



OHIO DEPARTMENT OF TRANSPORTATION

Mike DeWine, Governor

Jack Marchbanks, Ph.D., Director

1980 W. Broad Street, Columbus, OH 43223

614-466-7170

transportation.ohio.gov

April 14, 2020

Agreement No. 31869

Jeffery A. Davis Jr.
Director of Real Estate
Wheeling & Lake Erie Railway Company
100 East First Street, Brewster, Ohio 44613

SUBJECT: Proposed Letter Agreement for I.R. 480 minor bridge rehabilitation over Wheeling & Lake Erie (WLE)-owned / Cleveland & Cuyahoga Railway (CCR)-operated Cleveland Subdivision track

City of Maple Heights, Cuyahoga County, Ohio

**Agency Reference: CUY-480-21.30 WB
PID No. 107657**

CCR Reference: MP Q-8.5+/-, AARDOT# (unknown)

Dear Jeff:

This Letter Agreement is authorization for Wheeling & Lake Erie and/or their consultants to begin engineering-review tasks for the above-referenced project.

The proposed work for this project includes selective concrete parapet patching; repair and/or replacement on the I.R. 480 grade separation structure over W&LE-owned/CCR-operated Cleveland subdivision track in the City of Maple Heights at the location referenced above in Cuyahoga County, OH.

The proposed scope of work includes selective concrete parapet patching/repair; and/or replacement on the IR480 westbound span only

- 1) No work will commence until the Railway has approved the State's final plans for the project. All work will be performed in accordance with the approved plans, specifications and the attached Special Clauses in the Proposal.

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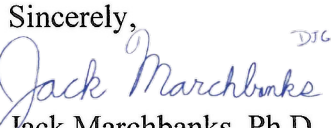
- 2) During the performance of the work, temporary construction clearances of 22'-0" vertically above the top of rail and 13'-0" horizontally from the centerline of track shall be maintained to any form work, false work or other temporary obstruction.
- 3) The State's Contractor will not be allowed to commence work on or over Railway property until the following conditions have been met:
 - a) The State has received notice from the Railway that the required insurance is satisfactory.
 - b) The State has received written authorization from the Railway to begin work on Railway property.

The written authorization will include the name and telephone number of the local representative who must be contacted to arrange for flag protection.

- 4) The State shall reimburse the Railway for all necessary force account work to accommodate the project, including but not limited to flagging, and construction engineering.
- 5) All obligations of the State provided for in this agreement which require the expenditure of funds by the State shall terminate at the end of the present biennium, being June 30, 2021. If construction covered under said agreement is not completed by June 30, 2021, it is the expressed intention of the parties to automatically renew said obligations for one successive biennium period; with the renewal period beginning July 1, 2021 and ending no later than June 30, 2023 until such time as construction covered under said agreement is complete. Said renewal is conditioned upon the State determining future appropriations will permit the State to renew said obligations.
- 6) Contingent upon meeting requirements indicated above, railroad shall permit the State and/or its contractor to enter upon lands owned or operated by the company to permit construction and/or maintenance referenced herein.
- 7) The State shall reimburse the railroad for applicable construction and engineering costs, based upon project billings rendered from the railroad in accordance with Federal Aid Policy Guide 140(1) of the Federal Highway Administration. The railroad shall render its billings to the State within 90 days in accordance with said rules and regulations, and further agrees to provide and furnish such itemized records and substantiating data for such costs as may be necessary.

If you agree with the terms of this Letter Agreement, please indicate your concurrence by signing in the space below, and then scan and email a copy of the signed agreement to Richard Behrendt, ODOT State Rail Coordinator/ORDC Project Manager at richard.behrendt@dot.ohio.gov.

Thank you for your assistance in this matter. Should you have any other questions or concerns about this project, please contact Mr. Behrendt at (614) 387-3097.

Sincerely,
 ^{DJC}
Jack Marchbanks, Ph.D.
Director of Transportation

Accepted by Wheeling & Lake Erie Railway Co.:

By: Jeffery A. Davis Jr.
Title: DIRECTOR OF REAL ESTATE
Date: 4/19/2021

CUYAHOGA COUNTY
CUY-480-21.30 WB, PID 107657

W&LE Cleveland Subdivision MP 8.5+/-
AARDOT # (unknown)

SPECIAL CLAUSES IN THE PROPOSAL

The bidder, if awarded the contract for this improvement understands and agrees:

The rail line referenced is owned by Wheeling & Lake Erie Railway Co. (Owner), and operated by Cleveland & Cuyahoga Railway LLC, a subsidiary of OmniTRAX, Inc. (Operator)

1. To cooperate at all times with the local officials of the Owner and/or Operator,
2. To use all reasonable care and diligence in the work in order to avoid accidents, damage or unnecessary delay to, or interference with the trains and other property of the railroad company.
3. To conduct his work in a manner satisfactory to the Chief Engineer of the Owner and/or Operator or their authorized representative; and to perform his work in such manner and at such time as not to unnecessarily interfere with the movements of trains or railroad traffic, and to hold his work at all times open to inspection of railroad company inspectors.
4. To cooperate with any public utility, railroad or other organizations having occasion to do work on or in connection with the improvement.
5. To avoid unnecessary use of railroad property without written permission of the Owner and/or Operator and to leave railroad roadbed and property in a condition acceptable to the Chief Engineer of the Owner.
6. To execute a bond conditioned according to Section 5525.16 of the Revised Code of Ohio, in favor of the State of Ohio, and further to carry insurance of the following kinds and amounts:
 1. Commercial General Liability coverage at their sole cost and expense with limits of not less than \$5,000,000 in combined single limits for bodily injury and/or property damage per occurrence, and such separate policies shall name both the Owner and Operator independently as an additional insured.
 2. Statutory Worker's Compensation and Employers Liability Insurance with limits of not less than \$1,000,000, which insurance must contain a waiver of subrogation against Owner and Operator and their affiliates [if permitted by state law].

3. Commercial automobile liability insurance with limits of not less than \$1,000,000 combined single limit for bodily injury and/or property damage per occurrence, and such policies shall name both Owner & Operator as an additional insured.
4. Railroad protective liability insurance with limits of not less than \$5,000,000 combined single limit for bodily injury and/or property damage per occurrence and an aggregate annual limit of \$10,000,000, which insurance shall satisfy the following additional requirements:
 - a. The Railroad Protective Liability Insurance Policy must be on the ISO/RIMA Form of Railroad Protective Insurance - Insurance Services Office (ISO) Form CG 00 35.
 - b. Owner and Operator must be the "Named Insured" on separate Railroad Protective Liability Insurance Policy as follows:

Owner:
Wheeling & Lake Erie Railway Co.
100 E. First Street
Brewster, OH 44613

Operator
Cleveland & Cuyahoga Railway LLC
252 Clayton St., 2nd Floor
Denver, CO. 80206
 - c) Name and Address of Contractor must be shown on the Declarations page.
 - d) A description of operations and location must appear on the Declarations page and must match the Project description.
 - e) Authorized endorsements must include the Pollution Exclusion Amendment - CG 28 31, unless using form CG 00 35 version 96 and later.
 - f) Authorized endorsements may include:
 - i. Broad Form Nuclear Exclusion - IL 00 21
 - ii. 30-day Advance Notice of Non-renewal or cancellation
 - iii. Required State Cancellation Endorsement
 - iv. Quick Reference or Index - CL/IL 240

- g) Authorized endorsements may not include:
 - i. A Pollution Exclusion Endorsement except CG 28 31
 - ii. A Punitive or Exemplary Damages Exclusion
 - iii. A “Common Policy Conditions” Endorsement
 - iv. Any endorsement that is not named in Section 4 (e) or (f) above.
 - v. Policies that contain any type of deductible
- h) All insurance companies must be A. M. Best rated A- and Class VII or better.
- i) Such additional or different insurance as Owner or Operator may require.
- j) The Special Clauses section herein supersede all requirements specific to the Railroad Protective Liability Policy.
- k) The insurance requirements specified in the Special Provisions for Protection of Railway Interests and in the Insurance for Public Projects supersede for all coverages except the Railroad Protective Liability Policy

Additional Terms

- (a) Contractor must submit the original Railroad Protective Liability policy, Certificates of Insurance and all notices and correspondence regarding the insurance policy for Owner to:

Jeffery A. Davis Jr.
 Manager of Real Estate
 Wheeling & Lake Erie Railway Company
 100 East First Street, Brewster, Ohio 44613
 330-767-7284 office
 email: jdavisjr@wlerwy.com

- (b) Contractor must submit the original Railroad Protective Liability policy, Certificates of Insurance and all notices and correspondence regarding the insurance policy for Operator to:

acox@omnitrax.com & tsimoes@omnitrax.com

- (b) Contractor may not begin work on the Project until it has received Owner & Operator’s written approval of the required insurance.

The insurance hereinbefore specified shall be with an acceptable insurance company authorized to do business in the State of Ohio, and shall be taken out before execution of the Contract by the Director and kept in effect until all work required to be performed under the terms of the contract is satisfactorily completed as evidenced by the formal acceptance by the State. Such policies shall include thirty (30) days canceling notice. The cost of insurance hereinbefore specified in subsection (a) will be a specific bid item.

The number of trains operating through the improvement is estimated to be:

0 Passenger trains per day @ ___ miles per hour.

2 Freight trains per day @ 25 miles per hour.

7. The Operator will assign, at the sole cost and expense of the Department, railroad flaggers or other protective services and devices as necessary to insure the safety and continuity of the work to be performed as a part of this contract. Said services and devices will be provided when necessary, as determined by the railroad company, because of any of the Contractor's operations over, under or adjacent to tracks over which trains are operating. The provision of such protective personnel and devices does not relieve the Contractor from the liability of payment for damage caused by his operations. Such protection will be required when men or equipment are working within clearances limits of 25 feet of a rail or when work being performed adjacent to operating tracks may present hazards to tracks, train operation, or when equipment does or may infringe upon such limits.

The Contractor will not be permitted to operate any of his own equipment on railroad tracks except under an acceptable arrangement with the Owner and Operator.

The Contractor shall notify the following named individual for the Operator at least 30 days, or as directed by the authorized representative of the Operator, in advance of starting any work which might require protection:

Tony Simoes
Cleveland & Cuyahoga Railway LLC
252 Clayton St., 2nd Floor
Denver, CO. 80206
Telephone: 1-306-222-2152
Email: tsimoes@omnitrax.com

The Contractor shall notify the Operator at least 5 working days in advance of suspending or ceasing operations that require a flagger, and must provide the Project Name, PID number, railroad line and milepost information and/or AARDOT# as shown at the top of pg. SC-1.

Railroad protective personnel assigned to the project will be responsible for notifying the Engineer upon arrival at the job site on the first working day that protective services begin and on the last day that he performs such services. This will be required for each separate period that such services are provided. The Engineer will document such notification in the project diary.

8. To indemnify, defend, and hold Wheeling & Lake Erie Railway Co. and its' affiliates; and Cleveland & Cuyahoga Railway, LLC (collectively, "Railroad"); and its' affiliates harmless from and against all claims, demands, payments, suits, actions, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages), for any injury to or death to any person(s) (including, but not limited to the employees of Railroad, the State, or the Contractor), for the loss of or damage to any property whatsoever (including but not limited to property owned by or in the care, custody, or control of Railroad, the State, or the Contractor, and environmental damages and any related remediation brought or recovered against Railroad), arising directly or indirectly from the negligence, recklessness or intentional wrongful misconduct of the Contractor, the State, and their respective agents, employees, invitees, or contractors in the performance of work in connection with the project or activities incidental thereto, or from their presence on or about Railroad's property.

The foregoing indemnification obligation shall not be limited to the insurance coverage required in paragraph 6 above.

9. To pay the railroad or owning company for any changes, requested for his convenience, to railroad property, facilities, wire, fiber optic and/or pipe lines other than shown on the plans for the project.
10. If at any time the contractor desires a temporary crossing of the railroad's tracks, he shall make a request for a temporary crossing from the railroad. If approved, he shall arrange with the railroad company, execute its regular form of private grade crossing agreement covering the crossing desired, paying all construction, maintenance, removal, protection and other costs

The Contractor will be responsible for protective services provided at his request and not utilized due, in the opinion of the Engineer, to a change in the Contractor's construction schedule or if it is determined by the Engineer that the requested services were not necessary. The actual costs for such protective services so assessed to the Contractor will be deducted from the Contract.

The decision of the Director of Transportation shall be final in the event of controversy as to the necessity for any protection services provided and not utilized by the Contractor as described in the preceding paragraph.

11. If at any time the contractor desires a temporary crossing (or the drawings show a temporary crossing is necessary) of the railroad's tracks, he shall make a request for a temporary crossing from the railroad. Contractor shall complete and execute railroad's regular form of private grade crossing agreement covering the crossing desired, paying any fees directly to the railroad necessary for construction, maintenance, removal, protection and other costs associated with the temporary crossing.

For additional information and application, contact Jeff Davis, Jr., Manager of Real Estate at 330-767-7284, or by email at jdavisjr@wlerwy.com.

12. Methods and procedures for performing work on property owned by **Wheeling & Lake Erie Railway** must adhere to the attached 'Wheeling & Lake Erie Special Provisions'. All work must be approved by:

Mr. Kasey S. O'Connor
Vice President of Engineering
Wheeling & Lake Erie Railway Company
100 E. First Street
Brewster, OH 44613
Telephone: 330-767-7279
Email: koconnor@wlerwy.com

13. Prior to beginning work on, or entering property of the Wheeling & Lake Erie Railway property, Contractor must complete and secure an approved WLE 'Permit to Enter Property' located at the end of the WLE's Special Provisions section following these 'Special Clauses', and pay any applicable fees (currently \$500 as of this writing).

Contractor should account for a minimum of 30 days after submission of the Permit before receiving the approved Permit from WLE.

End of Special Clauses

Wheeling & Lake Erie Railway Company

Special Provisions

1. NOTICE OF STARTING WORK:

A. Department's Prime contractor shall not commence any work on railroad rights-of-way until he has complied with the following conditions:

1. Given the Railroad written notice in electronic format to the Railroad Engineer, with copy to the Department Engineer who has been designated to be in charge of the work, at least thirty (30) days in advance of the date he proposes to begin work on Railroad Right-of-Way.

All email correspondence should include (at a minimum) the ODOT Project Name & Project Identification (PID) Number, and the WLE Line name and milepost in the Subject line for ease of reference.

2. Obtained written approval from the Railroad of Railroad Protective Liability Insurance coverage as required herein. It should be noted that Railroad Company does not accept notation of Railroad Protective insurance on a certificate of liability insurance form or Binders as Railroad Company must have the full original countersigned policy. Further, please note that mere receipt of the policy is not the only issue but review for compliance. Railroad typically takes a minimum of 30 days for Railroad Company to review and issue approval of RPL insurance.
3. Obtained Railroad's Flagging Services as required herein.
4. Obtained written authorization in electronic format from the Railroad to begin work on Railroad rights-of-way, such authorization to include an outline of specific conditions with which he must comply.
5. Furnished a schedule for all work within the Railroad rights-of-way.

B. The Railroad's written authorization to proceed with the work shall include the names, addresses, and telephone numbers of the Railroad's representatives who are to be notified as hereinafter required. Where more than one representative is designated, the area of responsibility of each representative shall be specified.

2. INTERFERENCE WITH RAILROAD OPERATIONS:

A. The Contractor shall so arrange and conduct his work that there will be no interference with Railroad operations, including train, signal, telephone and telegraphic services, or damage to the property of the Railroad Company or to poles, wires, and other facilities of tenants on the rights-of-way of the Railroad Company. Whenever work is liable to affect the operations or safety of trains, the method of doing such work shall first be submitted to the Railroad Engineer for approval, but such approval shall not relieve the Contractor from liability.

Any work to be performed by the Contractor which requires flagging service or inspection service shall be deferred by the Contractor until the flagging service or inspection service required by the Railroad is available at the job site.

- B. Whenever work within Railroad rights-of-way is of such a nature that impediment to Railroad operations such as use of runaround tracks or necessity for reduced speed is unavoidable, the Contractor shall schedule and conduct his operations so that such impediment is reduced to the absolute minimum.
- C. Should conditions arising from, or in connection with the work, require that immediate and unusual provisions be made to protect operations and property of the Railroad, the Contractor shall make such provisions. If in the judgment of the Railroad Engineer, or in his absence, the Railroad's Division Engineer, such provisions is insufficient, either may require or provide such provisions as he deems necessary. In any event, such unusual provisions shall be at the Contractor's expense and without cost to the Railroad or the Department.
- D. "One Call" Services do not locate buried railroad utilities. The contractor shall contact the railroad's representative 2 days in advance of work at those places where excavation, pile driving, or heavy loads may damage railroad underground facilities. Upon request from the contractor or agency, railroad forces will locate and paint mark or flag railroad underground facilities. The contractor shall avoid excavation or other disturbances of these facilities. If disturbance or excavation is required near a buried railroad facility, the contractor shall coordinate with the railroad to have the facility potholed manually with careful hand excavation. The facility shall be protected by the contractor during the course of the disturbance under the supervision and direction of the railroad representative.

3. TRACK CLEARANCES:

- A. The minimum track clearances to be maintained by the Contractor during construction are shown on the Project Plans. If temporary clearances are not shown on the project plans, the following criteria shall govern the use of falsework and formwork above or adjacent to operated tracks.
 - 1. A minimum vertical clearance of 22'-0" above top of highest rail shall be maintained at all times.
 - 2. A minimum horizontal clearance of 13'-0" from centerline of tangent track or 14'-0" from centerline of curved track shall be maintained at all times. Additional horizontal clearance may be required in special cases to be safe for operating conditions. This additional clearance will be as determined by the Chief Engineer Bridges & Structures
 - 3. All proposed temporary clearances which are less than those listed above must be submitted to the Railroad's engineering representative for approval prior to construction and must also be authorized by the regulatory body of the State if less than the legally prescribed clearances.

4. The temporary clearance requirements noted above shall also apply to all other physical obstructions including, but not limited to: stockpiled materials, parked equipment, placement or driving of piles, and bracing or other construction supports.
- B. Before undertaking any work within Railroad right-of-way, and before placing any obstruction over any track, the Contractor shall:
1. Notify the Railroad's representative at least 72 hours in advance of the work.
 2. Receive assurance from the Railroad's representative that arrangements have been made for flagging service as may be necessary.
 3. Receive permission from the Railroad's representative to proceed with the work.
 4. Ascertain that the Department Engineer has received copies of notice to the Railroad and of the Railroad's response thereto.

4. CONSTRUCTION PROCEDURES:

A. General:

1. Construction work and operations by the Contractor on Railroad property shall be:
 - a. Subject to the inspection and approval of the Railroad or their designated Construction Engineering Representative.
 - b. In accord with the Railroad's written outline of specific conditions.
 - c. In accord with the Railroad's general rules, regulations and requirements including those relating to safety, fall protection and personal protective equipment.
 - d. In accord with these Special Provisions.
2. Submittal Requirements
 - a. The contractor shall submit all construction related correspondence and submittals electronically to the Railroad Engineer.
 - b. The contractor shall allow for 30 days for the Railroad's review and response.
 - c. All work in the vicinity of the Railroad's property that has the potential to affect the Railroad's train operations or disturb the Railroad's Property must be submitted and approved by the Railroad prior to work being performed.
 - d. All submittals and calculations must be signed and sealed by a registered engineer licensed in the state of the project work.

- e. All submittals shall first be approved by the Department Engineer and the Railroad Engineer, but such approval shall not relieve the Contractor from liability.
- f. For all construction projects, the following submittals, but not limited to those listed below, shall be provided for review and approval when applicable:
 - i. General Means and Methods
 - ii. Roadway Protection
 - iii. Construction Excavation & Shoring
 - iv. Pipe, Culvert, & Tunnel Installations
 - v. Demolition Procedure
 - vi. Erection & Hoisting Procedure
 - vii. Debris Shielding or Containment
 - viii. Blasting
 - ix. Formwork for the bridge deck, diaphragms, overhang brackets, and protective platforms
 - x. Bent Cap Falsework. A lift plan will be required if the contractor want to move the falsework over the tracks.
- g. For Undergrade Bridges (Bridges carrying the Railroad) the following submittals in addition to those listed above shall be provided for review and approval:
 - i. Shop Drawings
 - ii. Bearing Shop Drawings and Material Certifications
 - iii. Concrete Mix Design
 - iv. Structural Steel, Rebar, and/or Strand Certifications
 - v. 28 day Cylinder Test for Concrete Strength
 - vi. Waterproofing Material Certification
 - vii. Test Reports for Fracture Critical Members
 - viii. Foundation Construction Reports

Fabrication may not begin until the Railroad has approved the required shop drawings.

- h. The Contractor shall include in all submissions a detailed narrative indicating the progression of work with the anticipated timeframe to complete each task. Work will not be permitted to commence until the Contractor has provided the Railroad with a satisfactory plan that the project will be undertaken without scheduling, performance or safety related issues.

Submission shall also provide a listing of the anticipated equipment to be used, the location of all equipment to be used and insure a contingency plan of action is in place should a primary piece of equipment malfunction.

In order to properly schedule flagman, the Contractor is required to provide a schedule of work acceptable to the Railroad, submitted a minimum of 1 week in advance of work, or as otherwise acceptable to the Railroad.

B. Track/Ballast Protection

1. The Contractor shall submit a proposed track/ballast protection system detailing the specific filter fabric and anchorage system to be used during all construction activities.
2. The track/ballast protection is to extend 25' beyond the proposed limit of bridge work above, be installed at the start of the project and be continuously maintained to prevent all contaminants from entering the ballast section of all tracks for the entire duration of the project.

C. Excavation:

1. The subgrade of an operated track shall be maintained with edge of berm at least 10'-0" from centerline of track and not more than 24- inches below top of rail. Contractor will not be required to make existing section meet this specification if substandard, in which case existing section will be maintained.
2. Additionally, the Railroad will require the installation of an OSHA approved handrail and orange construction safety fencing for all excavations of the Railroad right-of-way.

D. Excavation for Structures and Shoring Protection:

1. The Contractor will be required to take special precaution and care in connection with excavating and shoring pits, and in driving piles or sheeting for footings adjacent to tracks to provide adequate lateral support for the tracks and the loads which they carry, without disturbance of track alignment and surface, and to avoid obstructing track clearances with working equipment, tools or other material.
2. All plans and calculations for shoring shall be prepared and signed by a Registered Professional Engineer, licensed in the state of the State of the proposed work. The Registered Professional Engineer will be responsible for the accuracy for all controlling dimensions as well as the selection of soil design values which will accurately reflect the actual field conditions.
3. The contractor shall provide a detailed installation and removal plan of the shoring components. Any component that will be installed via the use of a crane or any other lifting device shall be subject to the review and approval of the Railroad.
4. The contractor shall be required to survey the track(s) and railroad embankment and provide a cross section of the proposed excavation in relation to the tracks.
5. Calculations for the proposed shoring should include deflection calculations. The maximum deflection for excavations within 18'-0" of the centerline of the nearest track shall be 3/8". For all other cases, the max deflection shall not exceed 1/2".

6. Additionally, the Railroad will require the installation of an OSHA approved handrail and orange construction safety fencing for all excavations within the Railroad right-of-way.

E. Pipe, Culvert, & Tunnel Installations

1. Pipe, Culvert, & Tunnel Installations shall be in accordance with the requirements for Pipeline Occupancy of the Wheeling & Lake Erie Railway.

F. Demolition Procedure

1. General

- a. Demolition plans are required for all spans over the track(s), for all spans adjacent to the track(s), if located on (or partially on) Railroad right-of-way; and in all situations where cranes will be situated on, over, or adjacent to Railroad right-of-way and within a distance of boom length plus 15'-0" from the centerline of track.
- b. Railroad tracks and other railroad property must be protected from damage during the procedure.
- c. A pre-demolition meeting shall be conducted with the Department, the Railroad Engineer or their representative, and the key contractor personnel prior to the start of the demolition procedure.
- d. The Railroad Engineer or his designated representative must be present at the site during the entire demolition procedure period.
- e. Existing, obsolete, bridge piers shall be removed to a sufficient depth below grade to enable restoration of the existing/proposed track ditch, but in no case less than 2'-0" below final grade.

2. Submittal Requirements

- a. The contractor shall submit the following for approval by the Railroad Engineer:
 - i. A plan showing the location of cranes, horizontally and vertically, operating radii, with delivery or disposal locations shown. The location of all tracks and other railroad facilities as well as all obstructions such as wire lines, poles, adjacent structures, etc. must also be shown.
 - ii. Rating sheets showing cranes or lifting devices to be adequate for 150% of the actual weight of the pick, including all rigging components. A complete set of crane charts, including crane, counterweight, and boom nomenclature is to be submitted. Safety factors that may have been "built-in" to the crane charts are not to be considered when determining the 150% factor of safety.

- iii. Plans and computations showing the weight of the pick must be submitted. Calculations shall be made from plans of the existing structure showing complete and sufficient details with supporting data for the demolition the structure. If plans do not exist, lifting weights must be calculated from field measurements.

The field measurements are to be made under the supervision of the Registered Professional Engineer submitting the procedure and calculations.

- iv. The contractor shall provide a sketch of all rigging components from the crane's hook block to the beam. Catalog cuts or information sheets of all rigging components with their lifting capacities shall be provided.

All rigging must be adequate for 150% of the actual weight of the pick. Safety factors that may have been "built-in" to the rating charts are not to be considered when determining the 150% factor of safety. All rigging components shall be clearly identified and tagged with their rated lifting capacities. The position of the rigging in the field shall not differ from what is shown on the final plan without prior review from the Department and the Railroad.

- v. A complete demolition procedure, including the order of lifts, time required for each lift, and any repositioning or re-hitching of the crane or cranes.
- vi. Design and supporting calculations for the temporary support of components, including but not limited to the stability of the superstructure during the temporary condition, temporary girder tie-downs and falsework.

3. Overhead Demolition Debris Shield

- a. The demolition debris shield shall be installed prior to the demolition of the bridge deck or other relevant portions of the superstructure over the track area to catch all falling debris.
- b. The demolition debris shield shall provide a minimum vertical clearance of 22'-0", or maintain the existing vertical clearance if the existing clearance is less than 22'-0".
- c. The Contractor shall include the demolition debris shield installation/removal means and methods as part of the proposed Demolition procedure submission.
- d. The contractor shall submit the demolition debris shield design and supporting calculations for approval by the Railroad Engineer.

- e. The demolition debris shield shall have a minimum design load of 50 pounds per square foot plus the weight of the equipment, debris, personnel, and other loads to be carried.
- f. The Contractor shall include the proposed bridge deck removal procedure in its demolition means and methods and shall verify that the size and quantity of the demolition debris generated by the procedure does not exceed the shield design loads.
- g. The contractor shall clean the demolition debris shield daily or more frequently as dictated either by the approved design parameters or as directed by the Railroad Engineer.

4. Vertical Demolition Debris Shield

- a. A vertical demolition debris shield may be required for substructure removals in close proximity to the Railroad's track and other facilities, as determined by the Railroad Engineer.

G. Erection & Hoisting Procedures

1. General

- a. Erection plans are required for all spans over the track(s), for all spans adjacent to the track(s), if located on (or partially on) Railroad right-of-way; and in all situations where cranes will be situated on, over, or adjacent to Railroad right-of-way and within a distance of boom length plus 15'-0" from the centerline of track.
- b. Railroad tracks and other railroad property must be protected from damage during the erection procedure.
- c. A pre-erection meeting shall be conducted with the Department, the Railroad Engineer or their representative, and the key contractor personnel prior to the start of the erection procedure.
- d. The Railroad Engineer or his designated representative must be present at the site during the entire erection procedure period.
- e. For field splices located over Railroad property, a minimum of 50% of the holes for each connection shall be filled with bolts or pins prior to releasing the crane. A minimum of 50% of the holes filled shall be filled with bolts. All bolts must be appropriately tightened.

2. Submittal Requirements

- a. The contractor shall submit the following for approval by the Railroad Engineer:

- i. As-built beam seat elevations - All as-built bridge seats and top of rail elevations shall be furnished to the Railroad Engineer for review and verification at least 30 days in advance of the erection, to ensure that minimum vertical clearances as approved in the plans will be achieved.
- ii. A plan showing the location of cranes, horizontally and vertically, operating radii, with delivery or staging locations shown. The location of all tracks and other railroad facilities as well as all obstructions such as wire lines, poles, adjacent structures, etc. must also be shown.
- iii. Rating sheets showing cranes or lifting devices to be adequate for 150% of the actual weight of the pick, including all rigging components. A complete set of crane charts, including crane, counterweight, and boom nomenclature is to be submitted.

Safety factors that may have been “built-in” to the crane charts are not to be considered when determining the 150% factor of safety.

- iv. Plans and computations showing the weight of the pick must be submitted. Calculations shall be made from plans of the proposed structure showing complete and sufficient details with supporting data for the erection of the structure.

If plans do not exist, lifting weights must be calculated from field measurements. The field measurements are to be made under the supervision of the Registered Professional Engineer submitting the procedure and calculations.

- v. The contractor shall provide a sketch of all rigging components from the crane’s hook block to the beam. Catalog cuts or information sheets of all rigging components with their lifting capacities shall be provided. All rigging must be adequate for 150% of the actual weight of the pick. Safety factors that may have been “built-in” to the rating charts are not to be considered when determining the 150% factor of safety. All rigging components shall be clearly identified and tagged with their rated lifting capacities.

The position of the rigging in the field shall not differ from what is shown on the final plan without prior review from the Department and the Railroad.

- vi. A complete erection procedure, including the order of lifts, time required for each lift, and any repositioning or re-hitching of the crane or cranes.
- vii. Design and supporting calculations for the temporary support of components, including but not limited to temporary girder tie-downs and falsework.

H. Blasting:

1. The Contractor shall obtain advance approval of the Railroad Engineer and the Department Engineer for use of explosives on or adjacent to Railroad property. The request for permission to use explosives shall include a detailed blasting plan. If permission for use of explosives is granted, the Contractor will be required to comply with the following:

- a. Blasting shall be done with light charges under the direct supervision of a responsible officer or employee of the Contractor and a licensed blaster.
- b. Electric detonating fuses shall not be used because of the possibility of premature explosions resulting from operation of two-way radios.
- c. No blasting shall be done without the presence of the Railroad Engineer or his authorized representative. At least 72 hours advance notice to the person designated in the Railroad's notice of authorization to proceed will be required to arrange for the presence of an authorized Railroad representative and such flagging as the Railroad may require.
- d. Have at the job site adequate equipment, labor and materials and allow sufficient time to clean up debris resulting from the blasting without delay to trains, as well as correcting at his expense any track misalignment or other damage to Railroad property resulting from the blasting as directed by the Railway's authorized representative. If his actions result in delay of trains, the Contractor shall bear the entire cost thereof.
- e. The blasting contractor shall have a copy of the approved blasting plan on hand while on the site.
- f. Explosive materials or loaded holes shall not be left unattended at the blast site.
- g. A seismograph shall be placed on the track shoulder adjacent to each blast which will govern the peak particle velocity of two inches per second.

Measurement shall also be taken on the ground adjacent to structures as designated by a qualified and independent blasting consultant. The Railroad reserves the option to direct the placement of additional seismographs at structures or other locations of concern, without regard to scaled distance.

- h. After each blast, the blasting contractor shall provide a copy of their drill log and blast report, which includes number of holes, depth of holes, number of decks, type and pounds of explosives used per deck.
- i. The Railroad may require top of rail elevations and track centers taken before, during and after the blasting and excavation operation to check for any track misalignment resulting from the Contractor's activities.

2. The Railroad representative will:
 - a. Determine approximate location of trains and advise the Contractor the appropriate amount of time available for the blasting operation and clean up.
 - b. Have the authority to order discontinuance of blasting if, in his opinion, blasting is too hazardous or is not in accord with these special provisions.
3. The Contractor must hire, at no expense to the Railroad, a qualified and independent blasting consultant to oversee the use of explosives. The blasting consultant will:
 - a. Review the Contractor's proposed drilling and loading patterns, and with the blasting consultant's personnel and instruments, monitor the blasting operations.
 - b. Confirm that the minimum amounts of explosives are used to remove the rock.
 - c. Be empowered to intercede if he concludes that the Contractor's blasting operations are endangering the Railway.
 - d. Submit a letter acknowledging that he has been engaged to oversee the entire blasting operation and that he approves of the blasting plan.
 - e. Furnish copies of all vibration readings to the Railroad representative immediately after each blast. The representative will sign and date the seismograph tapes after each shot to verify the readings are for that specific shot.
 - f. Advise the Railroad representative as to the safety of the operation and notify him of any modifications to the blasting operation as the work progresses.
4. The request for permission to use explosives on the Railroad's Right-of-Way shall include a blasting proposal providing the following details:
 - a. A drawing which shows the proposed blasting area, location of nearest hole and distance to Railway structures, all with reference to the centerline of track.
 - b. Hole diameter.
 - c. Hole spacing and pattern.
 - d. Maximum depth of hole.
 - e. Maximum number of decks per hole.
 - f. Maximum pounds of explosives per hole.

- g. Maximum pounds of explosives per delay.
- h. Maximum number of holes per detonation.
- i. Type of detonator and explosives to be used. (Electronic detonating devices will not be permitted). Diameter of explosives if different from hole diameter.
- j. Approximate dates and time of day when the explosives are to be detonated.
- k. Type of flyrock protection.
- l. Type and patterns of audible warning and all clear signals to be used before and after each blast.
- m. A copy of the blasting license and qualifications of the person directly in charge of the blasting operation, including their name, address and telephone number.
- n. A copy of the Authority's permit granting permission to blast on the site.
- o. A letter from the blasting consultant acknowledging that he has been engaged to oversee the entire blasting operation and that he approves of the blasting plan.
- p. In addition to the insurance requirements previously outlined, an additional certificate of insurance from the Contractor's insurer stating the amount of coverage for XCU (Explosive Collapse and Underground Hazard) insurance and that XCU Insurance is in force for this project.
- q. A copy of the borings and Geotechnical information or report.

I. Track Monitoring

1. At the direction of the Railroad Engineer, any activity that has the potential to disturb the Railroad track structure may require the contractor to submit a detailed track monitoring program for approval by the Railroad Engineer.
2. The program shall specify the survey locations, the distance between the location points, and frequency of monitoring before, during, and after construction. Railroad reserves the right to modify the survey locations and monitoring frequency as necessary during the project.
3. The survey data shall be collected in accordance with the approved frequency and immediately furnished to the Railroad Engineer for analysis.
4. If any movement has occurred as determined by the Railroad Engineer, the Railroad will be immediately notified. Railroad, at its sole discretion, shall have the right to immediately require all contractor operations to be ceased and determine what corrective action is required.

Any corrective action required by the Railroad or performed by the Railroad including the monitoring of corrective action of the contractor will be at project expense.

J. Maintenance of Railroad Facilities:

1. The Contractor will be required to maintain all ditches and drainage structures free of silt or other obstructions which may result from his operations and provide and maintain any erosion control measures as required. The Contractor will promptly repair eroded areas within Railroad rights-of-way and repair any other damage to the property of the Railroad or its tenants.
2. If, in the course of construction, it may be necessary to block a ditch, pipe or other drainage facility, temporary pipes, ditches or other drainage facilities shall be installed to maintain adequate drainage, as approved by the Railroad. Upon completion of the work, the temporary facilities shall be removed and the permanent facilities restored.
3. All such maintenance and repair of damages due to the Contractor's operations shall be done at the Contractor's expense.

K. Storage of Materials and Equipment:

1. Materials and equipment shall not be stored where they will interfere with Railroad operations, nor on the rights-of-way of the Railroad Company without first having obtained permission from the Railroad Engineer, and such permission will be with the understanding that the Railroad Company will not be liable for damage to such material and equipment from any cause and that the Railroad Engineer may move or require the Contractor to move, at the Contractor's expense, such material and equipment.
2. All grading or construction machinery that is left parked near the track unattended by a watchman shall be effectively immobilized so that it cannot be moved by unauthorized persons.

The Contractor shall protect, defend, indemnify and save Railroad, and any associated, controlled or affiliated corporation, harmless from and against all losses, costs, expenses, claim or liability for loss or damage to property or the loss of life or personal injury, arising out of or incident to the Contractor's failure to immobilize grading or construction machinery.

L. Cleanup:

1. Upon completion of the work, the Contractor shall remove from within the limits of the Railroad rights-of-way, all machinery, equipment, surplus materials, falsework, rubbish or temporary buildings of the Contractor, and leave said rights-of-way in a neat condition satisfactory to the Chief Engineer of the Railroad or his authorized representative.

5. DAMAGES:

- A. The Contractor shall assume all liability for any and all damages to his work, employees, servants, equipment and materials caused by Railroad traffic.

- B. Any cost incurred by the Railroad for repairing damages to its property or to property of its tenants, caused by or resulting from the operations of the Contractor, shall be paid directly to the Railroad by the Contractor.

6. FLAGGING SERVICES:

A. Requirements:

1. Flagging services will not be provided until the contractor's insurance has been reviewed & approved by the Railroad.
2. The Contractor shall provide a look-ahead schedule to the Railroad weekly (or as needed by the Railroad) a minimum of 7 days in advance of the work commencing, in order for the Railroad to properly schedule flagman.
3. Under the terms of the agreement between the Department and the Railroad, the Railroad has sole authority to determine the need for flagging required to protect its operations.

In general, the requirements of such services will be whenever the Contractor's personnel or equipment are or are likely to be, working on the Railroad's right-of-way, or across, over, adjacent to, or under a track, or when such work has disturbed or is likely to disturb a railroad structure or the railroad roadbed or surface and alignment of any track to such extent that the movement of trains must be controlled by flagging.

4. Normally, the Railroad will assign one flagman to a project; but in some cases, more than one may be necessary, such as yard limits or where site distances are limited. However, if the Contractor works within distances that violate instructions given by the Railroad's authorized representative or performs work that has not been scheduled with the Railroad's authorized representative, a flagman or flagmen may be required full time until the project has been completed.

B. Scheduling and Notification:

1. The Contractor's work requiring railroad flagging should be scheduled to limit the presence of a flagman at the site to a maximum of 50 hours per week. The Contractor shall receive Railroad approval of work schedules requiring a flagman's presence in excess of 40 hours per week. The Contractor may be required to submit regular look-ahead schedules to the Railroad in order to properly schedule flagman to protect the Contractor's operation on Railroad Right-of-Way.
2. Not later than the time that approval is initially requested to begin work on Railroad right-of-way, Contractor shall furnish to the Railroad and the Department a schedule for all work required to complete the portion of the project within Railroad right-of-way and arrange for a job site meeting between the Contractor, the Department, and the Railroad's authorized representative.

Flagmen may not be provided until a railroad job site meeting has been conducted and the Contractor's work scheduled.

3. The Contractor will be required to give the Railroad representative at least 10 working days of advance written notice of intent to begin work within Railroad right-of-way in accordance with this special provision. Once begun, when such work is then suspended at any time, or for any reason, the Contractor will be required to give the Railroad representative at least 3 working days of advance notice before resuming work on Railroad right-of-way. Such notices shall include sufficient details of the proposed work to enable the Railroad representative to determine if flagging will be required. If such notice is in writing, the Contractor shall furnish the Engineer a copy; if notice is given verbally, it shall be confirmed in writing with copy to the Engineer. If flagging is required, no work shall be undertaken until the flagman is present at the job site. It may take up to 30 days to obtain flagging initially from the Railroad. When flagging begins, the flagman is usually assigned by the Railroad to work at the project site on a continual basis until no longer needed and cannot be called for on a spot basis. If flagging becomes unnecessary and is suspended, it may take up to 30 days to again obtain from the Railroad.
4. If, after the flagman is assigned to the project site, an emergency arises that requires the flagman's presence elsewhere, then the Contractor shall delay work on Railroad right-of-way until such time as the flagman is again available. Any additional costs resulting from such delay shall be borne by the Contractor and not the Department or Railroad.

C. Payment:

1. The Department will be responsible for paying the Railroad directly for any and all costs of flagging which may be required to accomplish the construction.
2. The estimated cost of flagging is current rate per day based on a 10-hour work day. This cost includes the base pay for the flagman, overhead, and includes a per diem charge for travel expenses, meals and lodging. The charge to the Department by the Railroad will be the actual cost based on the rate of pay for the Railroad's employees who are available for flagging service at the time the service is required.
3. Work by a flagman in excess of 8 hours per day or 40 hours per week, but not more than 12 hours a day will result in overtime pay at 1 and 1/2 times the appropriate rate. Work by a flagman in excess of 12 hours per day will result in overtime at 2 times the appropriate rate. If work is performed on a holiday, the flagging rate is 2 and 1/2 times the normal rate.

D. Verification:

1. Any complaints concerning flagging must be resolved in a timely manner. If the need for flagging is questioned, please contact Railroad's the responsible Railroad Representative, or the ODOT District Area Engineer. All verbal complaints will be confirmed in writing by the Contractor within 5 working days with a copy to the ODOT Area Engineer.

2. The Railroad flagman assigned to the project will be responsible for notifying the Contractor's on-site Superintendent or ODOT Area Engineer, who will document such notification in the project records.

When requested, the Contractor's Superintendent or ODOT Area Engineer will also sign the flagman's diary showing daily time spent and activity at the project site.

7. HAUL ACROSS RAILROAD:

- A. Where the plans show or imply that materials of any nature must be hauled across a Railroad, unless the plans clearly show that the Department has included arrangements for such haul road in its agreement with the Railroad, the Contractor will be required to make all necessary arrangements with the Railroad regarding means of transporting such materials across the Railroad. The Contractor or Agency will be required to bear all costs incidental to such crossings whether services are performed by his own forces or by Railroad personnel.
- B. No temporary crossing may be established for use of the Contractor for transporting materials or equipment across the tracks of the Railroad Company unless specific authority for its installation, maintenance, necessary watching and flagging thereof and removal, until a temporary private crossing agreement has been executed between the Contractor and Railroad. The approval process for an agreement normally takes 90-days.

8. WORK FOR THE BENEFIT OF THE CONTRACTOR:

- A. All temporary or permanent changes in wire lines or other facilities which are considered necessary to the project are shown on the plans; included in the force account agreement between the Department and the Railroad or will be covered by appropriate revisions to same which will be initiated and approved by the Department and/or the Railroad.
- B. Should the Contractor desire any changes in addition to the above, then he shall make separate arrangements with the Railroad for same to be accomplished at the Contractor's expense.

9. COOPERATION AND DELAYS:

- A. It shall be the Contractor's responsibility to arrange a schedule with the Railroad for accomplishing stage construction involving work by the Railroad or tenants of the Railroad. In arranging his schedule he shall ascertain, from the Railroad, the lead time required for assembling crews and materials and shall make due allowance therefore.
- B. No charge or claim of the Contractor against either the Department or the Railroad Company will be allowed for hindrance or delay on account of railway traffic; any work done by the Railway Company or other delay incident to or necessary for safe maintenance of railway traffic or for any delays due to compliance with these special provisions.

10. TRAINMAN'S WALKWAYS:

- A. Along the outer side of each exterior track of multiple operated track, and on each side of single operated track, an unobstructed continuous space suitable for trainman's use in walking along trains, extending to a line not less than 10 feet from centerline of track, shall be maintained. Any temporary impediments to walkways and track drainage encroachments or obstructions allowed during work hours while Railway's protective service is provided shall be removed before the close of each work day. If there is any excavation near the walkway, a handrail, with 10'-0" minimum clearance from centerline of track, shall be placed and must conform to AREMA and/or FRA standards.

11. GUIDELINES FOR PERSONNEL ON RAILROAD RIGHT-OF-WAY:

- A. The Contractor and the Agency's personnel must be familiar with Wheeling & Lake Erie Railway's standard operating rules and guidelines, should conduct themselves accordingly, and may be removed from the property for failure to follow these guidelines and basic safety protocols as outlined.
- B. All persons on Railroad property shall wear hard hats, reflective vests and clothing, and use appropriate eye and hearing protection. Working in shorts is prohibited. Shirts must cover shoulders, back and abdomen. Working in tennis or jogging shoes, sandals, boots with high heels, cowboy and other slip-on type boots is prohibited. Hard-sole, lace-up footwear, zippered boots or boots cinched up with straps which fit snugly about the ankle are adequate.

Wearing of safety boots is strongly recommended. In the vicinity of at-grade crossings, it is strongly recommended that reflective vests be worn.

- C. No one is allowed within 25' of the centerline of track without specific authorization from the flagman.
- D. All persons working near track while a train is passing are to lookout for dragging bands, chains and protruding or shifted cargo.
- E. No one is allowed to cross tracks without specific authorization from the flagman.
- F. All welders and cutting torches working within 25' of track must stop when train is passing.
- G. No steel tape or chain will be allowed to cross or touch rails without permission from the Railroad.

12. GUIDELINES FOR EQUIPMENT ON RAILROAD RIGHT-OF-WAY:

- A. No crane or boom equipment will be allowed to set up to work or park within boom distance plus 15' of centerline of track without specific permission from railroad official and flagman.
- B. No crane or boom equipment will be allowed to foul track or lift a load over the track without flag protection and approval of the on-site flagman.

- C. All employees will stay with their machines when crane or boom equipment is pointed toward track.
- D. All cranes and boom equipment under load will stop work while train is passing (including pile driving).
- E. Swinging loads must be secured to prevent movement while train is passing.
- F. No loads will be suspended above a moving train.
- G. No equipment will be allowed within 25' of centerline of track without specific authorization of the flagman.
- H. Trucks, tractors or any equipment will not touch ballast line without specific permission from railroad official and flagman. Orange construction fencing may be required as directed.
- I. No equipment or load movement within 25' or above a standing train or railroad equipment without specific authorization of the flagman.
- J. All operating equipment within 25' of track must halt operations when a train is passing. All other operating equipment may be halted by the flagman if the flagman views the operation to be dangerous to the passing train.
- K. All equipment, loads and cables are prohibited from touching rails.
- L. While clearing and grubbing, no vegetation will be removed from railroad embankment with heavy equipment without specific permission from the Railroad Engineer and flagman.
- M. No equipment or materials will be parked or stored on Railroad's property unless specific authorization is granted from the Railroad Engineer.
- N. All unattended equipment that is left parked on Railroad property shall be effectively immobilized so that it cannot be moved by unauthorized persons.
- O. All cranes and boom equipment will be turned away from track after each work day or whenever unattended by an operator.
- P. Prior to performing any crane operations, the contractor shall establish a single point of contact for the Railroad flagman to remain in communication with at all times. Person must also be in direct contact with the individual(s) directing the crane operation(s).

13. FAILURE TO COMPLY:

- A. In the event the Contractor violates or fails to comply with any of the requirements of these Special Provisions:
 - 1. The Railroad Engineer may require that the Contractor vacate Railroad property.
 - 2. The Engineer may withhold all monies due the Contractor on monthly statements.

- B. Any such orders shall remain in effect until the Contractor has remedied the situation to the satisfaction of the Railroad Engineer and the Engineer.

14. PAYMENT FOR COST OF COMPLIANCE:

- A. No separate payment will be made for any extra cost incurred on account of compliance with these special provisions. All such costs shall be included in prices bid for other items of the work as specified in the payment items.

End of
Wheeling & Lake Erie Special Provision for Protection of Railway Interest

PERMIT TO ENTER PROPERTY

No. _____

This Permit to Enter Property Agreement ("Agreement") is entered into by and between _____, having a business address of _____ ("PERMITTEE"), to enter the property of **WHEELING & LAKE ERIE RAILWAY COMPANY**, having a business address of 100 East First Street, Brewster, OH 44613 ("RAILWAY").

In consideration of the terms and conditions herein contained and other good and valuable consideration, and intending to be legally bound the parties agree as follows:

1. **USE.**

RAILWAY grants permission to PERMITTEE to enter the property of RAILWAY for the purpose of _____, and for no other purpose not approved in advance by RAILWAY, contained at Mile Post _____ of the _____ Subdivision, located in the City of _____, County of _____ and State of Ohio.

2. **FLAG PROTECTION, PAYMENT, AND ENTRY NOTICE.**

2.1 PERMITTEE is required to pay RAILWAY the costs of flag protection at the applicable rate according to RAILWAY's current published flagging rates; the flagging rates are subject to change at any time for any reason at the discretion of RAILWAY.

2.2 PERMITTEE agrees to schedule flag protection, in advance, by contacting Heidi Rowlands, Engineering Administrator, at telephone number 330-767-7229; if Heidi Rowlands is unavailable, RAILWAY will assign a representative to handle the scheduling of flag protection. It is understood by PERMITTEE that RAILWAY will schedule flag protection, at its discretion, as soon as personnel becomes available, and PERMITTEE **WILL NOT** enter the property of RAILWAY without a representative present, assigned by RAILWAY, to handle such flag protection duties.

2.3 PERMITTEE agrees to pay for any other expenses RAILWAY incurs, at the discretion of RAILWAY, that may result directly from this Agreement, including, but not limited to, expenses associated with the assignment, by RAILWAY, of supervisors, signalmen, or other employees or agents of RAILWAY.

3. **CONSIDERATION.**

PERMITTEE will pay to RAILWAY the sum of Five Hundred Dollars (\$500.00) as compensation for this Agreement. PERMITTEE is responsible for any additional costs specifically arising from this Agreement, including but not limited to flagging and any other costs incurred by RAILWAY.

4. **LIABILITY AND INDEMNIFICATION.**

PERMITTEE SHALL RELEASE, INDEMNIFY, DEFEND, AND SAVE HARMLESS RAILWAY FROM AND AGAINST ANY AND ALL DETRIMENT, DAMAGES, LOSSES, CLAIMS, DEMANDS, SUITS, COSTS OR EXPENSES, INCLUDING COUNSEL FEES, WHICH RAILWAY MAY SUFFER OR SUSTAIN, OR BE SUBJECT TO, DIRECTLY OR INDIRECTLY, FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE SUFFERED BY ANYONE WHOMSOEVER (INCLUDING RAILWAY AND PERMITTEE) ARISING OUT OF, OR CAUSED EITHER WHOLLY OR IN PART BY, THE OCCUPATION OF OR WORK UPON RAILWAY'S PROPERTY BY PERMITTEE AND/OR ITS CONTRACTORS OR AGENTS, AND WITHOUT REGARD TO WHETHER CAUSED BY, ARISING OUT OF OR RESULTING FROM (IN WHOLE OR IN PART) THE FAULT, FAILURE, OR NEGLIGENCE OF RAILWAY OR OTHERWISE.

5. **STARTING OF USE OF PROPERTY.**

PERMITTEE shall notify the Vice President of Engineering of RAILWAY, or his duly authorized representative, in advance before entering upon or starting any work upon RAILWAY property to schedule flag protection, which is provided by RAILWAY at the expense of PERMITTEE. No entry or use of RAILWAY property will be permitted until this permit is signed, and permission received from the Vice President of Engineering of RAILWAY, or his duly authorized representative.

6. **RAILWAY OPERATIONS.**

All operations shall be carried on in such a manner so as not to interfere with RAILWAY property and operations or the use of any RAILWAY facilities. If, in the opinion of the Vice President of Transportation of RAILWAY, the Vice President of Engineering RAILWAY, or another duly authorized representative of RAILWAY, conditions warrant at any time, RAILWAY will provide flag service and protection at the expense of PERMITTEE, and PERMITTEE agrees to pay to RAILWAY the full cost and expense therefor.

7. **CROSSING TRACK.**

In no event shall equipment or material be transported across track(s) without special permission from the Vice President of Engineering RAILWAY, or his duly authorized representative. Such crossing may require installation of materials, as deemed necessary by RAILWAY, and a separate license agreement, to be prepared by RAILWAY, at the expense of PERMITTEE, and the PERMITTEE agrees to pay to RAILWAY the full cost and expense therefor.

8. **CLEARANCES.**

All equipment working on or material in use upon the property of RAILWAY shall be kept at all times not less than 8.5 feet from the nearest rail of any track, or as subsequently modified in writing by the Vice President of Engineering, or his duly authorized representative, of RAILWAY. PERMITTEE shall conduct operations so that no part of any equipment shall foul any track, transmission, signal or communication lines, or any other structure of RAILWAY.

9. **RESTORATION OF PREMISES.**

Upon completion of the occupation, RAILWAY's property shall be left or restored by PERMITTEE in a condition satisfactory to RAILWAY in its sole discretion. This includes, without limitation, the restoration immediately of any fences removed.

10. **SUBSIDENCE.**

PERMITTEE shall be responsible for any settlement caused to the roadbed, right of way, and/or tracks, facilities, and appurtenances of RAILWAY arising from or as a result of PERMITTEE's occupation of RAILWAY property, and PERMITTEE agrees to pay to RAILWAY on demand the full cost and expense therefor.

11. **TERM OF PERMIT.**

RAILWAY reserves the right to revoke this permit at any time. Unless subsequently modified or terminated, this permit shall begin upon execution of this Agreement by both PERMITTEE and RAILWAY, and end on _____/_____/2017. PERMITTEE agrees to notify RAILWAY when use of the property or work is completed. Under no circumstances shall this temporary permit be construed as granting PERMITTEE any right, title or interest of any kind or character in the property of RAILWAY.

12. **INSURANCE.**

Prior to commencement of occupation or use of the property of RAILWAY for activities described above, PERMITTEE, or its contractor, at its sole cost and expense, shall procure, maintain and furnish RAILWAY during continuance of this permit Commercial Liability Insurance covering liability assumed by PERMITTEE under this permit with a combined single limit of not less than Five Million Dollars (\$5,000,000.00) for personal injury and property damage per occurrence, naming RAILWAY as an additional insured. PERMITTEE shall furnish RAILWAY Director Real Estate at 100 East First Street, Brewster, OH 44613, with a certificate of insurance referring to this permit by date, name of RAILWAY, description of permit and location covered. The certificate shall be endorsed to provide for thirty (30) days' notice to said RAILWAY prior to termination of or change in the coverage provided. If a higher limit of liability is required by RAILWAY, RAILWAY shall provide PERMITTEE written notice of the limit required and within thirty (30) days thereafter PERMITTEE shall provide revised certificate of insurance for the increase required limit. Furnishing of this insurance by PERMITTEE shall not limit PERMITTEE's liability under this lease but shall be additional security therefor.

AGREED TO AND ACCEPTED:

| | |
|------------|---|
| _____ | WHEELING & LAKE ERIE RAILWAY COMPANY |
| _____ | Jeffery A. Davis Jr. _____ |
| Print Name | Print Name |
| _____ | _____ |
| Signature | Signature |
| _____ | Manager of Real Estate _____ |
| Title | Title |
| _____ | _____ |
| Date | Date |