amendments thereto, shall apply to crossings owned by the RAILROAD that may, in the future, become subject to the PROGRAM and therefore qualify for IMPROVEMENTS as described herein.

IN WITNESS WHEREOF, the parties hereunto have caused this agreement to be executed in duplicate as of the date and year first above written.

THE STATE OF OHIO by the  
Public Utilities Commission of Ohio

Youngstown & Austintown Railroad

By \_\_\_\_\_

By  \_\_\_\_\_

Robert Marvin, Director of Transportation

Print LEONARD D. GIER

The Ohio Rail Development Commission

By \_\_\_\_\_

Print \_\_\_\_\_

**SECTION X.**

In the event that delays or difficulties arise in securing necessary approvals which, in the opinion of the STATE, render it impracticable to utilize current funds for the development of the PROGRAM and construction of the IMPROVEMENTS, then at any time before the RAILROAD is authorized to purchase or furnish the items included under this AGREEMENT, the STATE may serve formal notice of cancellation upon the RAILROAD, and this AGREEMENT shall become null and void. In such event, the RAILROAD shall be reimbursed for all authorized costs properly incurred up to the point of cancellation.

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IN WITNESS WHEREOF, the parties hereunto have caused this agreement to be executed in duplicate as of the date and year first above written.

THE STATE OF OHIO by the  
Public Utilities Commission of Ohio

Youngstown & Austintown Railroad

By \_\_\_\_\_

By \_\_\_\_\_

Robert Marvin, Director of Transportation

Print \_\_\_\_\_

The Ohio Rail Development Commission

By MATTHEW P. DIETZ

Print Matthew P. Dietz

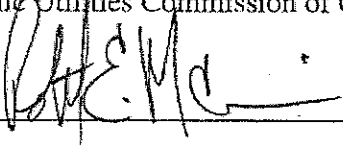
**SECTION X.**

In the event that delays or difficulties arise in securing necessary approvals which, in the opinion of the STATE, render it impracticable to utilize current funds for the development of the PROGRAM and construction of the IMPROVEMENTS, then at any time before the RAILROAD is authorized to purchase or furnish the items included under this AGREEMENT, the STATE may serve formal notice of cancellation upon the RAILROAD, and this AGREEMENT shall become null and void. In such event, the RAILROAD shall be reimbursed for all authorized costs properly incurred up to the point of cancellation.

This AGREEMENT shall be binding upon the successors and assigns of the RAILROAD. It is understood by the hereto that this AGREEMENT, and any subsequent amendments thereto, shall apply to crossings owned by the RAILROAD that may, in the future, become subject to the PROGRAM and therefore qualify for IMPROVEMENTS as described herein.

IN WITNESS WHEREOF, the parties hereunto have caused this agreement to be executed in duplicate as of the date and year first above written.

THE STATE OF OHIO by the  
Public Utilities Commission of Ohio

By   
Robert Marvin, Director of Transportation

Youngstown & Austintown Railroad

By \_\_\_\_\_  
Print \_\_\_\_\_

The Ohio Rail Development Commission

By \_\_\_\_\_  
Print \_\_\_\_\_

## Appendix 14

### Sample Railroad Letter Agreement



# Ohio Rail Development Commission

1980 West Broad Street, Second Floor, Columbus, Ohio 43223  
614-644-0306 (telephone) • 614-728-4520 (fax) • [www.dot.state.oh.us/ohiorail](http://www.dot.state.oh.us/ohiorail)

January 11, 2011

Mr. Rick Ray  
Norfolk Southern Railway Company  
Administrator Highway Grade Crossing Improvements  
1200 Peachtree Street  
Atlanta, GA 30309-3597

Subject: Grade Crossing Warning Device Improvement  
Ottawa County-Benton-Carroll Road/CR-23  
US DOT # 473-769 H

Dear Mr. Ray:

The Ohio Rail Development Commission (ORDC) has identified the above-referenced grade crossing for the installation of flashing light signals and roadway gates.

This project shall be completed in compliance with Agreement No. 2851 dated September 15, 1975, entered into by the State of Ohio and Norfolk Southern, to cover the general terms and conditions to be satisfied in the implementation of the State of Ohio Grade Crossing Warning Program.

Please indicate your acceptance of the terms and conditions of this Letter of Agreement by signing and returning one (1) copy to me at the address listed above and retain a copy for your files.

Sincerely,

Matthew R. Dietrich  
Executive Director

Norfolk Southern:

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

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

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

## Appendix 15

### Sample Subsidy Agreement

IN THE MATTER OF THE REQUEST FOR  
A CONSOLIDATION PROJECT FOR THE  
INSTALLATION OF WARNING DEVICES  
AND GRADE CROSSING CLOSURE TO  
VEHICLES AND PEDESTRIANS IN  
FREEDOM TOWNSHIP, WOOD COUNTY,  
OHIO

AGREEMENT NO. \_\_\_\_\_

## SUBSIDY AGREEMENT

THIS SUBSIDY AGREEMENT is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2010 by and among the Ohio Rail Development Commission ("ORDC"), Public Utilities Commission of Ohio ("PUCO"), CSX Transportation, Inc. ("CSXT"), and the Board of Freedom Township Trustees ("TOWNSHIP"), (each a "Party" or collectively "the Parties").

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;

WHEREAS, ORDC has statutory authority to develop, promote, and support safe, adequate, and efficient rail service throughout the State of Ohio;

WHEREAS, PUCO has statutory authority to regulate and promote the welfare and safety of railroad employees and the traveling public pursuant to Ohio Revised Code ("ORC") Section 4905.04;

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

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

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;

WHEREAS, the TOWNSHIP hereby declares it to be in the public interest that the consent of the TOWNSHIP be and such consent is hereby given to ORDC/PUCO 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 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 TOWNSHIP. 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 TOWNSHIP agrees to permanently close, to all vehicular and pedestrian traffic of any kind, CSXT's grade crossing located on the following street:

<u>Highway ID</u>	<u>AAR #</u>
Stein Road, TR 260	228 819M

The grade crossing closure shall take place within sixty (60) days of the completion due date ordered by PUCO for the improvements outlined in Section III. GRADE CROSSING UPGRADES.

The TOWNSHIP 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. These costs shall be reimbursed by CSXT as outlined in Section IV. COST ALLOCATION; BILLING.

The TOWNSHIP shall remove the advance warning signs and pavement markings from the crossing to be closed.

CSXT shall remove all pavements from the crossing area within railroad right-of-way and remove all existing warning devices from the crossing to be closed.

Following receipt of public input, the TOWNSHIP has enacted a Resolution 04-10, dated 10/25/2010, that expresses their commitment to this action, the form and substance of which are acceptable to ORDC and PUCO.

III. GRADE CROSSING UPGRADES

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

<u>Highway ID</u>	<u>AAR #</u>	<u>Improvements</u>
Dairy View Road, TR60	228 818F	Installation of flashing lights and roadway gates.
Hill Road, TR259	228 820G	Installation of flashing lights and roadway gates.
Gibsonburg Road, TR13	228 821N	Installation of flashing lights and roadway gates.

The TOWNSHIP 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.

The TOWNSHIP will provide CSXT with plans for the proposed widening of the roadway at the Dairy View Road, TR60, grade crossing within 14 days of execution of this Agreement. CSXT will design the necessary roadway improvements at Dairy View Road, TR60, to accommodate the proposed widening of the roadway.

In addition, CSXT and the ORDC will provide the following incentives to the Township:

1. The incentive funds shall be in the total amount of Fifteen Thousand and NO/cents U.S. Dollars (\$15,000.00) (the "Incentive Funds"), being comprised of payment in the amount of Seven Thousand Five Hundred and no/cents U.S. Dollars (\$7,500.00) from the ORDC and payment in the amount of Seven Thousand Five Hundred and no/cents U.S. Dollars (\$7,500.00) from CSXT. The Incentive Funds must be used for a highway safety improvement project preapproved by Federal Highway Administration ("FHWA"); and
2. CSXT will reimburse the TOWNSHIP for the work described below, and such reimbursement shall not exceed Five Thousand and no/cents U.S. Dollars (\$5,000.00). The work shall be comprised of the installation of barricades on public property at the CSXT right-of-way and removal of roadway surface approaching the closed crossing. The work may be accomplished by TOWNSHIP forces or contracted out by the TOWNSHIP.

The Incentive Funds in the total amount of Fifteen Thousand and NO/100 U.S. Dollars (\$15,000.00) shall be used by the TOWNSHIP to perform preapproved highway safety improvements on existing TOWNSHIP property. The TOWNSHIP shall provide written certification to the ORDC and CSXT that the improvements have been completed within one (1) year of the incentive payments being

made. If the safety improvements are not completed within one (1) year of the incentive payments, the ORDC and CSXT will reclaim their Incentive Fund payments from the TOWNSHIP.

#### IV. COST ALLOCATION; BILLING

The cost allocations and billing concerning the TOWNSHIP AND CSXT are as follows:

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

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

The cost allocations and billing concerning the ORDC AND CSXT are as follows:

The actual costs for the Improvements outlined in Section III for installation of flashing lights and roadway gates shall be borne eighty percent (80%) by the ORDC and twenty percent (20%) by CSXT. The total actual costs for the Improvements borne by ORDC shall not be greater than One Million and No/100 Dollars (\$1,000,000.00).

As set forth in Section III of this Subsidy Agreement, the Incentive Funds in the total amount of Fifteen Thousand and NO/100 U.S. Dollars (\$15,000.00) shall be borne fifty percent (50%) by ORDC and fifty percent (50%) by CSXT.

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 CSXT is authorized to purchase or furnish the items included under this Subsidy Agreement, ORDC may serve formal notice of cancellation upon CSXT and the TOWNSHIP, and this Subsidy Agreement shall become null and void. ORDC/PUCO shall reimburse CSXT and the TOWNSHIP for all costs and expenses reasonably incurred on account of the improvements prior to such cancellation, including costs associated with winding down the project.

CSXT 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 CSXT for the costs of the Improvements outlined in Section III, not to exceed One Million and No/100 U.S. Dollars (\$1,000,000.00) upon proper invoices submitted by

CSXT, consistent with the terms of this Subsidy Agreement and in accordance with all applicable Federal regulations.

CSXT may bill ORDC monthly or periodically for its costs when costs exceed One Thousand and No/100 U.S. Dollars (\$1,000.00). CSXT 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 CSXT 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 CSXT's final bill. CSXT agrees to cooperate and assist, as requested, in any such audit.

At any time during normal business hours upon three (3) days written notice and as often as ORDC/PUCO may deem necessary and in such a manner as not to interfere with the normal business operations, CSXT 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, CSXT and/or the TOWNSHIP may appeal the decision of the ORDC to a court of competent jurisdiction for further review.

All plans, specifications, estimates of costs, acceptance of work, and procedures in general, to facilitate the construction of the safety improvements described above, shall conform in all respects to applicable Federal laws, rules, regulations, orders, and approvals applicable to Federal-Aid projects. ORDC shall reimburse CSXT 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. CSXT shall render its billings to ORDC in accordance with said rules and regulations, and CSXT shall also provide and furnish such itemized records of and substantiating data for such costs as may be required.

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 Subsidy Agreement 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) CSXT 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 CSXT 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 PUCO:                   Public Utilities Commission of Ohio  
Railroad Division  
180 East Broad Street, 14<sup>th</sup> Floor  
Columbus, Ohio 43215-3793

If to CSXT:                   CSX Transportation  
500 Water Street – J301  
Jacksonville, Florida 32202

If to TOWNSHIP :           Freedom Township Trustees  
PO Box 796  
198 Water Street  
Pemberville, OH 43450

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

CSXT shall furnish notification to ORDC/PUCO and the TOWNSHIP 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. CSXT shall also notify ORDC/PUCO and the TOWNSHIP of any stoppage and resumption of the work activity, and the reasons therefore, and the date the project work on the improvements was completed.

CSXT shall furnish written or FAX notification to the TOWNSHIP at least fourteen (14) working days prior to starting any work requiring the establishment of a detour for highway traffic.

CSXT 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

This 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 CSXT or the TOWNSHIP has failed to perform satisfactorily any requirements of this Subsidy Agreement, or if CSXT or the TOWNSHIP is in violation of any provision of this Subsidy Agreement, or upon just cause, ORDC/PUCO may terminate the Subsidy Agreement after providing CSXT or the TOWNSHIP 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 CSXT or the TOWNSHIP with a thirty (30) day period to cure any and all defaults under this Subsidy Agreement.

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

## VII. REPRESENTATIONS AND WARRANTIES

### A. CSXT: CSXT represents and warrants the following:

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

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

Further, CSXT represents that its employees engaged in the administration or performance of this Subsidy Agreement are knowledgeable of and understand the Ohio Ethics and Conflicts of Interest laws and Executive Order No. 2007-01S. CSXT further represents, warrants, and certifies that neither CSXT nor any of its employees will do any act that is inconsistent with such laws and Executive Order. The Governor's Executive Orders may be found by accessing the following website: <http://governor.ohio.gov/GovernorsOffice/ExecutiveOrdersDirectives/tabid/105/Default.aspx>.

#### IX. FALSIFICATION OF INFORMATION

CSXT for itself, and the TOWNSHIP for itself, affirmatively covenant that neither has made any false statements to ORDC/PUCO in the process of obtaining this grant of funds. If CSXT or the TOWNSHIP have knowingly made a false statement to ORDC/PUCO to obtain this grant of funds, the CSXT and the TOWNSHIP 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, CSXT agrees that CSXT, any subcontractor, and any person acting on behalf of CSXT or subcontractor, shall not discriminate, by reason of race, color, religion, sex, age, sexual orientation, gender identity, disability, national origin, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the work

under this Subsidy Agreement. CSXT 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. CSXT 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

CSXT 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, CSXT 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

CSXT covenants and agrees to indemnify and hold the TOWNSHIP, 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 CSXT'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 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 CSXT or the TOWNSHIP cannot meet any or all of the obligations placed upon it by the terms of this Subsidy Agreement, (1) CSXT or the TOWNSHIP shall immediately notify ORDC/PUCO in writing, and (2) ORDC/PUCO may, at its sole discretion, make reasonable efforts to assist CSXT or the TOWNSHIP 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 CSXT 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, CSXT 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.

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

CSXT and the TOWNSHIP agree to comply with all applicable federal, state, and local laws in the conduct of the work hereunder. CSXT 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.

**XVIII. DISPUTE RESOLUTION**

In the event CSXT or the TOWNSHIP 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, CSXT or the TOWNSHIP may file whatever action or take whatever other steps they believe may be necessary to resolve the dispute, per Paragraph IV. herein.

**XIX. NO WAIVER**

No delay or omission to exercise any right or option accruing to Grantor upon any breach by CSXT or the TOWNSHIP 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.

**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.

**XXII. BUY AMERICA**

CSX 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.

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

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

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

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

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

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

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

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

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

### XXIII. FORUM AND VENUE

All actions brought against the ORDC and/or the PUCO regarding this Subsidy Agreement shall be foruned 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.

### XXV. 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.

CSX TRANSPORTATION, INC.

By \_\_\_\_\_

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

Title \_\_\_\_\_

Date \_\_\_\_\_

FREEDOM TOWNSHIP

By \_\_\_\_\_

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

Title \_\_\_\_\_

Date \_\_\_\_\_

PUBLIC UTILITIES COMMISSION  
OF OHIO

By \_\_\_\_\_

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

Title \_\_\_\_\_

Date \_\_\_\_\_

OHIO RAIL DEVELOPMENT COMMISSION

By \_\_\_\_\_

Print Name Matthew R. Dietrich

Title Executive Director \_\_\_\_\_

Date \_\_\_\_\_

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

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

Date \_\_\_\_\_

Agreement WOO Freedom Twp 12-23-10.doc

## Appendix 16

### ORDC Interoffice Communication Requesting PUCO Order

OHIO RAIL DEVELOPMENT COMMISSION  
INTER-OFFICE COMMUNICATION

TO: George Martin, Planner, Railroad Division, PUCO  
FROM: Susan Kirkland, Supervisor, Rail-Highway Safety Section  
BY: Tod Darfus, Project Manager  
SUBJECT: Grade Crossing Warning Projects  
DATE: July 2, 2010

---

You may authorize the Ann Arbor Railroad to proceed with the non-field work for the project listed below. This construction authorization is made with the stipulation and understanding that any field work needs prior approval before 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. The construction portion and preliminary engineering will be financed with federal funds.

Please initiate a one (1) year order with the plan and estimate due in ninety (90) days for the following.

Lucas-Laskey Road, (Toledo) AAR # 258 243 T

Thank you for your assistance with this matter.

TD:td

c: File

Appendix 17

PUCO Order

BEFORE

RECEIVED  
ORDC

THE PUBLIC UTILITIES COMMISSION OF OHIO

2010 AUG -2 PM 3:07

In the Matter of the Authorization of the )  
Youngstown & Austintown Railroad and )  
the Wheeling & Lake Erie Railway to Install ) Case No. 10-945-RR-FED  
Active Grade Crossing Warning Devices in )  
Mahoning and Stark Counties. )

ENTRY

The Commission finds:

- (1) On July 8, 2010, the Commission's railroad staff filed a memorandum stating that the Ohio Rail Development Commission (ORDC) had authorized funding for the Youngstown & Austintown Railroad (YARR) to install mast-mounted flashing lights and cantilevered flashing lights at the Meridian Road grade crossing (262-368A), in the city of Youngstown, Mahoning County; and the Wheeling & Lake Eire Railway (WE) to install mast-mounted flashing lights and roadway gates at the Belden Avenue Southeast/Township Road 294 grade crossing (474-543A) in the city of Canton, Stark County.
- (2) Staff recommended authorization for preliminary engineering within 90 days and a construction deadline of one year for the projects.
- (3) Upon review, YARR and WE shall submit to the Commission and ORDC by October 27, 2010, site plans and cost estimates for the projects. Within seven days thereafter, YARR and WE shall each file a notice in this docket advising that the site plans and cost estimates have been submitted to the Commission and ORDC. Following submission and approval of the site plans and cost estimates by ORDC, and, unless otherwise directed, YARR and WE are hereby authorized to acquire project materials and to commence construction as detailed in the letter of construction authorization. YARR and WE shall notify staff at least five working days before the date work is scheduled to begin at the projects so that arrangements can be made for inspections. In addition, YARR and WE shall timely notify staff of any changes in the scope of work, cost overruns, materials, etc., which are not in

JUN 10 2011  
the approved plans and estimates and secure approval before the work is performed.

- (4) Within 120 days of the issuance of this entry, YARR and WE shall each file in the docket notice that it has initiated discussions with American Electric Power (AEP) to ensure that electric service will be available to enable the grade crossing improvements to be constructed and placed in service within the deadline specified by the Commission. Such filing shall identify the steps YARR and WE have taken with AEP, government entities, and the local highway authority to have electric service available during the construction and cut-in phases of the projects. YARR and WE shall serve a copy of the notice upon AEP. To ensure that the deadline is met, YARR and WE shall timely inform the Commission, in writing, of any issues regarding the availability of electric service.
- (5) The Commission will issue no further construction authorization. Further, the grade crossing improvements should be completed by July 29, 2011.
- (6) In order to expedite the activation of the warning devices, the Commission no longer requires railroad companies to delay such activation pending final inspections by staff. However, YARR and WE should notify staff and ORDC 30 days before the projected date of completion. At the time the Commission or ORDC staff makes its final inspection of the devices and if it finds that the identified installations are completed and the warning devices have been put in service, staff should file a memorandum in this docket indicating that the installations are completed and the warning devices have been put in service.
- (7) With the intention of promoting increased public safety during the pendency of the project, the Commission urges the appropriate local government agency to make an immediate assessment of interim physical improvements, which would enhance driver awareness at the crossings. The Commission may provide assistance in funding improvements such as rumble strips, illumination, signs, or other safety enhancements for the projects. Applications for such funding should be made to the Commission's Transportation

Department, Rail Division, which shall review all proposals. In the event the department finds the improvements appropriate, the department director is hereby authorized to execute a contract with the local government agency, and obligate up to \$5,000 from the State Grade Crossing Safety Fund for such improvements at the project location. However, the local government agency should not initiate any improvements until a contract has been executed.

It is, therefore,

ORDERED, That YARR and WE submit to the Commission and ORDC site plans and cost estimates for the projects by October 27, 2010. It is, further,

ORDERED, That, by November 3, 2010, YARR and WE each file a notice in this docket advising that it has submitted site plans and cost estimates to the Commission and ORDC. It is, further,

ORDERED, That, by November 26, 2010, YARR and WE each file a notice that it has initiated with AEP the process to ensure that electric service will be available at the involved grade crossings as set forth in finding 4. It is, further,

ORDERED, That YARR and WE follow the detailed instructions as outlined in the ORDC letter of construction authorization and proceed with and complete the projects by July 29, 2011. It is, further,

ORDERED, That YARR and WE notify staff at least five working days before the date work is scheduled to begin at the project sites so that arrangements can be made for inspections. It is, further,

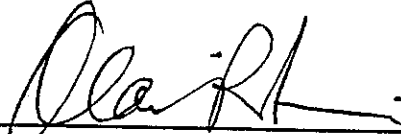
ORDERED, That YARR and WE timely notify staff of any changes in the scope of work, cost overruns, materials, etc. which are not in the approved plans and estimate, and shall secure approval before the work is performed. It is, further,

ORDERED, That YARR and WE notify the Commission and ORDC 30 days before the projected date of completion. It is, further,

ORDERED, That, at the time staff or ORDC makes its final inspection and if it finds that the installations at the grade crossings are completed and the warning devices have been put in service, staff will file a memorandum in this docket indicating that the installations are completed and the warning devices have been put in service. It is, further,

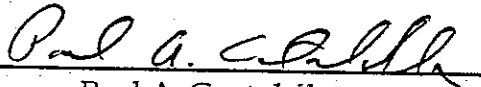
ORDERED, That copies of this entry be served upon YARR, WE, ORDC, city of Canton Engineer, city of Youngstown Engineer, AEP, and any other interested person of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



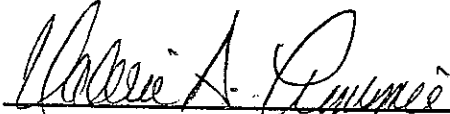
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Alan R. Schriber, Chairman



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Paul A. Centolella



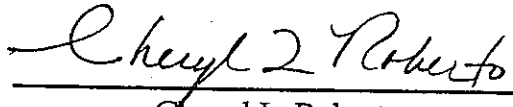
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Valerie A. Lemmie



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Steven D. Lesser



---

Cheryl L. Roberto

SEF/sc

Entered in the Journal

JUL 29 2010



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Renee J. Jenkins  
Secretary

## Appendix 18

### ORDC Inspection Log



## Appendix 19

### AU10 Invoice Approval Form

# Ohio Department of Transportation

## Railroad Bill Summary and Payable Invoice

AU-10  
Rev.02/10

**RAILROAD:** CSX Transportation, Inc.  
**OAKS VENDOR NUMBER:** 91362

8 - Final  
August 12, 2010

**COUNTY-ROUTE SECTION:** UNI-Westlake-Lee Rd  
**AGREEMENT NO.:** 5590 A  
**FAN:** DOT1(695)  
**STATE JOB NBR:** 466757  
**PID:** 86543  
**ODOT P.O. NUMBER:** 572179  
**RAILROAD INVOICE NUMBER:** 7145359

PAYMENT ITEM	Estimated Cost	Total Cost to Date	Previously Transmitted	Transmitted Herewith
1. Preliminary Engineering	\$ -	\$ -	\$ -	\$ -
2. Construction	\$ 190,000.00	\$ 131,008.43	\$ 126,284.68	\$ 4,723.75
<b>3. Totals</b>	<b>\$ 190,000.00</b>	<b>\$ 131,008.43</b>	<b>\$ 126,284.68</b>	<b>\$ 4,723.75</b>
4. Less Railroad Share	0%	-	-	-
<b>5. Net Amount Due Railroad</b>	<b>\$ 190,000.00</b>	<b>\$ 131,008.43</b>	<b>\$ 126,284.68</b>	<b>\$ 4,723.75</b>

*Joseph N. Berhardt*  
Grade Crossing Specialist  
8/12/10  
Date

*Simon G. Kullerud*  
Manager, Safety Section  
8/12/10  
Date

## Appendix 20

### Project Checklist for Safety Projects

## PROJECT CHECKLIST FOR SAFETY PROJECTS

Date	PID/Project Name: _____
	Completed Diagnostic Review Form.
	No diagnostic review performed - Reason:
	Environmental Clearance date.
	Minor ITS Conformity Determination, if preempted traffic signals.
	Ellis Check - request Federal Authorization
	FAPN Federal Aid Project Agreement.
	Agreement or Letter Agreement with the railroad to perform the work.
	Encumbrance estimate.
	GASB Form.
	Railroad PE authorization
	Plan and Estimate with PE approval and stamp.
	PUCO memo/Authorization for the railroad to proceed with construction (if applicable).
	PUCO Order to the railroad for construction.
	Construction Authorization letter.
	Notification from the railroad to ORDC of when work will begin (if hard copy).
	Verbal notification from the railroad to ORDC of when work will begin (date), (name).
	In Service
	Construction Complete
	Inspection Log*
	Partial bill payment/s documentation.
	Final bill payment/documentation.
	Audit findings (if applicable).
	Documentation of ORDC project acceptance.
	Date that project was closed and moved to central filing _____

\*Inspection Log includes dates of construction inspection; documentation of labor, equipment and materials used for force account billing; and documentation of the project final inspection including the date that work was complete.

## Appendix 21

### ORDC Process Flowchart

