

ORDINANCE NO. 20-14

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A SUBSIDY STIPULATION AGREEMENT BETWEEN THE PUBLIC UTILITIES COMMISSION OF OHIO, THE WHEELING AND LAKE ERIE RAILWAY COMPANY AND THE CITY OF MEDINA, RELATIVE TO THE INSTALLATION OF GATES AND FLASHERS AT THE GUILFORD BOULEVARD RAILROAD CROSSING.

WHEREAS: Resolution No. 61-12, passed March 26, 2012 supported an application to the Public Utilities Commission of Ohio (PUCO) for funding assistance for installation of lights and gates at the railroad crossing on Guilford Boulevard; and

WHEREAS: In December, 2013 the PUCO advised the City that the crossing did warrant the installation of lights and gates and that PUCO funds were available for the cost of this installation

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:

SEC. 1: That the Mayor is hereby authorized and directed to execute a Subsidy Stipulation Agreement between the Public Utilities Commission (PUCO), the Wheeling and Lake Erie Railway Company (W&LE) and the City of Medina relative to the installation of gates and flashers at the Guilford Boulevard railroad crossing.

SEC. 2: That a copy of the Subsidy Agreement is marked Exhibit A, attached hereto, and incorporated herein.

SEC. 3: That the funds to cover this Agreement, in the estimated amount of \$70,000.00 are available in Account No. 108-0610-54411.

SEC. 4: That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.

SEC. 5: That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: February 10, 2014

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: February 11, 2014

SIGNED: Dennis Hanwell
Mayor

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of a Request for the :
Installation of Active Warning Devices at : Case No. ____ - ____ -RR-STP
the Wheeling & Lake Erie Railroad Grade :
Crossing, DOT# 002-090H, Guilford :
Boulevard, in Medina, Ohio. :

SUBSIDY STIPULATION

THIS SUBSIDY STIPULATION ("Subsidy Stipulation") is entered into on this
____ day of _____, 20 14 by and among the Public Utilities Commission of
Ohio Railroad Staff ("PUCO"), Wheeling & Lake Erie Railroad ("Railroad"), and the
City of Medina, Medina County, Ohio ("LHA").

WITNESSETH:

WHEREAS, Rule 4901-1-30 of the Ohio Administrative Code provides that any two or
more parties to a proceeding may enter into a written or oral stipulation concerning the
issues presented in such proceeding; and

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

WHEREAS, the PUCO is responsible for evaluating public highway railroad grade
crossings to determine the need for upgrading the warning devices and apportioning the
costs thereof pursuant to ORC§ 4907.471;

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

WHEREAS, the parties hereto propose to facilitate the upgrade identified in this Subsidy
Stipulation in manner approved by the PUCO in accordance with the Federal Aid Policy
Guide and applicable provisions of Title 23 of the United States Code pursuant to the
terms hereof; and

WHEREAS, the parties hereto believe this Subsidy Stipulation to be reasonable and
entitled to careful consideration by the PUCO;

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

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

Article I. PURPOSE

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

Article II. PROJECT

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

<u>Grade Crossing #</u>	<u>Location</u>	<u>Nature of Upgrades</u>
002-090H	Guilford Boulevard City of Medina Medina County	Lights and Gates

B. The Project shall be completed within 12 months from the date of the PUCO order adopting this Subsidy Stipulation. The parties agree to comply with the terms of the Subsidy Stipulation and the PUCO order adopting the Subsidy Stipulation.

Article III. ALLOCATION OF PROJECT COSTS

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

<u>Grade Crossing</u>	<u>Railroad</u>	<u>LHA</u>	<u>PUCO</u>
Guilford Blvd. (002-090H)	10% of 100% plus maintenance	35% of 90%	65% of 90%

B. The Railroad shall be responsible for initially paying all of the actual costs to upgrades of the warning devices identified above. However, the PUCO shall be legally bound to reimburse the Railroad for the above-mentioned amounts upon proper application by the Railroad, consistent with the terms of this Subsidy Stipulation and in accordance with all applicable state regulations.

- C. The LHA shall, within 30 days of the adoption of this Subsidy Stipulation, certify in writing to the PUCO the authority to participate in this Project as described herein. The PUCO shall have no obligation to expend funds hereunder until the LHA have submitted documentation in proper form as described in this section.
- D. The PUCO has agreed to provide funds from the State Grade Crossing Protection Fund, pursuant to ORC§ 4907.472, to cover that portion of the upgrade cost to be borne by the PUCO proposed above. The actual respective dollar amount, which the Railroad and the PUCO shall bear, will be based upon the actual cost noted in the plans and estimates to be approved by the PUCO Staff and incurred by the Railroad for this Project.
- E. All plans, specifications, estimate of cost, acceptance of work, and procedures in general, to facilitate the construction of the safety upgrade described above, shall conform in all respects to federal laws, rules, regulations, orders, and approvals applicable to state aid projects. The Railroad shall render billings to the PUCO Staff in accordance with said rules and regulations, and shall provide and furnish such itemized records of and substantiating data for such cost that may be required.
- F. The LHA shall furnish advance warning signs and pavement markings as specified in the Manual on Uniform Traffic Control Devices and shall assume all costs to maintain such signage and markings in the future at each of the subject grade crossings. The LHA shall arrange for the relocation, rearrangement or alteration of all utilities of any nature, which are located on public right of way, and which will affect by or interfere with the construction of the said Project. Said relocation, rearrangement or alteration will be done at such time as requested by the PUCO Staff and will be performed solely at the expense of the utility and at no cost to this Project or the Railroad.

Article IV. BILLING

- A. The Railroad may bill the PUCO monthly or periodically for its costs when costs exceed \$1,000.00. The Railroad shall submit three (3) copies of its bill and in accordance with said rules and regulations as they have been issued or as thereafter may be supplemented or revised. A final bill covering the actual costs and showing all details shall be submitted to the PUCO Staff, within ninety (90) days after completion of each project, the PUCO Staff shall pay all bills within sixty (60) days after receipt thereof, except that the PUCO may hold a retainer on all bills not to exceed eight percent (8%) until final payment. The PUCO Staff shall make final payment for all amounts due the Railroad within sixty (60) days after a final audit has been performed and approved by the PUCO Staff. The Railroad agrees to cooperate and assist, as requested, in any such audit. At any time during normal business hours upon three (3) days written notice and as often as the PUCO Staff may deem necessary and in such a manner as not to interfere with the normal business operations, the Railroad shall make available to the PUCO Staff for examination, and to appropriate state agencies or officials, all of its records with respect to matters covered by this Subsidy Stipulation including, but not limited to, records of personnel and conditions of employment and shall permit the PUCO Staff to audit, examine and make excerpts or transcripts from such records. In the event of a controversy as to the eligibility for reimbursement of any charges claimed against the Project, as set in this Subsidy Stipulation, all parties agree to work in good faith with the other parties to resolve the controversy. After attempting to resolve any dispute regarding this Subsidy Stipulation, if the parties are still unable to resolve their dispute, any party shall have the right to seek enforcement of the terms of the Subsidy Stipulation by the PUCO. The decision of the PUCO regarding this dispute is final.
- B. No Project activity reimbursable under this Subsidy Stipulation, including, without limitation, preliminary engineering, shall be commenced until all of the following have occurred: (1) this Subsidy Stipulation shall have been approved and the Railroad directed to submit plans and estimates by the PUCO; (2) all financial obligations of the PUCO and LHA, as provided for in this Stipulation are subject to the provisions of ORC§ 126.07 of the Ohio Revised Code and shall not be valid and enforceable unless funds are appropriated by the Ohio General Assembly and encumbered by the PUCO Staff; and, (3) the Railroad has been notified by the PUCO Staff to proceed with construction of the Project work. Work on the improvements shall commence within 30 days of the occurrence of events (1), (2), and (3) described herein. Said work shall be pursued diligently by the Railroad until completed.

Article V. NOTIFICATION

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

RAILROAD: Wheeling & Lake Erie Railroad
Dan Reinsel
Signal & Communication Supervisor
100 E. First Street
Brewster, OH 44613
(330) 767-7202
dreinsel@wlerwy.com

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

City: City of Medina
Patrick Patton
City Engineer
132 North Elmwood Ave.
P.O. Box 703
Medina, Ohio 44258-0703
330-725-8861
330-722-9045 (fax)
ppatton@medinaoh.org

Article VI. TERMINATION

This Subsidy Stipulation shall terminate at the end of the present biennium, June 30, 2015. If construction covered under this Subsidy Stipulation is not completed by that date, it is the expressed intention of the parties to renew this Subsidy Stipulation on each successive biennium period until such time as all work contemplated under this Subsidy Stipulation has been satisfactorily completed. If it appears to the PUCO that the Railroad, or the LHA have failed to perform satisfactorily any requirements of this Subsidy Stipulation, or if the Railroad, or the LHA are in violation of any provision of this Subsidy Stipulation, or upon just cause, the PUCO may:

- A. Terminate the Subsidy Stipulation after providing the Railroad or the LHA with written notice, in accordance with the notice provisions of this Subsidy Stipulation, of its failure to perform satisfactorily any requirement of this Subsidy Stipulation (the "Notice"), which shall provide the Railroad, or the LHA with a thirty (30) day period to cure any and all defaults under this Subsidy Stipulation; or
- B. Immediately terminate the Subsidy Stipulation. During the thirty (30) day cure period, the PUCO, the Railroad, or the LHA shall incur only those obligations or expenditures that are necessary to enable the Railroad or the LHA to achieve compliance as, set forth in the Notice. If it is determined that the Railroad or the LHA cannot cure its default, the Railroad shall immediately cease work under this Subsidy Stipulation, take all necessary or appropriate steps to limit disbursements and minimize cost, and the Railroad shall provide a report, as of the date of receipt of the Notice, setting forth the status of the work completed, the cost of the work completed and such other information as the PUCO shall deem pertinent.

Article VII. REPRESENTATIONS AND WARRANTIES

- A. RAILROAD: The Railroad represents and warrants the following:
 - (1) The Railroad has the power and authority to enter into this Subsidy Stipulation; and
 - (2) The Railroad has the authority to carry out its obligations under this Subsidy Stipulation; and
 - (3) No personnel of the Railroad, any subcontractor of the Railroad, public official, employee or member of the governing body of the particular locality where this Subsidy Stipulation shall be completed, who exercises any functions or responsibilities in connection with the review or approval of the work completed under this Subsidy Stipulation, shall prior to the completion of said work, voluntarily or involuntarily acquire any personal monetary interest, direct or indirect, which is incompatible or in conflict

with the discharge or fulfillment of his functions or responsibilities with respect to the completion of the work contemplated under this Subsidy Stipulation. Any person, who, prior to or after the execution of this Subsidy Stipulation, acquires any personal monetary interest, involuntarily or voluntarily, shall immediately disclose his interest to the PUCO in writing. Thereafter, such person shall not participate in any action affecting the work contemplated under this Subsidy Stipulation unless the PUCO determines that, in light of the personal monetary interest disclosed his participation in any such action would not be contrary to the public interest.

- B. PUCO: PUCO represents and warrants that they have the power and authority to enter into this Subsidy Stipulation and to carry out their obligations pursuant to the terms of this Subsidy Stipulation.
- C. LHA represents and warrants that it is authorized to enter into this Stipulation and to carry out its obligations as delineated herein.

Article VIII. RECORD KEEPING

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

Article IX. RIGHTS TO DATA

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

Article X. FALSIFICATION OF INFORMATION

The Railroad and the LHA affirmatively covenant that neither has made any false statements to the PUCO in the process of obtaining this grant of funds. If the Railroad and/or the LHA has/have knowingly made a false statement, the Railroad and the LHA shall be required to return all funds immediately pursuant to ORC§ 9.66(C) (2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to ORC§ 9.66(C) (1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to ORC§2921.13(D)(1), which is punishable by a fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

Article XI. EQUAL EMPLOYMENT OPPORTUNITY

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

Article XII. DRUG FREE WORKPLACE

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

Article XIII. HOLD HARMLESS PROVISION

The Railroad covenants and agrees to indemnify and hold the LHA, the PUCO and their agents and employees harmless from and against any loss, claim, cause of action, damages, liability (including, without limitation, strict or absolute liability in tort or by statute imposed), charge, cost or expense (including, without limitation, counsel fees to the extent permitted by law), predicated on personal injury or death, or loss of or damage to property, and arising from any work performed pursuant to this Subsidy Stipulation and caused by the Railroad's negligent, intentional, willful or wanton actions or inactions, or such actions or omissions by any subcontractors that may be hired by the Railroad under this Subsidy Stipulation. In case any action involving any work covered by this Subsidy Stipulation is brought by or against any party or parties, said party or parties shall promptly notify the other party or parties of such action.

Article XIV. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS

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

**Article XV. BUY OHIO/BUY AMERICAN PROVISIONS; OFFSHORE
OUTSOURCING PROVISION:**

The Railroad 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 Subsidy Stipulation. Further, in the performance of the work contemplated under this Subsidy Stipulation, the Railroad 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. The Railroad affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Subsidy Stipulation. Notwithstanding any other terms of this Subsidy Stipulation, the PUCO reserve the right to recover any funds paid for services the Railroad performs outside the United States for which it did not receive a waiver from the Director of the Ohio Department of Administrative Services.

Article XVI. ENTIRETY OF AGREEMENT

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

Article XVII. CAMPAIGN CONTRIBUTIONS

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

Article XVIII. AMENDMENTS OR MODIFICATIONS

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

Article XIX. DEBARMENT

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

Article XX. HEADINGS

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

Article XXI. GOVERNING LAW

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

Article XXII. PARTIAL INVALIDITY

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

Article XXIII. DUPLICATE COUNTERPARTS

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

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

On behalf of the City of Medina, Medina County, Ohio:

By: Dennis Hanwell

Dennis Hanwell
[Print Name]

Title: Mayor

Date: February 11, 2014

On behalf of the Public Utilities Commission of Ohio :

By: _____

Milan Orbovich

Title: Director of Transportation

Date: _____

On behalf of Wheeling & Lake Erie Railroad:

By: _____

[Print Name]

Title: _____

Date: _____



ORDINANCE NO. 21-14

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE PUBLIC UTILITIES COMMISSION OF OHIO (PUCO) FOR THE INSTALLATION OF GATES AND FLASHERS AT THE CITY'S STATE ROAD RAILROAD CROSSING.

WHEREAS: In November, 2013 the PUCO completed a diagnostic review of the City owned rail crossing on State Road. In December, 2013 the PUCO notified the City that their review was complete and it was determined that flashing lights and gates were warranted at this crossing.

NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:

- SEC. 1:** That the Mayor is hereby authorized and directed to enter into an Agreement with the Public Utilities Commission of Ohio (PUCO) for the installation of gates and flashers at the City's State Road railroad crossing.
- SEC. 2:** That a copy of the Agreement is marked Exhibit A, attached hereto, and incorporated herein.
- SEC. 3:** That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.
- SEC. 4:** That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: February 10, 2014

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: February 11, 2014

SIGNED: Dennis Hanwell
Mayor

971
Ord. 21-14
Exh. A.

IN THE MATTER OF THE REQUEST FOR
A MASTER AGREEMENT FOR MODIFICATION
OF WARNING DEVICES WITH THE CITY OF MEDINA
(RAILROAD) IN THE STATE OF OHIO

AGREEMENT NO. 251

AGREEMENT

THIS AGREEMENT is entered into on this _____ day of _____, 2014 by and among the Ohio Rail Development Commission and the Public Utilities Commission of Ohio (hereinafter collectively referred to as the "STATE"), and the City of Medina ("RAILROAD"),

WITNESSETH:

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

WHEREAS, the Ohio Rail Development Commission (ORDC) is charged with the statutory authority under ORC §4981.03 to develop, promote, and support safe, adequate, and efficient rail service throughout the State of Ohio; and

WHEREAS, ORC §4907.471 requires the PUCO 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 modification of railroad warning devices (hereinafter referred to as "PROJECTS"); and

WHEREAS, the Moving Ahead for Progress in the 21st Century Act (MAP-21) 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 the PUCO and ORDC pursuant to ORC §4907.476; and

WHEREAS, the parties hereto propose to facilitate the modifications identified in this AGREEMENT in accordance with the Title 23 Code of Federal Regulations ("CFR") and applicable provisions of Title 23 of the United States Code pursuant to the terms hereof; and

WHEREAS, this agreement and any information or documentation relating thereto is for the purpose of identifying, evaluating, and/or planning the safety enhancement of railway-highway crossings which may be implemented utilizing Federal-aid highway funds; and

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

WHEREAS the STATE and RAILROAD will execute this AGREEMENT to specify details for the modification of warning devices at each designated grade crossing; and

WHEREAS, it is desired by the parties hereto to accomplish PROJECTS at highway-railroad grade crossing(s) and to determine and agree upon the manner of performing all such work necessary and incidental 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.

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

I. GENERAL REQUIREMENTS

The work and the construction to be performed under this AGREEMENT, including the preparation of plans, specifications and estimates and the purchase of materials shall be undertaken by the RAILROAD in accordance with plans and specifications which meet 23 CFR, the standards approved by the American Railway Engineering and Maintenance of Way and RAILROAD standards.

Identification of highway-rail grade crossings to be modified under this AGREEMENT, type of modification to be performed, and the proportion of the costs and expenses to be paid by each of the parties will be accomplished by means of a Letter Agreement ("LA") (sample form which is attached hereto as EXHIBIT A as if fully rewritten herein).

The LA and the approved plans shall constitute the scope of the project.

The RAILROAD shall be responsible for general engineering supervision of the PROJECT 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 PROJECT. Plans shall clearly show the existing facilities as well as the existing right of way, proposed right of way and centerline. The RAILROAD shall furnish such engineering services as may be necessary to install the PROJECT, subject to review and approval by the STATE.

The RAILROAD shall complete the preparation of plans within ninety (90) days or other time frame directed by the ORDC or PUCO in the PE authorization, and the installation of the PROJECT shall be completed within nine (9) months or other time frame specified by the ORDC or PUCO in the construction authorization. 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 PROJECT, and shall not permit liens or any other type of encumbrance to be placed upon all or any portion of the PROJECT 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 PROJECT work and at any stage during the installation of PROJECT at grade crossing(s).

In the event conditions or circumstances require a change in scope of the RAILROAD's work on the PROJECT as set forth in the approved plan(s) and estimate(s) the changes must be made in writing and approved by ORDC or PUCO. Should the RAILROAD request a change in the scope of work, the RAILROAD's work shall accommodate the time necessary for STATE to process the change request.

After completion of the PROJECT, the RAILROAD shall operate, maintain and renew, at its sole expense, all PROJECTS 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 PROJECTS 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 ("FHWA") regulations and/or the ORC.

II. COST ALLOCATION AND BILLING

The allocation of costs will be determined in the LA. The total costs for the modifications borne by the STATE shall not exceed actual cost of the modifications, approved estimate and the STATE share outlined in the LA.

RAILROAD shall notify ORDC or PUCO in writing of any changes in the scope of work which are not in the approved plans and estimates and secure approval in writing of same before the work is performed.

The costs assigned to ORDC shall be satisfied through the expenditure of Federal funds administered by ORDC and subject to approval by the 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 RAILROAD is authorized to purchase or furnish the items included under this AGREEMENT, ORDC may serve formal notice of cancellation upon RAILROAD, and this AGREEMENT shall become null and void. ORDC shall reimburse RAILROAD for all eligible costs incurred on account of the modifications prior to such cancellation, including costs associated with authorized preliminary engineering for the PROJECT.

All plans, specifications, estimates of costs, acceptance of work, and procedures in general, to facilitate the construction of the safety modifications described above, shall conform in all

respects to applicable Federal laws, rules, regulations, orders, and approvals applicable to Federal-Aid PROJECTS. ORDC shall reimburse RAILROAD in accordance with 23 CFR 140, Subpart I. and 23 CFR, Part 646, Subpart B or any subsequent amendments thereto, in such amounts and form as are proper and eligible for payment from Federal-Aid highway funds. RAILROAD shall render its billings to ORDC in accordance with said rules and regulations, and RAILROAD shall also provide and furnish such itemized records of and substantiating data for such costs as may be required.

RAILROAD shall be responsible for initially paying all of ITS actual costs to install the modifications. RAILROAD may bill STATE no more frequently than monthly for its costs when PROJECT costs incurred during the billing period exceed \$1,000.00. RAILROAD 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 one hundred and eighty (180) days after completion of the modifications. STATE shall pay all bills within sixty (60) days after receipt thereof, except that STATE may hold a retainer on all bills not to exceed eight percent (8%) until final payment. Final payment for all amounts due RAILROAD shall be made by STATE 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 RAILROAD's final bill. RAILROAD agrees to cooperate and assist, as requested, in any such audit.

III. RECORDS RETENTION AND AUDIT

RAILROAD agrees that STATE, or its duly authorized representatives, shall, during STATE normal business hours, upon reasonable notice, in accordance with RAILROAD safety rules and regulations, and accompanied by RAILROAD personnel, be permitted to examine the records and data maintained by RAILROAD related to this AGREEMENT as may be necessary to monitor RAILROAD's compliance with this AGREEMENT.

RAILROAD shall maintain all books, documents, papers, program agreements, accounting records, and other evidence pertaining to this AGREEMENT, its revenues and expenditures, and shall provide such information upon request of STATE or its designee and shall permit STATE to examine and audit those books, records, and the accounting procedures and practices of the RAILROAD relevant to this AGREEMENT. All documents and information shall be made available for review and audit at a mutually-agreeable location within the state of Ohio. The records shall be retained for three years after receipt of final payment to the RAILROAD from the STATE.

To the extent possible under applicable law, all aspects of STATES's exercise of audit rights and the results thereof, and any and all information disclosed by RAILROAD to the STATE under this AGREEMENT, shall be held confidential, and shall not be disclosed without RAILROAD's prior written consent. Nothing in this AGREEMENT shall be construed to restrict the STATE from disclosing such confidential information as required by law or by court or

administrative order, provided in each case the ORDC shall timely inform RAILROAD, if legally permissible, of the request.

RAILROAD will comply with the requirements of the ODOT Railroad Audit Circulars, available at:

<http://www.dot.state.oh.us/Divisions/Finance/Auditing/Pages/RailUtilities.aspx.aspx>

IV. 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 RAILROAD: City of Medina
Patrick Patton, Engineer
132 N Elmwood
Medina, Oh 44256

If to PUCO: Public Utilities Commission of Ohio
Railroad Division
180 East Broad Street, 4th Floor
Columbus, Ohio 43215-3793

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

RAILROAD shall furnish notification to STATE at least five (5) working days prior to the date work is scheduled to start at the PROJECT site of the modifications so arrangements can be made for inspection. RAILROAD shall also notify STATE of any stoppage and resumption of the work activity, and the reasons therefore, and the date the PROJECT work on the modifications was completed.

RAILROAD shall furnish written notification to the Local Highway Authority at least fourteen (14) working days prior to starting any work requiring the establishment of a detour for highway traffic.

V. TERMINATION

Said AGREEMENT shall terminate at the end of the present US Transportation Bill. If construction under this AGREEMENT is not completed by that date, it is the express intention of the parties to renew this AGREEMENT on each successive biennium period until such time as all work contemplated under this AGREEMENT has been satisfactorily completed. If it appears to ORDC or PUCO that RAILROAD has failed to perform satisfactorily any requirements of this AGREEMENT, or if RAILROAD is in violation of any provision of this AGREEMENT, or upon just cause, ORDC or PUCO may terminate the AGREEMENT after providing RAILROAD with written notice; in accordance with the notice provisions of this AGREEMENT, of its failure to perform satisfactorily any requirement of this AGREEMENT (the "Notice"), which shall provide RAILROAD with a thirty (30) day period to cure any and all defaults under this AGREEMENT.

During the thirty (30) day cure period, RAILROAD shall incur only those obligations or expenditures which are necessary to enable RAILROAD to achieve compliance as set forth in the Notice. If it is determined that RAILROAD cannot cure its default, RAILROAD shall immediately cease work under this AGREEMENT, take all necessary or appropriate steps to limit disbursements and minimize costs, and 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 STATE shall deem pertinent.

If this 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 STATE.

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

VI. REPRESENTATIONS AND WARRANTIES

A. RAILROAD: RAILROAD for itself, represents and warrants the following:

- (1) RAILROAD has the power and authority to enter into this AGREEMENT;
- (2) RAILROAD has the authority to carry out its obligations under this AGREEMENT; and

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

VII: OHIO ETHICS LAW REQUIREMENTS

RAILROAD affirms that it is not in violation of ORC §102.04, as that section is applicable to this AGREEMENT and RAILROAD.

VIII. FALSIFICATION OF INFORMATION

RAILROAD affirmatively covenants that it has not made any false statements to STATE in the process of obtaining this grant of funds. If RAILROAD has knowingly made a false statement to STATE to obtain this grant of funds, the RAILROAD shall be required to return all funds immediately pursuant to ORC §9.66(C) (2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to ORC §9.66(C) (1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to ORC §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.

IX. EQUAL EMPLOYMENT OPPORTUNITY

In performing this AGREEMENT, the RAILROAD shall not discriminate against any employee, applicant for employment, or other person because of race, color, religion, gender, national origin (ancestry), military status (past, present or future), disability, age (forty (40) years of age or older), genetic information, or sexual orientation. The RAILROAD will ensure that applicants are hired and that employees are treated during employment without regard to their

race, color, religion, gender, national origin (ancestry), military status (past, present or future), disability, age (forty (40) years of age or older), genetic information, or sexual orientation. The RAILROAD shall incorporate the foregoing requirements of this paragraph in all of its contracts for any of the work prescribed herein (other than subcontracts for standard commercial supplies or raw materials) and will require all of its subcontractors for any part of such work to incorporate such requirements in all such subcontracts.

X. OHIO ELECTIONS LAW

RAILROAD represents that its participation in this AGREEMENT does not violate ORC §3517.13.

XI. DRUG FREE WORKPLACE

In the event that work performed pursuant to the terms of this AGREEMENT will be done while on state property, RAILROAD 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.

XII. HOLD HARMLESS PROVISION

RAILROAD covenants and agrees to indemnify and hold the STATE and its 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 AGREEMENT and caused by RAILROAD's negligent, intentional, willful or wanton actions or inactions, or such actions or omissions by any subcontractors that may be hired by RAILROAD under this AGREEMENT.

In case any action involving any work covered by this 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.

XIII. UNUSUAL CIRCUMSTANCES AFFECTING PERFORMANCE

In the event that RAILROAD cannot meet any or all of the obligations placed upon it by the terms of this AGREEMENT, (1) RAILROAD shall immediately notify STATE in writing, and (2) STATE may, at its sole discretion, make reasonable efforts to assist RAILROAD in meeting its obligations under the AGREEMENT.

If RAILROAD is unable to complete the PROJECT within the time period set forth in the Order issued by the PUCO, RAILROAD must request an extension of time to complete the PROJECT. All such requests must be submitted to the PUCO in accordance with PUCO guidelines.

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

RAILROAD agrees to comply with all applicable federal, state, and local laws in the conduct of the work hereunder. To the extent applicable, RAILROAD 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 RAILROAD on the performance of the work authorized by this AGREEMENT.

XV. DISPUTE RESOLUTION

In the event the RAILROAD desires clarification or explanation of, or disagrees with, any matter concerning the 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 the STATE. If the dispute cannot be resolved, and the RAILROAD has failed to comply materially with the terms and conditions of this AGREEMENT, then procedures for suspension and/or termination may be instituted as provided for under this AGREEMENT, or this matter may be submitted to a court of competent jurisdiction for final determination.

XVI. NO WAIVER

No delay or omission to exercise any right or option accruing to the STATE upon any breach by RAILROAD 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 STATE. Further, if any term, provision, covenant or condition contained in this 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.

XVII. CONSTRUCTION

This 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.

XVIII. 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 AGREEMENT in its entirety.

XIX. BUY AMERICA

RAILROAD 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 §s 153.011 and 5525.21, and State of Ohio Department of Transportation Construction and Material Specifications, 109.09.

The RAILROAD affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this AGREEMENT. Notwithstanding any other terms of this AGREEMENT, the STATE reserves the right to recover any funds paid for services the RAILROAD performs outside the United States for which it did not receive a waiver from the Director of the Ohio Department of Administrative Services.

XX. FORUM AND VENUE

All actions brought against the STATE regarding this 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 AGREEMENT shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this 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 AGREEMENT.

XXII. ENTIRE AGREEMENT

This 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. DUPLICATE COUNTERPARTS

This 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 AGREEMENT.

XXIV. CAPTIONS

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

XXV. AMENDMENTS OR MODIFICATIONS

Any party may at any time during the term of this AGREEMENT request amendment or modification. Requests for amendment or modification of this 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 AGREEMENT, then an amendment shall be drawn, approved, and executed in the same manner as this AGREEMENT.

Any revisions to this AGREEMENT shall be made in writing and agreed upon by all parties.

XXIV. SUCCESSORS OR ASSIGNS

This AGREEMENT shall be binding upon the successors and assigns of the RAILROAD. It is understood 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 PROJECT and therefore qualify for modifications as described above.

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

CITY OF MEDINA

PUBLIC UTILITIES COMMISSION OF OHIO

By Dennis Hanwell

By _____

Print Name Dennis Hanwell

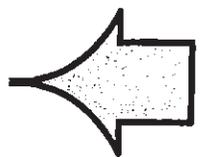
Print Name _____

Title Mayor

Title _____

Date February 11, 2014

Date _____



OHIO RAIL DEVELOPMENT COMMISSION

By _____
Matthew R. Dietrich, Executive Director

Date _____

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

Assistant Attorney General Alan H. Klodell

Date _____

Master Agreement State of Ohio and City of Medina