

RESOLUTION NO. 33-21

A RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION FOR GRANT ASSISTANCE WITH THE OHIO RAIL DEVELOPMENT COMMISSION (ORDC), AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:

- SEC. 1:** That the Mayor is hereby authorized and directed to file an application with the Ohio Rail Development Commission (ORDC) for a grant to be used to improve drainage and replace ties, rail and ballast on a portion of the rail line north of SR 18 and also to replace the crossing surface on SR 18 near AI Root Company.
- SEC. 2:** That if the Grant is awarded to the City, the Mayor is authorized to accept the grant and complete all documentation necessary for the implementation and administration of the grant.
- SEC. 3:** That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution 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 Resolution shall be considered an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason applications are reviewed as they are received; wherefore, this Resolution shall be in full force and effect immediately upon its passage and signature by the Mayor.

PASSED: March 8, 2021

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: March 9, 2021

SIGNED: Dennis Hanwell
Mayor

AGREEMENT

This Agreement ("Agreement"), made and entered into this 28 day of JULY 2021, by and among the STATE OF OHIO, OHIO RAIL DEVELOPMENT COMMISSION (hereinafter referred to as "Grantor"), 1980 West Broad Street, Mail Stop 3140, Columbus, Ohio 43223, and the City of Medina (hereinafter referred to as the "Grantee"), with principal offices at 132 N. Elmwood Avenue, Medina, Ohio 44256. This Agreement shall have ORDC Agreement Control Number 2021-__.

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

Article 1. RAIL PROJECT DESCRIPTION:

The Project pursuant to this Agreement is attached in Exhibit A. The work described above shall hereinafter be referred to as the RAIL PROJECT. Any work not included in the RAIL PROJECT will be ineligible for reimbursement.

Article 2. PREVAILING WAGE:

Due to the non-highway nature of this Rail Project, federal Davis-Bacon prevailing wage requirements do not apply.

Article 3. COMPETITIVE BIDDING:

Grantee agrees to pursue the RAIL PROJECT in a manner that is cost effective for both the Grantee and Grantor and consistent with Federal Railroad Administration requirements. Grantee shall not advertise for bids prior to the receipt of an "Authorization to Advertise" notification from Grantor.

Once the Grantee receives authorization to advertise, the Grantee may begin advertising activities. The period between the first legal advertising date and the bid opening date shall be a minimum of twenty-one (21) calendar days. The Grantee shall submit to Grantor any addendum to be issued during the advertisement period that changes estimates or materials. Grantor shall review and approve such addendum for project eligibility. All addenda shall be distributed to all potential bidders prior to opening bids and selling the contracts.

The Grantee must incorporate the Ohio Department of Transportation's ("ODOT") LPA Bid Template in its bid documents. The template includes Form FHWA-1273, Required Contract Provisions, a set of contract provisions and proposal notices that are required by regulations promulgated by the Federal Highway Administration ("FHWA") and other Federal agencies, which must be included in all contracts as well as appropriate subcontracts and purchase orders.

In accordance with Ohio Revised Code ("ORC") Section 153.54, et. seq., the Grantee shall require that the selected contractor provide a performance and payment bond in an amount equal to at least one hundred percent (100%) of its contract price as security for the faithful performance of its contract. Grantor shall be named an obligee on any bond. If the Grantee has

one hundred percent (100%) locally-funded work product within this agreement, the Grantee must allocate the correct percent of the performance and payment bond cost to the one hundred percent (100%) locally-funded work product.

Before awarding a contract to the selected contractor, the Grantee shall verify that the contractor is not subject to a finding for recovery under ORC Section 9.24, that the contractor has taken the appropriate remedial steps required under ORC Section 9.24, or that the contractor otherwise qualifies under the exceptions to this section. Findings for recovery can be viewed on the Auditor of State's website at <https://ohioauditor.gov/findings.html> . If the Grantee fails to so verify, Grantor may immediately terminate this Agreement and release all Federal funding commitments.

Before awarding a contract to the selected contractor, the Grantee shall verify that the contractor is an active registrant on the Federal System for Award Management ("SAM"). Pursuant to 48 CFR 9.404, contractors that have an active exclusion on SAM are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits. If the Grantee fails to so verify, Grantor may immediately terminate this Agreement and release all federal funding commitments.

The Grantee is prohibited from imposing any geographical hiring preference on any bidder in the Grantee's bid documents or on any successful contractor in the Grantee's award or contract for the construction of the RAIL PROJECT.

After analyzing all bids for completeness, accuracy, and responsiveness, per ORC 153.12, the Grantee shall submit a recommendation for approval of award of the contract in accordance with laws and policies governing the Grantee. Grantee shall not award the contract without the written approval of the Grantor.

All bidders must be prequalified contractors with ODOT. Pre-qualification status must be in effect/current at the time of award. For work types that ODOT does not pre-qualify, the Grantee must still select a qualified contractor. Subcontractors are not subject to the pre-qualification requirement. In accordance with FHWA Form 1273 Section VII and 23 CFR 635.116, the "prime" contractor must perform no less than thirty percent (30%) of the total original contract price. The thirty percent (30%) prime requirement does not apply to design-build contracts.

Article 4. GRANT SUM/METHOD OF PAYMENT:

Section 4.01 The Grantor hereby grants up to \$249,600 to the Grantee for the sole and express purpose of undertaking the RAIL PROJECT, which shall be referred to as the "Funds." Grantee will match Grantor's Funds for the RAIL PROJECT with \$62,400 of Grantee's own funds. Grantor will not be responsible for any payment to the Grantee beyond the Funds.

Section 4.02 The Federal-aid Highway Program operates on a reimbursement basis, which requires that costs actually be incurred and paid before a request is made for reimbursement. The Grantee shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from Grantor for work performed on the RAIL PROJECT. If the Grantee

requests reimbursement, it must provide documentation of payment for the RAIL PROJECT costs requested. The Grantee shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the RAIL PROJECT. The Grantee must submit to Grantor a written request for reimbursement of the Federal/State share of the expenses involved, attaching copies of all source documentation associated with paid costs.

Section 4.03 The Grantee shall submit invoices to the Grantor for 80% of costs incurred for RAIL PROJECT work completed. The final invoice shall be in an amount which is equal to or greater than twenty percent (20%) of the Funds. The final invoice shall not be submitted until one hundred percent (100%) of all work on the RAIL PROJECT is completed. The invoice shall substantiate, to the satisfaction of the Grantor, RAIL PROJECT costs incurred. The adequacy and sufficiency of such invoices shall be determined solely by the Grantor. The Grantor shall not pay the Grantee for any work that is not part of the RAIL PROJECT. To facilitate Grantor's final inspection, ties installed must be marked in such a way to be easily identifiable by the Grantor, and the Grantee's final invoice shall include an inventory of installed materials by milepost or other segmentation of the RAIL PROJECT that is satisfactory to the Grantor. In addition, prior to the Grantor's approval of any invoice, the Grantee shall provide evidence satisfactory to the Grantor that demonstrates that all contractors who are to be paid from the Grantor's Funds are fully compliant with Ohio Bureau of Workers Compensation requirements. Grantor reserves the right to reject any invoice which does not segment the inventory of installed materials in a manner acceptable to Grantor.

Section 4.04 Payment shall be made within forty-five (45) days from the date of Grantor's approval of Grantee's invoice. The Grantor shall have thirty (30) days from the receipt of the invoice to either approve or reject the invoice. If any invoice is rejected, Grantor shall immediately provide Grantee with a notice and opportunity to correct any deficiency or error. The Local Public Agency ("LPA") must provide the final invoices, and final report (Appendix P located in the Construction Chapter of the ODOT LPA Manual) along with all necessary closeout documentation within 6 months of the physical completion date of the RAIL PROJECT. All costs must be submitted within 6 months of the established completion date. Failure to submit final invoices along with the necessary closeout documentation within the 6-month period may result in closeout of the RAIL PROJECT and loss of eligibility of any remaining Federal and or State funds.

Article 5. TERM OF AGREEMENT/SUSPENSION/TERMINATION:

All financial obligations of the Grantor under this Agreement shall expire on December 31, 2022 and the RAIL PROJECT shall also be completed by December 31, 2022 or extended by agreement of the parties.

Grantor Termination: The Grantor shall have the right to terminate this Agreement in the event of a material breach of this Agreement by the Grantee. The Grantor shall provide the Grantee thirty (30) days written notice in advance of the exercise of its rights under this provision, unless the Grantor determines that substantial noncompliance cannot be corrected within a reasonable time, then the Grantor may immediately terminate this Agreement.

Suspension of Funding by the Grantor: The Grantor shall have the right to suspend funding of

the RAIL PROJECT authorized under this Agreement at any time in the event of any material breach or default by Grantee, and for so long as the Grantee fails substantially to comply with material terms and conditions of this Agreement.

Article 6. PROJECT INSPECTION:

Section 6.01 The Grantee shall allow, upon reasonable notice, the inspection of and access to, the RAIL PROJECT to the Grantor.

Section 6.02 The Grantee shall furnish written notification no later than five (5) working days prior to the date work will start at the RAIL PROJECT site to Megan McClory, Secretary-Treasurer of the Ohio Rail Development Commission, at 1980 West Broad Street, Mail Stop 3140, Second Floor, Columbus, Ohio 43223, Telephone Number (614)644-0289, FAX (614)728-4520 or e-mail at Megan.McClory@dot.ohio.gov. The Grantee shall also notify the same of the details of any work stoppages, the subsequent resumption of the work activity, and the date on which the work on the RAIL PROJECT was completed.

Article 7. RAIL MAINTENANCE AND REPAIR/TEN YEAR REQUIREMENT:

After the RAIL PROJECT has been completed pursuant to this Agreement, Grantee agrees to maintain the RAIL PROJECT at a level in compliance with Federal Railroad Administration Class I standards for a period of not less than ten (10) years. If, during this ten (10) year period, the Grantor determines that the RAIL PROJECT does not comply with Federal Railroad Administration Class I standards, the Grantor may require Grantee, via a written notice, to perform, or cause to be performed, all work necessary to bring the RAIL PROJECT up to Federal Railroad Administration Class I standards. The Grantor shall be the sole arbiter in determining if Grantee has satisfactorily restored the RAIL PROJECT to Federal Railroad Administration Class I standards. Further, in the event that the Grantor determines the RAIL PROJECT does not meet the Federal Railroad Administration Class I standards and Grantee does not correct the deficiencies of the RAIL PROJECT in a manner satisfactory to the Grantor, Grantee shall repay to the Grantor an amount calculated as follows: One hundred percent (100%) of the Funds received by Grantee in the first year after the RAIL PROJECT's completion, decreasing ten percent (10%) each year thereafter, until the tenth year after completion of the RAIL PROJECT at which time Grantee's repayment would be equivalent to ten percent (10%) of the Grantor's Funds.

Article 8. CONTINGENT INTEREST/CESSASSION OF SERVICE:

For ten (10) years after completion of the RAIL PROJECT, upon any sale or disposition of the RAIL PROJECT or any portion thereof, to the RAIL PROJECT, the Grantee agrees to repay the Grantor, within thirty (30) days of such sale or disposition or discontinuance, 80% (eighty percent) of the Net Liquidation Value ("NLV") of the RAIL PROJECT, but not to exceed the Funds received by Grantee under this Agreement. The NLV shall mean the value of the RAIL PROJECT for resale or for salvage, whichever is the greater, less the cost to remove and sell and/or dispose of the RAIL PROJECT. Any sale or disposition of the RAIL PROJECT or any portion thereof shall mean any one of the following: (i) use of the RAIL PROJECT not consistent with the said purpose, or (ii) use of the RAIL PROJECT for the purpose by an

assignee or successor to the Grantee when the Grantor has not approved of an assignment of this Grant. The Grantee shall notify the Grantor, in writing, no less than thirty (30) days in advance of any sale or disposition of the RAIL PROJECT or any portion thereof.

Article 9. OTHER CLAUSES:

Section 9.01 FLOW DOWN PROVISIONS:

Grantee will note in all bid documents and other correspondence that 80% of the RAIL PROJECT will be funded via Federal-aid Highway Funds.

Section 9.02 BUY AMERICA PROVISION

The Grantee's acquisition of steel or iron products for the RAIL PROJECT is subject to Buy America requirements. The Grantee shall comply with the Buy America provisions set forth in 23 CFR 635.410 and Section 106.09 of the ODOT Construction and Material Specifications dated January 1, 2016.

Section 9.03 DISADVANTAGED BUSINESS ENTERPRISES PROVISION

The Grantee shall ensure that Disadvantaged Business Enterprises ("DBE"), as defined in 49 CFR Part 26, will have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. To meet this requirement, subcontractors who claim to be DBEs must be certified by ODOT. The Grantee shall require that all contracts and other agreements it enters into for the performance of the RAIL PROJECT contain the following specific language:

DBE Requirement. DBE participation goals (subcontracts, materials, supplies) have been set on this project for those certified as DBEs pursuant to Title 23, U.S.C. section 140(c) and 49 CFR, Part 26, and where applicable qualified to bid with ODOT under Chapter 5525 of the ORC.

Grantor shall supply the percentage goal to the Grantee upon review of the engineer's estimate. Prior to executing the contract with the contractor, and in order for Grantor to encumber the Federal/State funds, the contractor must demonstrate compliance with the DBE Utilization Plan and Good Faith Efforts requirements.

(i) GOOD FAITH EFFORTS ("GFEs")

In the event that the DBE contract goal established by Grantor is not met on a project, the contractor shall demonstrate that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

The contractor shall demonstrate its GFEs by submitting information including but not limited to

the following to the Grantee:

- All written quotes received from certified DBE firms;
- All written (including email) communications between the contractor and DBE firms;
- All written solicitations to DBE firms, even if unsuccessful;
- Copies of each non-DBE quote when a non-DBE was selected over a DBE for work on the contract;
- Phone logs of communications with DBE firms.
- The Grantee will send the GFE documentation including their recommendation to Grantor at the following address:

Office of Small & Disadvantaged Business Enterprises
The Ohio Department of Transportation
1980 West Broad Street, Mail Stop 3270
Columbus, Ohio 43223

Grantor shall utilize the guidance set forth in 49 CFR §26.53 Appendix A in determining whether the contractor has made adequate good faith efforts to meet the goal. Grantor will review the GFE documentation and the Grantee's recommendation and issue a written determination on whether adequate GFEs have been demonstrated by the contractor.

The contractor may request administrative reconsideration within two (2) days of being informed that it did not perform a GFE. The contractor must make this request in writing to the following official:

Ohio Department of Transportation
Division of Chief Legal Counsel
1980 West Broad Street, Mail Stop 1500
Columbus, Ohio 43223

The reconsideration official will not have played any role in the original determination that the contractor did not document sufficient good faith effort.

As part of this reconsideration, the contractor will have the opportunity to provide written documentation or an argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. Grantor will send the contractor a written decision on reconsideration explaining the basis for finding that the contractor did or did not meet the goal or make adequate good faith efforts. The result of the reconsideration process is not administratively appealable.

Grantor may issue sanctions if the contractor fails to comply with the contract requirements and/or fails to demonstrate the necessary good faith effort. Grantor may impose any of the following sanctions:

- (a) letter of reprimand;
- (b) contract termination; and/or
- (c) other remedies available by law including administrative suspension.

Factors to be considered in issuing sanctions include, but are not limited to:

- (d) the magnitude and the type of offense;
- (e) the degree of the consultant's culpability;
- (f) any steps taken to rectify the situation;
- (g) the contractor's record of performance on other projects including, but not limited to:
 - (i) annual DBE participation over DBE goals;
 - (ii) annual DBE participation on projects without goals;
 - (iii) number of complaints Grantor has received from DBEs regarding the contractor; and,
 - (iv) the number of times the Contractor has been previously sanctioned by Grantor; and,
 - (v) Whether the contractor falsified, misrepresented, or withheld information.

Section 9.04 MECHANIC'S LIENS

The Grantee shall notify Grantor of the filing of any mechanic's liens against the Grantee's contractor within three (3) business days of receipt of notice of lien. Failure to so notify Grantor or failure to process a mechanic's lien in accordance with the provisions of Chapter 1311 of the ORC may result in the termination of this Agreement. Upon the receipt of notice of a mechanic's lien, Grantor reserves the right to (1) withhold an amount of money equal to the amount of the lien that may be due and owing to either the Grantee or the contractor; (2) terminate direct payment to the affected contractor; or (3) take both actions, until such time as the lien is resolved.

Section 9.05 SUSPENSION OR TERMINATION OF CONTRACTOR

If, for any reason, the Grantee contemplates suspending or terminating the contract of the contractor, it shall first seek Grantor's written approval. Failure to timely notify Grantor of any contemplated suspension or termination, or failure to obtain written approval from Grantor prior to suspension or termination, may result in Grantor terminating this Agreement and ceasing all federal funding commitments.

If Grantor approves any suspension or termination of the contract, Grantor reserves the right to amend its funding commitment in Article 4 and, if necessary, unilaterally modify any other term of this Agreement in order to preserve its federal mandate. Upon request, the Grantee agrees to assign all rights, title, and interests in its contract with the contractor to Grantor to allow Grantor to direct additional or corrective work, recover damages due to errors or omissions, and to exercise all other contractual rights and remedies afforded by law or equity.

Any Grantee right, claim, interest, and/or right of action, whether contingent or vested, arising out of, or related to any contract entered into by the Grantee for the work to be performed by the contractor on this RAIL PROJECT (the Claim), may be subrogated to Grantor, and Grantor shall have all of the Grantee's rights in/to the Claim and against any other person(s) or entity(ies) against which such subrogation rights may be enforced. The Grantee shall immediately notify Grantor in writing of any Claim. The Grantee further authorizes Grantor to sue, compromise, or settle any such Claim. It is the intent of the parties that Grantor be fully substituted for the Grantee and subrogated to all of the Grantee's rights to recover under such Claim(s). The Grantee agrees to cooperate with reasonable requests from Grantor for assistance in pursuing any action on the

subrogated Claim including requests for information and/or documents and/or to testify.

Article 10. NOTICES:

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 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 the Grantee:

City of Medina
132 North Elmwood Avenue
Medina, Ohio
Attention: City Engineer

If to the Grantor:

Ohio Rail Development Commission
1980 West Broad Street, Second Floor
Mail Stop 3140
Columbus, Ohio 43223
Attention: Grants Administrator

Article 11. MISCELLANEOUS CLAUSES:

Section 11.01 PLANS AND SPECIFICATIONS:

The RAIL PROJECT shall be governed by the engineering standards, practices, and specifications established by the American Railway Engineering and Maintenance of Way Association (hereinafter "A.R.E.M.A."). Further, it will conform to relevant standards of the Grantee.

Section 11.02 WORKMANSHIP:

The RAIL PROJECT shall be executed only by artisans and mechanics qualified to perform rail track maintenance and construction work. The RAIL PROJECT shall be performed in accordance with A.R.E.M.A. standards. The RAIL PROJECT shall be inspected by a Grantor railroad inspector within thirty (30) days after the receipt of a complete final invoice for the completed RAIL PROJECT. Any portion of the RAIL PROJECT performed contrary to standards of A.R.E.M.A., either shall be removed and replaced by the Grantee without delay and without any extra cost to the Grantor, or the Grantor's Funds (as defined below) granted herein for that portion of the work not completed to the specifications of A.R.E.M.A. shall be repaid by the Grantee to the Grantor in full.

Section 11.03 RECORDS, ACCESS AND MAINTENANCE

The Grantee agrees to maintain records concerning the RAIL PROJECT as described in this Agreement for a period of three (3) years after the final inspection of the RAIL PROJECT by the Grantor. Further, in order to demonstrate the public benefits of the RAIL PROJECT Grantor may request that Grantee provide information related to the RAIL PROJECT including but not limited to, financial reports, rail car loading data, job creation data, derailment data, and all other relevant information. The Grantee shall provide this information to the Grantor within thirty (30)

days of the Grantor's request so long as the request is made within three (3) years of the date of the final Grantor inspection of the RAIL PROJECT. The Grantee further agrees that records required by the Grantor with respect to any questioned costs, audit disallowance, litigation or dispute between the Grantor and the Grantee shall be maintained for the time needed for the resolution of said question and, that in the event of early termination of this Agreement, or if for any other reason the Grantor shall require a review of the records related to the RAIL PROJECT, the Grantee shall, at its own cost and expense, segregate all such records related to the RAIL PROJECT from its other records of operation.

Section 11.04 REPRESENTATIONS AND WARRANTIES

- (a) The Grantee warrants and represents the following:
 - (i) Grantee has the power and authority to enter into this Agreement; and
 - (ii) Grantee has the authority to carry out its obligations under this Agreement; and
 - (iii) No personnel of the Grantee, any subcontractor of the Grantee, nor to the Grantee's knowledge, any public official, employee or member of the governing body of the particular locality where the RAIL PROJECT 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 such personal monetary interest, involuntarily or voluntarily, shall immediately disclose his interest to the Grantor in writing. Thereafter, such person shall not participate in any action affecting the work under this Agreement unless the Grantor 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) The Grantor represents and warrants that it has the power and authority to enter into this Agreement and to carry out its obligations under this Agreement.

Section 11.05 ENVIRONMENTAL PROTECTION:

The Grantee represents and warrants that no facility or equipment shall be acquired, constructed, or improved as a part of this Agreement unless the facility or equipment is equipped to limit water and air pollution in accordance with all applicable state and federal standards.

The Grantee agrees to expend granted Funds and to conduct the RAIL PROJECT in compliance with all the requirements of Section 114 of the Clean Air Act (42 U.S.C. § 7414) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. § 1318), and all regulations issued there under.

The Grantee represents and warrants that no facilities to be utilized or improved as part of this RAIL PROJECT are listed on the Environmental Protection Agency's List of Violating Facilities.

The Grantee represents that it will notify the Grantor within one (1) business day of receiving any communication from the Environmental Protection Agency indicating that any facility to be

utilized or improved as part of the RAIL PROJECT is under consideration to be listed on the Environmental Protection Agency's List of Violating Facilities.

No publicly owned land from a public park, recreation area, or wildlife and water fowl refuge of national, state, or local significance as determined by the official having jurisdiction thereof, or any land from a historic site of national, state, or local significance as determined by the official may be used for the RAIL PROJECT without the advance written authorization of the Grantor.

The Grantee shall be responsible for assuring compliance with all commitments made as part of the RAIL PROJECT's environmental clearance and/or permit requirements during the construction of the RAIL PROJECT.

The Grantee shall submit a Notice of Intent ("NOI") to Ohio EPA to obtain coverage under the National Pollution Discharge Elimination System (NPDES) Construction General Permit for all projects where the combined Contractor and Project Earth Disturbing Activity ("EDA") are one acre or more. If the Grantee chooses not to use ODOT's L&D Vol. 2, Grantee may use an alternative post-construction Best Management Practices ("BMP") criteria with Ohio EPA approval.

Section 11.06 INSURANCE, INDEMNIFICATION AND RELEASE:

This Grant is without force and effect until such time that the Grantee demonstrates to the satisfaction of the Grantor that it has liability insurance coverage; i.e. bodily and property insurance coverage, in an amount not less than FIVE MILLION DOLLARS (\$5,000,000) per each individual claim in regard to the operation of rail service at the RAIL PROJECT. The Grantee shall provide to the Grantor, within thirty (30) days of the effective date of this Grant, evidence of such coverage.

Grantee agrees to indemnify and hold the Grantor and its agents harmless against any and all losses, claims, causes of action, destruction, liability (including, without limitation, strict or absolute liability in tort or by statute), charges, costs or expenses (including, without limitation, counsel fees to the extent permitted by law) caused by the Grantee's negligent, intentional, willful or wanton actions or inactions, including such actions, or the failures to act, of any employees of the Grantee relating to the RAIL PROJECT. Grantee agrees to reimburse the Grantor for any judgments which may be obtained against the Grantor and defend against any claims or legal actions if requested, in writing, by the Grantor relating to the RAIL PROJECT.

Section 11.07 UNUSUAL CIRCUMSTANCES AFFECTING PERFORMANCE:

In the event that the Grantee cannot meet any or all of the obligations placed upon it by the terms of this Agreement, (1) the Grantee shall immediately notify the Grantor in writing, and (2) the Grantor may, at its sole discretion, make reasonable efforts to assist the Grantee in meeting its obligations under the Agreement. If the Grantee is unable to comply with its obligations under this Agreement for a period no less than thirty (30) days, the Grantee may seek modification in accordance with the procedures set forth in this Agreement, including but not limited to, the extension of the term of this Agreement. Such extension shall be within the sole discretion of the Grantor unless outside of the Grantee's control.

Section 11.08 CONTINGENCIES:

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 §§ 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 § 127.16 of the ORC.

Section 11.09 COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS:

The Grantee agrees to comply with all applicable federal, state, and local laws in the conduct of the work hereunder. Grantee 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 Grantee on the performance of the work authorized by this Agreement.

Also, if the Grantee has knowingly made a false statement to the Grantor to obtain this grant of Funds, the Grantee 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.

Further, during the performance of this Agreement, the Grantee, for itself, its assignees, and successors in interest, which includes consultants) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21
- (b) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-Aid programs and projects)
- (c) Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 et seq.) (prohibits discrimination on the basis of sex)
- (d) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability) and 49 CFR Part 27

- (e) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age)
- (f) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of Federal-Aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not)
- (g) Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§ 12131-12189), as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38 (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities)
- (h) The Federal Aviation Administration’s Non-Discrimination Statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex)
- (i) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations)
- (j) Executive Order 13166, Improving Access to Services for People with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100)

During the performance of this Agreement, the Grantee for itself, its assignees and successors in interest further agrees as follows:

- (k) Compliance with Regulations: The Grantee (hereinafter includes consultants) will comply with the Acts and Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (“FHWA”), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
- (l) Non-discrimination: The Grantee, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, disability, low-income status, or limited English proficiency in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Grantee will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix E, including employment practices

when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

- (m) Solicitations for Subcontractors, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Grantee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability, low-income status, or limited English proficiency.
- (n) Information and Reports: The Grantee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Grantor or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of the Grantee is in the exclusive possession of another who fails or refuses to furnish this information, the Grantee will so certify to the Grantor or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- (o) Sanctions for Noncompliance: In the event of the Grantee's noncompliance with the Nondiscrimination provisions of this Agreement, Grantor will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:
 - (i) withholding payments to the Grantee under the Agreement until the Grantee complies; and/or
 - (ii) cancelling, terminating, or suspending the Agreement, in whole or in part.
- (p) Incorporation of Provisions: The Grantee will include the provisions of paragraphs (k) through (o) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Grantee will take action with respect to any subcontract or procurement as Grantor or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Grantee becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Grantee may request Grantor to enter into any litigation to protect the interests of Grantor. In addition, the Grantee may request the United States to enter into the litigation to protect the interests of the United States.

Section 11.10 OUTSTANDING LIABILITIES:

The Grantee affirmatively covenants that it does not owe: (1) any delinquent taxes to the State of Ohio (the "State") or a political subdivision of the State; (2) any monies to the State or a state agency for the administration or enforcement of any environmental laws of the State; and (3) any other monies to the State, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.

Section 11.11 GRANTOR DISCLAIMER:

The Grantor shall have not have or acquire any right, title or interest in the RAIL PROJECT or any materials therein by virtue of the providing of Funds for the performance of this Grant. However, this Section 11.11 does not in any way negate the Grantee's responsibilities to repay the NLV of the RAIL PROJECT described in Article 8.

Section 11.12 THIRD PARTY BENEFICIARY:

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions hereof or of any other document to create in the public, or any person whomsoever, a third party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries, property damage or for loss, damage or delay of cargo or shipment by reason of, or under the terms or provisions of, this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain solely as imposed by law.

Section 11.13 DISPUTE RESOLUTION:

In the event the Grantee 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 Grantor. After review and consultation with the Grantee, the Grantor shall decide the matter. If the dispute cannot be resolved, and the Grantee 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.

Section 11.14 OFFSHORE OUTSOURCING PROVISION:

The Grantee affirms to have read and understands Executive Order 2019-12D and shall abide by those requirements in the performance of this Agreement. Notwithstanding any other terms of this Agreement, the Grantor reserves the right to recover any funds paid for services the Grantee performs outside the United States for which it did not receive a waiver from the Director of the Ohio Department of Administrative Services.

Section 11.15 EQUAL EMPLOYMENT OPPORTUNITY:

In performing this Agreement, the Grantee 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 Grantee 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 Grantee 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.

Section 11.16 REMEDIES:

No remedy herein conferred or reserved by the Grantor is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Agreement now or hereafter existing at law or in equity, which in any event shall not exceed the amount of the Funds.

Section 11.17 NO WAIVER:

No delay or omission to exercise any right or option accruing to Grantor upon any breach by the Grantee 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 the Grantor. 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 waivers shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 11.18 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.

Section 11.19 FORUM AND VENUE:

All actions regarding this Agreement shall be in a forum and venue in a court of competent subject matter jurisdiction in Franklin County, Ohio.

Section 11.20 SEVERABILITY:

Whenever possible, each provision of this Agreement shall be interpreted in such manners 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.

Section 11.21 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.

Section 11.22 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.

Section 11.23 ASSIGNMENT:

Neither this Agreement, nor any rights, duties or obligations described herein, shall be assigned or subcontracted without the prior advance written consent of the Grantor, which shall not be unreasonably withheld. In the event the Grantor approves an assignment, each and all of the terms and conditions of this Agreement shall extend to the benefit of the respective successors and assigns.

Section 11.24 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.

Section 11.25 EFFECTIVE DATE:

This Agreement shall become effective on July 28, 2021, which will be termed the "effective date."

IN WITNESS WHEREOF, the parties hereto have caused this Grant Agreement to be executed as of the day and year first above written.

GRANTEE:

City of Medina

BY: _____

PRINT NAME: _____

TITLE: _____

DATE: _____

Dennis Hawwell
Dennis Hawwell
Mayor
07-28-2021

GRANTOR:

STATE OF OHIO
OHIO RAIL DEVELOPMENT COMMISSION

Matthew Dietrich,
Executive Director

Date: 8/18/2021

PART 1: DRAINAGE & TRACK IMPROVEMENTS					
ITEM #	ITEM DESCRIPTION	UNIT PRICE	UNIT	QTY.	TOTAL
EARTHWORK					
1	Clearing & Grubbing	\$2,000	LUMP	1	\$2,000
2	Excavation & Embankment	\$35	CY	300	\$10,500
SUBTOTAL, ROADWAY:					\$12,500
EROSION CONTROL					
3	Seeding and Topsoil	\$6	SY	4,600	\$27,600
4	Erosion Control Plan	\$5,000	EACH	1	\$5,000
SUBTOTAL, EROSION CONTROL:					\$32,600
DRAINAGE					
5	Storm Sewers, 12-18 inch diameter	\$60	LIN. FT.	180	\$10,800
6	Jack & Bore Under RR Tracks	\$300	LIN. FT.	16	\$4,800
7	Ditching	\$8	LIN. FT.	1,200	\$9,600
8	Underdrain	\$6	LIN. FT.	600	\$3,600
9	24" Half Headwall	\$1,100	EACH	2	\$2,200
SUBTOTAL, DRAINAGE:					\$31,000
TRACK WORK					
10	132# Rail	\$50	FEET	120	\$6,000
11	132# Double Shoulder Tied Plats	\$12	EACH	90	\$1,080
12	Tie Plate Pads	\$15	EACH	90	\$1,350
13	132#/100# Compromise Weld Kits	\$900	EACH	6	\$5,400
14	Rail Anchors	\$10	EACH	300	\$3,000
15	Cross Tie Removal And Replacement	\$120	EACH	100	\$12,000
16	Carbon Steel Rail Spikes	\$125	KEG	4	\$500
17	Ballast	\$32	TON	250	\$7,925
SUBTOTAL, TRACK WORK:					\$37,255
INCIDENTALS					
22	ODOT 624 Mobilization	\$2,500		1	\$2,500
23	Construction Layout	\$2,500		1	\$2,500
24	Performance Bond, Warranty and Maintenance Bond	\$8,500		1	\$1,000
SUBTOTAL, INCIDENTALS:					\$6,000

PART 2: CROSSING SURFACE REPLACEMENT					
ITEM #	ITEM DESCRIPTION	UNIT PRICE	UNIT	QTY.	TOTAL
CROSSING SURFACE					
4	Rail Crossing Removal	\$15,000	LUMP	1	\$15,000
16	Modular, precast concrete rail crossing surface	\$2,100	LIN. FT.	64	\$134,400
15	Ballast	\$32	TON	20	\$634
SUBTOTAL, CROSSING SURFACE:					\$150,034
TRAFFIC CONTROL					
18	Maintenance of Traffic	\$5,000		1	\$5,000
SUBTOTAL, TRAFFIC CONTROL:					\$5,000

BUDGET ESTIMATE
ORDC FY2021 GRANT FUNDING

SUMMARY - ALL ITEMS	
PART 1: DRAINAGE & TRACK IMPROVEMENTS	
SUBTOTAL, ROADWAY:	\$12,500
SUBTOTAL, EROSION CONTROL:	\$32,600
SUBTOTAL, DRAINAGE:	\$31,000
SUBTOTAL, TRACK WORK:	\$37,255
SUBTOTAL, INCIDENTALS:	\$6,000
SUBTOTAL, PART 1: DRAINAGE & TRACK IMPROVEMENTS:	\$119,355
PART 2: CROSSING SURFACE REPLACEMENT	
SUBTOTAL, CROSSING SURFACE:	\$150,034
SUBTOTAL, TRAFFIC CONTROL:	\$5,000
SUBTOTAL, PART 2: CROSSING SURFACE REPLACEMENT	\$155,034
TOTAL	
TOTAL, ALL ITEMS:	\$274,389
Engineering/Design/Project Management Costs (8.0% of Construction Subtotal)	\$21,951
Right Of Way	\$0
Printing, Advertising, Legal	\$800
Contingency (10% of Construction Subtotal)	\$15,503
TOTAL PROJECT ESTIMATE:	\$312,644