

May 16, 2018

Dear Commissioners:

Enclosed please find relevant information to the **Wednesday, May 23, 2018,** Commission Meeting. Minutes of the March 6, 2018, Commission Meeting are included for your review.

This meeting will be held at **The Ohio Department of Transportation, 1980 W. Broad St., Room GA. The Committees will meet at 10 a.m. The Policy Committee will meet in Room GA and the Administrative Committee will meet in the Rail Conference Room.**

The ORDC Commission meeting will begin promptly at 11:00 a.m.

If you haven't already done so, please contact Julie Finnegan to confirm your attendance. You may reach her at 614-728-9497 (telephone) or by e-mail at [julianne.finnegan@dot.ohio.gov](mailto:julianne.finnegan@dot.ohio.gov).

We look forward to seeing you.

Sincerely,

Mark Policinski  
Chairman

Enclosures



# OHIO RAIL DEVELOPMENT COMMISSION

Mail Stop #3140, 1980 West Broad Street, Columbus OH 43223

John R. Kasich, Governor • Mark Policinski, ORDC Chairman

**The Ohio Department of Transportation  
1980 West Broad Street, Columbus, Ohio**

## **COMMISSION MEETING AGENDA Wednesday, May 23, 2018, 11:00 a.m. Room GA**

**Policy Committee will meet in Room GA at 10:00 a.m.**

**Administrative Committee will meet in the ORDC Conference Room at 10:00 a.m.**

**CALL TO ORDER:** Mark Policinski, Chairman

- Welcome
- Roll Call
- Approval of Minutes from March 6, 2018 Meeting

**EXECUTIVE DIRECTOR REPORT:** Matt Dietrich

**FINANCE REPORT:** Megan McClory

### **ITEM FOR APPROVAL**

- Resolution 18-03 Ashtabula, Carson & Jefferson Railroad 25-Year Lease
- Resolution 18-04 Indiana & Ohio Springfield Bridge Undercuttings
- Resolution 18-05 Better Utilizing Investments to Leverage Development (BUILD)  
Application for Norfolk Southern River Line Project
- Resolution 18-06 Consolidated Rail Infrastructure and Safety Improvements (CRISI)  
Application for Kanawha River Railroad Project

### **APPROVED PROJECT BRIEFINGS**

- Columbus & Ohio River Rail Road Raccoon Run Bridge Repair
- Ellwood Engineered Castings Expansion and Bridge Rehabilitation

### **COMMITTEE REPORTS**

### **OLD BUSINESS**

### **NEW BUSINESS**

### **PUBLIC COMMENT**

### **ADJOURN**

### **COMMISSIONER TRAINING**



**MINUTES FROM THE OHIO RAIL DEVELOPMENT COMMISSION  
REGULAR BI-MONTHLY MEETING  
March 6, 2018**

**CALL TO ORDER**

The meeting of the Ohio Rail Development Commission was called to order by Chairman Policinski at 11:02 a.m. on Tuesday, March 6, 2018.

**MEMBERS PRESENT**

Executive Director Dietrich, Chairman Mark Policinski, Commissioners Solomon Jackson, Eric Richter, Tom Zitter, Andrew Bremer, Thomas Maphet, Dean Hempfling, Andrew Pusateri, and Bill Lozier were in attendance. Also in attendance was Representative Sheehy. Commissioner Johnson, Senator LaRose and Representative Dever were unable to attend. There were 9 voting members present, therefore a quorum was obtained.

**APPROVAL OF THE MINUTES OF THE JANUARY MEETING**

Chairman Policinski asked for a motion to approve the minutes of the January 16, 2018 meeting. Secretary-Treasurer McClory noted one change, from Wednesday to Tuesday for the meeting date. Commissioner Zitter moved to approve the minutes and Commissioner Pusateri seconded the motion. The minutes were approved with 9 votes in the affirmative.

**EXECUTIVE DIRECTOR'S REPORT**

Executive Director Dietrich presented his report to the Commissioners, which can be found on page 5 of the packet. In addition to the items in the packet, Mr. Dietrich expanded on the federal freight plan approval process, thanking Jennifer Townley and Scott Phinney of ODOT for their work and assistance.

Executive Director Dietrich also discussed the Federal Railroad Administration (FRA) notices of funding opportunities. Staff is actively seeking input and partnerships from Ohio railroads for applications.

Representative Sheehy left at 11:09 a.m.

Lastly, Executive Director Dietrich noted staff outreach efforts, specifically the SCORT conference and the BATIC Institute preconference meeting, which staff found very insightful and beneficial to attend.

Commissioner Lozier noted Licking County made the report two times this month, asking specifically about the no award for funding of the Raccoon Run Bridge. Executive Director Dietrich explained staff is actively working with the railroad on a solution to the issue with the bridge and has potentially come up with an approximately 10-year fix. Staff will update the Commissioners as the project develops.

Chairman Policinski asked who would be the eligible recipients of the CRISI funds. Executive Director Dietrich explained anyone can receive the funds, but the state offers an administrative cushion that is a great benefit to any award winner. Additionally, the chairman asked if there is a

breakdown of eligibility between freight and passenger projects. Mr. Dietrich explained there is no funding split or dedicated amount for each type. Lastly, the Chairman asked who is making the funding decisions and Mr. Dietrich confirmed it is USDOT. He also explained staff is concerned about the benefit-cost analysis calculations as a basis for decisions and that staff did discuss this with federal representatives.

Commissioner Bremer asked if this is railroad specific opportunities. Executive Director Dietrich explained anyone who has rail infrastructure can apply.

There were no additional questions.

#### FINANCE REPORT

Megan McClory, ORDC's Secretary-Treasurer, presented the Finance Report to the Commissioners, which can be found on page 7 of the packet and the additional handout. Ms. McClory announced we have some funding left for projects in May after the projects being presented today are approved.

Additionally, Ms. McClory announced Sherrie Pritchard has been hired to fill the vacancy left with Evelyn Winkfield's retirement.

Executive Director Dietrich announced the 2016-2017 project maps are available at each Commissioner's seat.

There were no questions.

#### RESOLUTION 18-02 – Disposal of Excess Property Near Cadiz, Ohio

ORDC staff member Tom Burns presented to the Commissioners the briefing on page 10 of the commission packet. Mr. Burns provided the background information found in the packet and introduced Ken Mason from the Cadiz CIC and Mayor Ken Zitko from Cadiz to elaborate on the property disposal.

Mr. Mason thanked the Commission for considering this property disposal and explained how the property purchase has been on their agenda for some time and are thankful the Commission will finally engage in discussions to sell it. Additionally, Mr. Mason further described the development opportunity the community has with the acquisition of the property.

There were no questions.

Commissioner Zitter made a motion to approve Resolution 18-02 and Commissioner Jackson seconded it. Roll Call was taken and the resolution was approved as presented with 9 votes in the affirmative.

#### PROJECT BRIEFING – Cleveland Commercial Railway Von Willer Yard

ORDC staff member Tom Burns presented to the Commissioners the briefing on page 15 of the commission packet. Mr. Burns provided the background information found in the packet and introduced Bill Brown from the railroad to elaborate on the project.

Mr. Brown described Von Willer Yard and the current situation with shipping scrap metal and the theft of product from the rail cars. He explained not only the advantage of rehabilitating the track for their current shippers, but also for the new opportunity to store empty hazmat cars. Mr. Brown anticipated paying back the loan within 2 years under his current plan.

Commissioner Zitter asked what will be accomplished with the project, based on the packet map. Mr. Burns explained there was not a good map image of the current storage location and the map in the packet is the proposed interchange point. Mr. Brown further explained the current and improved interchange point.

Commissioner Bremer asked Mr. Brown to elaborate on the project. Mr. Brown provided rehabilitation details and explained there is not new rail or additional rail being installed.

There were no additional questions.

#### PROJECT BRIEFING – CertainTeed Corporation

ORDC staff member Tom Burns presented to the Commissioners the briefing on page 18 of the commission packet. Mr. Burns provided the background information found in the packet and introduced Mary Cierebiej from TeamNEO to elaborate on the project.

Ms. Cierebiej explained the importance of attracting this investment and how all the state partners came together to offer an incentive package that landed the expansion. Additionally, Ms. Cierebiej elaborated on the project itself, the logistics partnerships, and thanked the Commission for the grant.

There were no questions.

#### PROJECT BRIEFING – MSW Plastics USA, Inc.

ORDC staff member Tom Burns presented to the Commissioners the briefing on page 21 of the commission packet. Mr. Burns provided the background information found in the packet and introduced Mike Panayi and Joel Koops from the company to elaborate on the project.

Mr. Panayi and Mr. Koops provided a PowerPoint presentation that further elaborates on their new location in Ohio, the nature of their business, and the rail project. Mr. Koops thanked the Commission and the State of Ohio partners for the excellent partnerships and working relationships.

There were no questions.

#### PROJECT BRIEFING – Spray Products Corporation

ORDC staff member Tom Burns presented to the Commissioners the briefing on page 24 of the commission packet. Mr. Burns provided the background information found in the packet and introduced Bart Bastian from the company to elaborate on the project.

Mr. Bastian explained the business of Spray Products and the progression towards a new, expanded location. He explained how rail service was a major part of locating a new facility and

a contributing factor in selecting the Medina site. Additionally, Mr. Bastian described the project and the timeline for the facility to come online.

There were no questions.

#### COMMITTEE REPORTS

Commissioner Zitter reported on the Policy Committee, explaining ORDC staff member Tom Burns described the type of property concerns staff faces and how it is handled. Additionally, Commissioner Zitter noted some public comment on property issues, as well as the ongoing state rail plan efforts.

Commissioner Jackson reported the Administrative Committee did not meet due to lack of attendance. He adjourned the meeting and Commissioners and staff joined the Policy meeting.

There were no questions.

#### OLD BUSINESS

There is no old business.

#### NEW BUSINESS

There is no new business.

#### PUBLIC COMMENT

Mike Connor noted the diversity and international businesses locating in Ohio.

#### ADJOURN

Chairman Policinski adjourned the meeting at 11:47 a.m.

This document reflects the accomplishments and highlights of the Ohio Rail Development Commission since the March Meeting:

**Rail Project Solicitation:**

On March 1, 2018, ORDC staff sent out a project solicitation letter to 56 railroad operators and rail infrastructure owners in Ohio. From that solicitation, ORDC received 13 project requests from 10 different railroads. The total grant request was \$3,121,657 for projects totaling \$7,643,933. Staff have performed their analysis and are currently reaching out to all applicants. Each applicant will get a written response for their application: Staff recommends funding the project and a tentative date, staff requires more information to make a recommendation, or staff does not recommend funding the project.

**Rail Congestion issues in Ohio:**

ORDC, as well as the PUCO, continues to receive complaints about blocked crossings throughout the state. ORDC has been in active contact with the communities of Sharonville, Evendale and Lockland in Southwestern Ohio as well as Lima, Mt. Victory and Archbold.

Once ORDC is aware of an issue at a specific location, staff begins a dialogue with the railroad following the steps below:

1. Make sure the railroad is aware of the situation.
2. Inquire if the issues are temporary or the result of a change in operations or service offering that will be long term.
3. Inquire if any operational changes could mitigate/alleviate the situation.
4. Explore any capital projects that could mitigate/alleviate the situation. This step is available to ORDC now that the federal grade crossing safety funds can be used to reduce blocked crossing incidents.

In addition to blocked crossings, ORDC has received a small number of inquiries regarding rail service issues from specific companies. In those instances, we follow the same outline as above.

**State Rail Plan Update:**

Staff have completed the formal outreach to all identified stakeholder groups. Since the March Meeting, staff has met with the following groups:

- Akron Metropolitan Area Transportation Study
- Brooke-Hancock-Jefferson Metropolitan Planning Commission
- Buckeye Hills Regional Council of Governments
- Cambridge-Guernsey County Community Improvement Corporation
- Coshocton Port Authority
- Lima-Allen County Planning Commission
- Miami Valley Regional Planning Commission
- Mid-Ohio Regional Planning Commission
- Northeast Ohio Areawide Coordinating Agency

- Ohio Mid-Eastern Governments Association
- Stark County Regional Planning Commission
- Toledo-Lucas County Port Authority/Midwest Terminals
- Toledo Metropolitan Area Council of Governments
- West Central Ohio Port Authority

Staff also contacted the JobsOhio regional affiliates for input. Additionally the survey located on the ORDC website remains open for comment until May 31<sup>st</sup>. I want to recognize Tim Brown who has done an outstanding job not only representing ORDC at every meeting but also managing the State Rail Plan Update.

#### Federal Railroad Administration, Request for Information:

On March 22<sup>nd</sup>, the Federal Railroad Administration issued a request for information (RFI) notice in the Federal Register regarding automation in the railroad industry (Docket No. FRA-2018-0027). This RFI consisted of 25 separate questions/issue areas. Upon review of the RFI and in consultation with DriveOhio, ORDC responded to the RFI focusing on two questions/issue areas. The formal RFI and ORDC's response are attached.

#### ORDC Staff Outreach:

Since the March meeting, ORDC staff has participated in the following:

- Ohio Economic Development Association 360 Meeting – Columbus
- Ohio Department of Transportation Civil Rights Symposium – Columbus

#### ORDC Staffing:

- I would like to welcome the following new staff members to the ORDC:
  - Joshua Skaggs is our new grants administrator. This is a new position in the project development section, but I anticipate Joshua will also do a lot of work for the grade crossing safety section as he gets up to speed. Joshua previously worked for ODOT Finance.
  - Sean Neef is back for the summer as an intern in the project development section. Sean is a senior in Civil Engineering and ROTC at Ohio University.
  - Gerika Logan will be starting as our new safety intern on May 29. She is starting graduate school at OSU in City and Regional Planning. Gerika replaces Ibrahim Al-Waeli who has taken a construction engineering internship with ODOT District 6.
- Finally, the two recently vacated Grade Crossing Project Manager Positions will be posted soon.



**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****[Summary Notice No. PE–2018–09]****Petition for Exemption; Summary of Petition Received; DroneSeed Co.****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before April 18, 2018.

**ADDRESSES:** Send comments identified by docket number FAA–2017–1157 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

*Docket:* Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200

New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jake Troutman, (202) 683–7788, 800 Independence Avenue SW, Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

**Lirio Liu,**

*Director, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2017–1157.

*Petitioner:* DroneSeed Company.

*Section(s) of 14 CFR Affected:*

§§ 91.7(a); 91.119(c); 91.121; 91.151(b); 91.405(a); 91.407(a)(l); 91.409(a)(l) & (2); 91.417(a) & (b); 137.19(c), (d) & (e)(2)(ii)(iii) & (v); 137.31; 137.33; 137.41(c); 137.42.

*Description of Relief Sought:* The petitioner is requesting relief in order to operate three unmanned aircraft systems (UAS) weighing 55 pounds or more, not exceeding 185 pounds, for aerial agricultural operations in remote operating environments. The three UAS are the HSE AG V8A+ v2, the DS–10, and the DS–11, weighing 55 pounds (lbs.), 124.09 lbs., and 102.5 lbs., respectively, at maximum (fully loaded) take-off weight. The petitioner also requests relief to allow a single person to act as remote pilot in command for up to fifteen simultaneous operations of UAS weighing 55 lbs. or more. Additionally, the petitioner is requesting relief for the pilot in command to operate the UAS weighing 55 lbs. or more with a remote pilot certificate.

[FR Doc. 2018–06332 Filed 3–28–18; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****Environmental Impact Statement: Alexander, Pulaski, and Union Counties, Illinois**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice to rescind a Notice of Intent to prepare an Environmental Impact Statement.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will not be prepared for a proposed transportation project in Alexander, Pulaski, and Union Counties, Illinois between the intersection of Illinois Route 3 with Illinois Route 146 and Interstate 57.

**FOR FURTHER INFORMATION CONTACT:**

Catherine A. Batey, Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4600. Jeffrey L. Keirn, Deputy Director of Highways, Region 5 Engineer, Illinois Department of Transportation, 1102 Eastport Plaza Drive, Collinsville, Illinois 62234, Phone: (618) 346–3110.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Illinois Department of Transportation, issued a notice of intent to prepare an environmental impact statement (EIS) in 2015 (80 FR 73871, November 25, 2015). The project proposal was to improve transportation between the identified project termini.

The project is being cancelled and no further activities will occur for the Shawnee Parkway project at this time.

Comments or questions concerning this notice should be directed to FHWA or the Illinois Department of Transportation at the addresses provided above.

**Authority:** 23 U.S.C. 315; 23 CFR 771.123; 49 CFR 1.48

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 9, 2018.

**Catherine A. Batey,**

*Division Administrator, Springfield, Illinois.*

[FR Doc. 2018–06329 Filed 3–28–18; 8:45 am]

**BILLING CODE 4910–22–P**

**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration****[Docket No. FRA–2018–0027]****Automation in the Railroad Industry**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Request for Information (RFI).

**SUMMARY:** This request for information notice replaces the version published in the **Federal Register** on March 22, 2018 (83 FR 12646), to make technical corrections to the prior version. FRA requests information and comment on the future of automation in the railroad industry. FRA is interested in hearing from industry stakeholders, the public, local and State governments, and any other interested parties on the potential benefits, costs, risks, and challenges to

implementing automated railroad operations. FRA also seeks comment on how the agency can best support the railroad industry's development and implementation of new and emerging technologies in automation that could lead to safety improvements or increased efficiencies in railroad operations.

**DATES:** Comments and information responsive to this request should be received by May 7, 2018.

**ADDRESSES:** You may submit information and comments identified by the docket number FRA-2018-0027 by any one of the following methods:

- **Fax:** 1-202-493-2251;
- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590;
- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or
- Electronically through the Federal eRulemaking Portal, <http://www.regulations.gov>. Follow the online instructions for submitting comments.

**Instructions:** All submissions must include the agency name, docket name, and docket number for this RFI (FRA-2018-0027). Note that all comments and data received in response to this RFI will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

**Docket:** For access to the docket to read comments received, go to <http://www.regulations.gov> at any time or to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Peter Cipriano, Special Assistant to the Administrator, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: 202-493-6017), [peter.cipriano@dot.gov](mailto:peter.cipriano@dot.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Overview**

FRA seeks to understand the current stage and development of automated

railroad operations and how the agency can best position itself to support the integration and implementation of new automation technologies to increase the safety, reliability, and the capacity of the nation's railroad system. As in other transportation modes, there are varying levels of automation that already are, or could potentially be, implemented in the railroad industry. Currently, U.S. passenger and freight railroads do not have a fully autonomous rail operation in revenue service, however, railroads commonly use automated systems for dispatching, meet and pass trip planning, locomotive fuel trip time optimization, and signaling and train control. Railroads conduct many switching and yard operations by remote control and automated equipment and track inspections technologies are used to augment manual inspection methods. Modern locomotive cabs are equipped with intelligent information systems designed to provide operating crews with up-to-date situational awareness as train sensor data and alarms are continuously updated and displayed in operator consoles within the cab. Railroads often now utilize energy management technology (the equivalent of automobile cruise-control) to optimize fuel consumption based on specific operational and equipment factors, as well as movement planner systems designed to optimize in real-time, train movements on the rail network. Railroads are implementing statutorily mandated positive train control technology (a processor-based/communications-based train control system) to prevent train accidents by automatically controlling train speeds and movements if a train operator fails to take appropriate action in certain operational scenarios. These various systems of automation and technologies have transformed rail operations in recent years, improving railroad operational safety and efficiency.

FRA has helped developed many of these technologies and enhancements to these technologies are currently underway to support more advanced train control schemes and fully autonomous operations. In the fall of 2017, the Association of American Railroads, the freight rail industry's primary industry organization that focuses on policy, research, standard setting and technology, formed a Technical Advisory Group on autonomous train operations (ATO TAG). The focus of the ATO TAG is to define industry standards for an interoperable system to support enhanced safety and efficiency of

autonomous train operations. The ATO TAG intends to develop standardization to support common interfaces and functions, such that technology may be applied in an interoperable fashion, while also allowing some flexibility in the specific design, implementation and packaging of the technology.

Internationally, the only known fully-autonomous freight railroad system is in Australia. The system is part of the Australia Rio Tinto mining company and began fully-autonomous train operations on an approximately 62-mile stretch of track in Western Australia. This Rio Tinto train is equipped with a variety of sensors (e.g., radar, cameras, kangaroo collisions sensors) and with a switch to toggle between autonomous operation or operation with an operator on board.

FRA seeks to understand the rail industry's plans for future development and implementation of automated train systems and technologies and the industry's plans and expectations related to potential fully-automated rail operations. FRA is specifically interested in the anticipated benefits, costs, risks, and challenges to achieving the industry's desired level of automation. FRA also seeks to understand how the rail industry's plans for future automation may affect other stakeholders, including railroad employees, the traveling public and freight shipping industry, railroad industry suppliers and equipment manufacturers, communities through which railroads operate, local and state governments with roles in regulating highway-rail grade crossing safety, and any other interested parties.

FRA also seeks comment on the appropriate taxonomy to use to provide a baseline framework for the continued development and implementation of automated technology in the railroad industry. For example, both SAE, for on-road vehicles, and the International Association of Public Transport's (UITP) for public transit fixed guideway (rail) have developed taxonomies for their respective modes of transportation.

The SAE definitions divide vehicles into levels based on "who does what, when." Generally:

- At SAE Level 0, the driver does everything.
- At SAE Level 1, an automated system on the vehicle can *sometimes assist* the driver conduct *some parts* of the driving task.
- At SAE Level 2, an automated system on the vehicle can *actually conduct* some parts of the driving task, while the driver continues to monitor the driving environment and performs the rest of the driving task.

- At SAE Level 3, an automated system can both actually conduct some parts of the driving task and monitor the driving environment *in some instances*, but the driver must be ready to take back control when the automated system requests.

- At SAE Level 4, an automated system can conduct the driving task and monitor the driving environment, and the driver need not take back control, but the automated system can operate only in certain environments and under certain conditions.

- At SAE Level 5, the automated system can perform all driving tasks, under all conditions that a driver could perform them.

Using the SAE levels described above, the Department has drawn a distinction for non-road vehicles between Levels 0–2 and 3–5 based on whether the human driver or the automated system is primarily responsible for monitoring the driving environment.

Automatic Train Operation of public transit fixed guideway (rail) systems is an operational safety enhancement to automate operations of trains. It is mainly used on fixed guideway rail systems which are easier to ensure safety of agency staff and passengers. Basically, each grade defines distinct functions of train operation that are the responsibility of agency staff and those that are the responsibility of the rail system itself.

Similar to SAE, UITP defines grades of automation (GoA) for fixed guideway (rail) systems. Generally:

- At UITP Grade 0, on-sight train operation, similar to a streetcar running in mixed traffic.

- At UITP Grade 1, manual train operation where a train operator controls starting and stopping, operation of doors and handling of emergencies or sudden diversions.

- At UITP Grade 2, semi-automatic train operation where starting and stopping is automated, but the train operator or conductor controls the doors, drives the train if needed and handles emergencies (many ATO systems worldwide are Grade 2),

- At UITP Grade 3, driverless train operation where starting and stopping are automated but a train attendant or conductor controls the doors and drives the train in case of emergencies.

- At UITP Grade 4, unattended train operation where starting and stopping, operation of doors and handling of emergencies are fully automated without any on-train staff.

FRA requests comment on whether these or other taxonomies for automation should be applied to railroads.

## II. Questions Posed

Although FRA seeks comments and relevant information and data on all issues related to the development and continued implementation of automated train systems and technologies and potentially fully autonomous train operations, FRA specifically requests comment and data in response to the following questions:

### General Questions

1. To what extent do railroads plan to automate operations? Do railroads plan to implement fully autonomous rail vehicles (*i.e.*, vehicles capable of sensing their environments and operating without human input)? If so, for what types of operations?

2. How do commenters envision the path to wide-scale development and implementation of autonomous rail operations (or operations increasingly reliant on automated train systems or technologies)? What is the potential timeframe for technology prototype availability for testing and for deployment of such technologies?

3. As discussed above, the railroad industry is currently taking steps in developing standards for automation. How does the railroad industry currently define “autonomous operations”? Would it be helpful to develop automated rail taxonomy; a system of standards to clarify and define different levels of automation in trains, as currently exists for on-road vehicles and rail transit? What, if any, efforts are already under way to develop such rail automation taxonomy? Should FRA embrace any existing and defined levels of automation in the railroad industry or other transportation modes such as highways or public transit? For example, should FRA consider SAE Standard J3016\_201609 (see [http://standards.sae.org/j3016\\_201609/](http://standards.sae.org/j3016_201609/)), which provides for six GoA for on-road vehicles, or the four GoA for public transit fixed guideway vehicles?

4. What limitations and/or risks (*e.g.*, practical, economic, safety, or other) are already known or anticipated in implementing these types of technologies? How should the railroad industry anticipate addressing these limitations and/or risks, and what efforts are currently underway to address them? Are any mitigating efforts expected in the future and what is the timeline for such efforts?

5. What benefits and efficiencies (*e.g.*, practical, economic, safety, or other) do commenters anticipate that railroads will be able to achieve by implementing these technologies?

6. What societal benefits if any, could be expected to result from the adoption

of these technologies (*e.g.*, environmental, or noise reduction)? What societal disadvantages could occur?

7. What, if anything, is needed from other railroad industry participants (*e.g.*, rail equipment and infrastructure suppliers, manufacturers, maintainers) to support railroads’ automation efforts?

8. How does the state of automation of U.S. railroad operations compare to that of railroads in other countries? What can be learned from automation employed or under development in other countries? What are the unique characteristics of U.S. railroad operations and/or infrastructure as compared to railroads in other countries that may affect the wide-scale automation of railroad operations in this country?

### Safety and/or Security Issues

9. How do commenters believe these technologies could increase rail safety?

10. What processes do railroads have in place to identify potential safety and/or security, including cybersecurity, risks arising during the adoption of these technologies and that may result from the adoption of such technologies?

11. How should railroads plan to ensure identified safety and/or security risks are adequately addressed during the development and implementation of these new technologies? What is an acceptable level of risk in this context?

12. How should railroads plan to ensure the integration of these technologies will not adversely affect, and will instead improve, the safety and/or security of railroad operations?

13. What are the safety and security issues raised by automation in railroad operations at public and private at-grade highway-rail crossings? To what extent should DOT coordinate with state or local governmental entities on certain safety or security issues? How might automation improve the safety of the general public at highway-rail grade crossings or along the railroad rights-of way?

14. How do railroads plan to ensure safety and security from cyber risks?

15. How do the safety and/or security, including cyber risks, faced by U.S. railroads implementing these technologies compare to the risks faced by railroads operating in other countries? How have railroads in other countries addressed or mitigated these risks? Are there opportunities for cross-border collaboration to address such risks?

### Infrastructure

16. What are the infrastructure needs for effectively, safely, and securely

implementing these technologies? FRA is particularly interested in wayside, communication, onboard, operating personnel, testing, maintenance, certification, and data infrastructure needs, as well as any other expected or anticipated infrastructure needs.

17. How can the nation's existing rail infrastructure be leveraged to support the implementation of new infrastructure, necessary for the adoption of automated and autonomous operations?

#### *Workforce Viability*

18. What is the potential impact of the adoption of these technologies on the existing railroad industry workforce?

19. Would the continued implementation of these technologies, including fully autonomous rail vehicles, create new jobs and/or eliminate the need for existing jobs in the railroad industry?

20. What railroad employee training needs would likely result from the adoption of these technologies? For example, if the technology fails en route, will an onboard employee be trained to take over operation of the vehicle manually or be required to repair the technology en route?

#### *Legal/Regulatory Issues*

21. What potential legal issues are raised by the development and implementation of autonomous train systems and technologies within the industry?

22. What are the regulatory challenges (rail-specific or DOT-wide) that must be addressed before autonomous rail vehicles can be made a part of railroad operations in the United States?

23. Are there current safety standards and/or regulations that impede the development and/or implementation of automated train systems or technologies in the railroad industry, including the development and/or implementation of autonomous rail vehicles? If so, what are they and how should they be addressed?

#### *Opportunities for Joint Government/Industry Cooperation*

24. Are there current or anticipated railroad industry, private, international, or State or local government pilot projects or research initiatives involving automated train systems or technologies potentially in need of FRA support? If so, what are the needs (e.g., regulatory, technical)?

25. What data relevant to the development and integration of automated train systems and technologies currently exists that could

be leveraged to address future government/industry research needs?

### **III. Public Participation**

FRA invites all interested parties to submit comments, data, and information related to the specific questions listed in Section II above and any other comments, data, or information relevant to issues related to the development and implementation in the railroad industry of new automated train systems or technologies.

#### *How do I prepare and submit comments?*

Your comments should be written and in English. To ensure that your comments are filed in the correct docket, please include docket number FRA-2018-0027 in your comments.

Please submit your comments to the docket following the instruction given above under **ADDRESSES**. If you are submitting comments electronically as a PDF (Adobe) file, we ask that the document submitted be scanned using an Optical Character Recognition process, thus allowing FRA to search your comments.

#### *How do I request confidential treatment of my submission?*

Although FRA encourages the submission of information that can be freely and publicly shared, if you wish to submit any information under a claim of confidentiality, you must follow the procedures in 49 CFR 209.11.

#### *Will FRA consider late comments?*

FRA will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, FRA will also consider comments after that date.

#### *How can I read the comments submitted by other people?*

You may read the comments received at the address given above under **Comments**. The hours of the docket are indicated above in the same location. You may also read the comments on the internet, filed in the docket number at the heading of this notice, at <http://www.regulations.gov>.

Please note that, even after the comment closing date, FRA will continue to file any relevant information it receives in the docket as it becomes available. Further, some people may submit late comments. Accordingly, FRA recommends that you periodically check the docket for new material.

### **IV. Privacy Act Statement**

FRA notes that anyone is able to search (at [www.regulations.gov](http://www.regulations.gov)) the

electronic form of all filings received into any of DOT's dockets by the name of the individual submitting the filing (or signing the filing, if submitted on behalf of an association, business, labor union, or other organization). You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (Volume 65, Number 70, Pages 19477-78), or you may view the privacy notice of [www.regulations.gov](http://www.regulations.gov/#!privacyNotice) at <http://www.regulations.gov/#!privacyNotice>.

**Authority:** 49 U.S.C. 20101 *et seq.*

Issued in Washington, DC, on March 23, 2018.

**Brett A. Jortland,**

*Acting Deputy Chief Counsel.*

[FR Doc. 2018-06281 Filed 3-28-18; 8:45 am]

**BILLING CODE 4910-06-P**

## **DEPARTMENT OF THE TREASURY**

### **Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple TTB Information Collection Requests**

**AGENCY:** Departmental Offices, U.S. Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

**DATES:** Comments should be received on or before April 30, 2018 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at [OIRA\\_Submission@OMB.EOP.gov](mailto:OIRA_Submission@OMB.EOP.gov) and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8142, Washington, DC 20220, or email at [PRA@treasury.gov](mailto:PRA@treasury.gov).

**FOR FURTHER INFORMATION CONTACT:** Copies of the submissions may be obtained from Jennifer Quintana by emailing [PRA@treasury.gov](mailto:PRA@treasury.gov), calling (202) 622-0489, or viewing the entire information collection request at [www.reginfo.gov](http://www.reginfo.gov).

**SUPPLEMENTARY INFORMATION:**

May 7, 2018

U.S. Department of Transportation  
Docket Operations  
M-30, West Building, Ground Floor, Room W12-140  
12100 New Jersey Avenue SE  
Washington, DC 20590

RE: Federal Register Docket # FRA-2018-0027  
Automation in the Railroad Industry

The State of Ohio thanks the Federal Railroad Administration (FRA) for the opportunity to comment on the Request for Information (RFI) Automation in the Railroad Industry. Ohio would like to focus its comments on questions 13 & 24 of the RFI.

Question 13. What are the safety and security issues raised by automation in railroad operation at public and private at-grade highway-rail crossings? To what extent should DOT coordinate with state or local governmental entities on certain safety or security issues? How might automation improve the safety of the general public at highway-rail grade crossings or along the railroad rights-of way?

It is not an exaggeration to state that the current underlying vehicle detection technology used at at-grade railroad-highway crossings is decades old. While there have been significant advancements with warning device technology, these advancements have been evolutionary with all of the current improvements still relying on essentially the same underlying track circuitry to perform. Likewise, States' role in grade crossing safety has evolved over time. Currently, states, through the use of Federal Highway Administration funding, are the primary partners with railroads for the identification of locations and funding of active warning devices around the country.

How and which technologies used for automation is going to drive the level of involvement needed by states. For instance, if advances in technology lead to direct automobile-locomotive communication and the role of the stationary roadside warning device is diminished or removed, then the role of states in grade crossing safety will be diminished. However, if advances in automation include communication to rail and/or automobile traffic through fixed roadside warning devices, then the states will be a major stakeholder in that effort.

Rather than discuss the various technologies under development, I would like to emphasize the importance of the process developed by the US DOT that allows these various technologies to be implemented.

In Ohio, railroad-highway warning device projects follow a public-private partnership model with railroads. Ohio identifies the locations of projects and provides funding and oversight, ensuring compliance with state and federal requirements. Railroads design, build and maintain the asset.

Designs are governed by several variables including individual railroad standards as well as federal and state standards. Each one of these broad categories is influenced by underlying engineering resources such as the American Railway Engineering and Maintenance-of-Way Association specifications, Manual of Uniform Traffic Control Devices, Ohio DOT Transportation Engineering Manual as well as determination of eligible warning device elements through the Code of Federal Regulations. A change in any one of these underlying reference documents can have a ripple effect throughout the entire process.

Therefore, it is imperative that the FRA identify and mandate that railroad adoption of automated technologies include vetting and approval through these existing resources and standards. By using the existing organizational structures, FRA can ensure that states, along with other stakeholders, will have the appropriate level of interaction and influence on the emerging standards. While securing approval or inclusion in these and other appropriate documents may add time to bringing the new technology to market, anything less will result in confusion and disruption to the various grade crossing safety programs around the country.

Question 24. Are there current or anticipated railroad industry, private, internal, or State or local government pilot or research initiatives involving automated train systems or technologies potentially in need of FRA support? If so, what are the needs (e.g, regulatory, technical)?

On January 18, 2018, Governor Kasich created DriveOhio by executive order. DriveOhio is a one-stop shop for researchers, developers and manufacturers to collaborate on autonomous and connected vehicle initiatives in Ohio.

Housed within the Ohio Department of Transportation, DriveOhio is a partnership between ODOT, the Department of Public Safety, the Department of Administrative Services, the Ohio Turnpike Infrastructure Commission, the Public Utilities Commissions of Ohio, the Department of Insurance, the Governor's Office of Workforce Transformation and the Ohio Adjutant General's Department.

Ohio is an increasingly important player in smart mobility technologies needed for the nation's growing autonomous and connected vehicles industry. While DriveOhio is new, Ohio has already made a mark within the industry with key projects including:

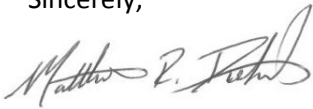
- U.S. 33 Smart Mobility Corridor, one of the country's longest highways ready for autonomous and connected driving;
- "Smart Columbus," winner of the U.S. Department of Transportation's Smart City Challenge;
- I-90 Lake Effect Corridor, a stretch of I-90 that will enable connectivity to monitor driving conditions in lake-effect snow;
- Ohio Turnpike, a 241-mile, four-lane test bed for autonomous and connected vehicles; and
- I-670 Smart Lane, a project using a shoulder to create a "smart lane" during peak traffic times

Ohio's freight railroads operate approximately 5,300 miles of active rail, and there are approximately 123,000 miles of roadway. Consequently, there are more than 5,700 public railroad-highway grade crossings statewide. In the last ten years, there have been 765 crashes at railroad crossings with 79 fatalities. Addressing the nexus of railroad automation and highway automation is a necessity for Ohio. While Ohio is building the necessary partnerships on the highway and automotive elements, the same level of partnership has been more difficult to achieve with the rail industry. Ohio believes that the FRA can assist in two ways:

1. Create protocols in the railroad regulatory framework to easily allow railroads to participate in small, experimental projects.
2. Provide a resource and point of contact at the FRA that could serve as a non-regulatory technical expert for potential state-railroads partnership opportunities.

Again, thank you for the opportunity to comment. Ohio looks forward to working with the FRA on developing these technologies to improve the safe movement of goods and people in this country.

Sincerely,

A handwritten signature in dark ink, appearing to read "Matthew P. Dietrich". The signature is fluid and cursive, with a large, stylized initial 'M'.

Matthew Dietrich  
Executive Director  
Ohio Rail Development Commission

MEMORANDUM  
May 14, 2018

TO: Commissioners  
FROM: Megan McClory  
SUBJECT: Finance Report

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Accomplishments and Highlights of the Finance Section from February 27, 2018, to May 14, 2018:

1. **Fiscal Reports.** Staff have prepared monthly statements reflecting current outstanding loans, revenue collection, and project balances. All 8 loans currently in repayment were in good standing as of May 1.
2. **Consultant Contracts.** ODOT recently entered into two consultant contracts on ORDC's behalf to support to ORDC's Grade Crossing Safety programs.
  - a) Mott MacDonald: Consultant will provide preemption project development to ORDC. The contract is for a maximum of \$350,000.
  - b) Mead & Hunt: Consultant will provide general engineering services on a task order basis as assigned by ORDC. Contract is for a maximum of \$500,000.



**ORDC - Loan Payback (Active Loans)**

April 2, 2018

	Loans	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	Loan App., Interest & Admin. Fees	Total Payments
<b>FY11 American Rail Center **</b>	<b>\$298,524</b>	<b>\$10,398</b>						<b>\$16,230</b>	<b>\$314,754</b>
FY13 Cleveland Commercial Railroad *	\$105,000	\$21,942	\$10,971					\$5,318	\$110,318
FY13 Marion Industrial Center *	\$1,000,000	\$208,972	\$191,558					\$36,389	\$1,036,389
FY15 Buckeye Transfer Realty, LLC *	\$350,000	\$73,140	\$73,140	\$24,380				\$16,561	\$366,561
FY15 Indiana Eastern/Ohio South Central RR *	\$208,000	\$22,913	\$22,913	\$116,120				\$13,433	\$221,433
FY14 Napoleon, Defiance Western Railway *	\$1,000,000	\$208,972	\$208,972	\$174,144				\$46,389	\$1,046,389
FY15 River Rail Development *	\$325,000	\$67,916	\$67,916	\$67,916	\$16,979			\$15,414	\$340,414
FY15 Nelson Packaging *	\$500,000	\$76,236	\$76,236	\$76,236	\$76,236	\$76,236		\$34,347	\$534,347
FY17 Ashland Railway *	\$700,000	\$58,333	\$142,821	\$146,771	\$146,771	\$146,771		\$34,584	\$734,584
FY17 Mahoning Valley Economic Development ***	\$30,000								
	<b>\$4,516,524</b>	<b>\$748,823</b>	<b>\$794,527</b>	<b>\$605,567</b>	<b>\$239,986</b>	<b>\$223,007</b>	<b>\$117,382</b>	<b>\$218,665</b>	<b>\$4,705,189</b>

**Loan Amount Received to Date: \$612,141**

**Loan Balance Due: \$136,682**

\*Loans Active

\*\*Loans Paid Off

\*\*\*Loans in Process

- as of the above date all loan payments are current

**ORDC - Loan Payback (Active Loans)**

May 3, 2018

	Loans	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	Loan App., Interest & Admin. Fees	Total Payments
<b>FY11 American Rail Center **</b>	<b>\$298,524</b>	<b>\$10,398</b>						<b>\$16,230</b>	<b>\$314,754</b>
FY13 Cleveland Commercial Railroad *	\$105,000	\$21,942	\$10,971					\$5,318	\$110,318
FY13 Marion Industrial Center *	\$1,000,000	\$208,972	\$191,558					\$36,389	\$1,036,389
FY15 Buckeye Transfer Realty, LLC *	\$350,000	\$73,140	\$73,140	\$24,380				\$16,561	\$366,561
FY15 Indiana Eastern/Ohio South Central RR *	\$208,000	\$22,913	\$22,913	\$116,120				\$13,433	\$221,433
FY14 Napoleon, Defiance Western Railway *	\$1,000,000	\$208,972	\$208,972	\$174,144				\$46,389	\$1,046,389
FY15 River Rail Development *	\$325,000	\$67,916	\$67,916	\$67,916	\$16,979			\$15,414	\$340,414
FY15 Nelson Packaging *	\$500,000	\$76,236	\$76,236	\$76,236	\$76,236	\$76,236		\$34,347	\$534,347
FY17 Ashland Railway *	\$700,000	\$58,333	\$142,821	\$146,771	\$146,771	\$146,771		\$34,584	\$734,584
FY17 Mahoning Valley Economic Development ***	\$30,000								
FY18 Cleveland Commercial Railroad ***	\$60,000								
	<b>\$4,576,524</b>	<b>\$748,823</b>	<b>\$794,527</b>	<b>\$605,567</b>	<b>\$239,986</b>	<b>\$223,007</b>	<b>\$117,382</b>	<b>\$218,665</b>	<b>\$4,705,189</b>

**Loan Amount Received to Date: \$680,482**

**Loan Balance Due: \$68,341**

\*Loans Active

\*\*Loans Paid Off

\*\*\*Loans in Process

- as of the above date all loan payments are current

**Revenue Received FY 2018**  
**March 2018**

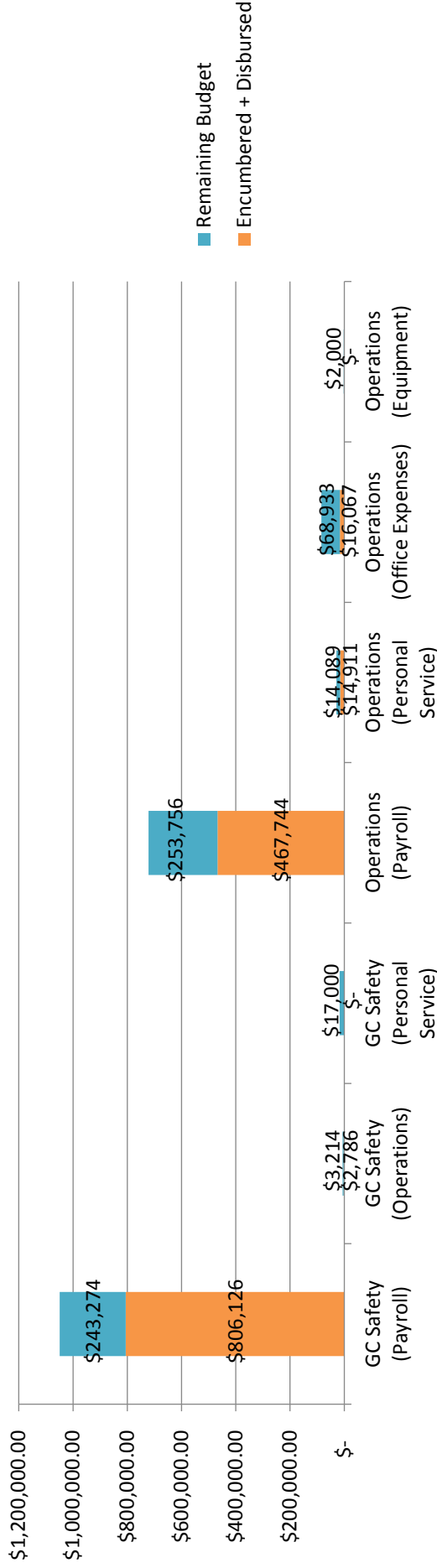
Name	CT #	Invoice #	Refunds / Reimburse 4N40	Panhandle Lease	Gas & Oil Leases, Royalties and Other - 4N4 (49995)	ORDC Loan Payment - 4N4 Fees (29991) Princ. (79955) Inter. (79956)	Running Total
Asland Railway		Electronic Transfer				11,666.67	1,452,121.44
Buckeye Transfer		Electronic Transfer				5,879.04	1,458,216.46
Cleveland Commercial		Electronic Transfer				1,795.82	1,460,044.97
Indiana Eastern/OSC		Electronic Transfer				1,652.79	1,461,954.35
MIC		Electronic Transfer				16,949.46	1,479,368.70
Napolean, Defiance & Western		Electronic Transfer				16,616.44	1,496,783.05
Nelson Packaging		Electronic Transfer				5,732.25	1,503,136.08
River Rail Development/Strauss Industries		Electronic Transfer				5,351.85	1,508,795.74
Eric Petroleum Corp	55				26.70		1,508,822.44
Hydrodec of North America (grant payback)	56	(GRF)	1,000.00				1,508,822.44
Diversified Energy	57				91.09		1,508,913.53
Fiber Farms	57	RA004718			298.52		1,509,212.05
Village of Cadiz	58	RA003918	6,498.71				1,515,710.76
Columbia Gas of Ohio	58	RA004018					1,516,067.21
Genesee & Wyoming	59	RA004518		88,953.70			1,605,020.91
Dominion Energy	60	RA004618			250.00		1,605,270.91
Ohi-Rail	60	Q4 Lic Revenue			1,600.00		1,606,870.91
FirstEnergy	61	RA004818			5,250.00		1,612,120.91
Genesee & Wyoming	61	Feb trackage			7,742.57		1,619,863.48
Horizon Chillicothe Telephone	61	RA004918			895.56		1,620,759.04
Ohio River Pipe Line (Marathon)	61	RA005018			346.07		1,621,105.11
		Monthly Total	\$6,498.71	88,953.70	16,856.96	0.00	180,650.34
		Grand Total	\$6,498.71	888,114.57	175,691.89	7,000.00	1,621,105.11

**Revenue Received FY 2018**  
**April 2018**

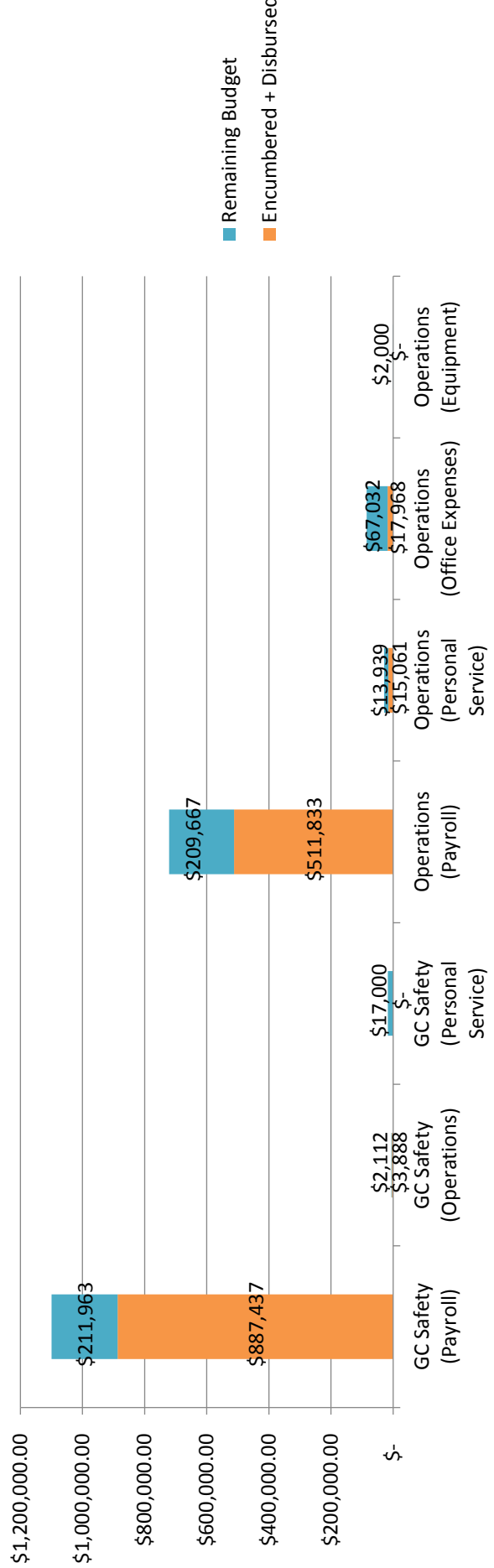
Name	CT #	Invoice #	Refunds / Reimburse 4N40	Panhandle Lease	Gas & Oil Leases, Royalties and Other - 4N4 (49995)	ORDC Loan Payment - 4N4		Running Total
						Fees (29991)	Princ. (79955)	Inter. (79956)
Buckeye Transfer		Electronic Transfer					11,666.67	0.00
Cleveland Commercial		Electronic Transfer					5,889.66	205.36
Indiana Eastern/OSC		Electronic Transfer					1,799.06	29.45
MIC		Electronic Transfer					1,655.78	253.60
Napolean, Defiance & Western		Electronic Transfer					16,980.06	434.29
Nelson Packaging		Electronic Transfer					16,646.44	767.91
River Rail Development/Strauss Industries		Electronic Transfer					5,742.60	610.43
Hydrodec of North America (grant payback)		Electronic Transfer					5,361.52	298.14
Zanesville & Western Scenic Railroad	62	(GRF) new lease	1,000.00					
Soles Law Office	63	RA004418			500.00			
Cardinal Gas Services (Utica)	64	RA003718			42.70			
Apex Environmental Inc	65	RA001917			298.52			
Genesee & Wyoming Inc	66	trackage			4,823.20			
Genesee & Wyoming Inc	67	RA005218			8,720.83			
	68			88,953.70				
<b>Monthly Total</b>			0.00	88,953.70	14,385.25	0.00	65,741.79	2,599.18
<b>Grand Total</b>			6,498.71	977,068.27	190,077.14	7,000.00	581,746.60	30,394.31
								1,792,785.03
								171,679.92

# Fiscal Year 2018 Agency Operations

## Operating Expenses vs. Budget (through 3/31/18)



## Operating Expenses vs. Budget (through 4/30/18)



## ORDC Operations & Revolving Loan Fund Report as of April 2, 2018

	Spending authority	Cash
Fiscal Year 2018 Appropriation	\$ 3,875,800	
Cash Balance as of 4/2/18		\$ 9,069,287
<i>LESS: OPEN PRIOR YEAR ENCUMBRANCES</i>		\$ 1,407,021
<i>NET CASH AVAILABLE FOR 2018 USE</i>		\$ 7,662,266
 Fiscal Year 2018 Appropriation		 \$ 3,875,800
<i>LESS: PAYROLL AND OTHER COSTS (Budgeted)</i>	\$ 837,500	
<i>LESS: PROJECTS ENCUMBERED or DISBURSED</i>		
ASRY Trail Bridge (FY 2017 balance)	\$ 195,400	
<i>LESS: PROJECTS APPROVED BUT NOT ENCUMBERED</i>		
Cleveland Commercial Railway Von Willer Yard	\$ 60,000	
<i>LESS: PROPOSED COMMITMENTS FOR FY 2018</i>		
<i>NET SPENDING AUTHORITY/CASH AVAILABLE*</i>	\$ 2,782,900	\$ 3,786,466

\*Controlling Board approval will be necessary to fund projects beyond the available spending authority.

## ORDC Operations & Revolving Loan Fund Report as of May 1, 2018

	Spending authority	Cash
Fiscal Year 2018 Appropriation	\$ 3,875,800	
Cash Balance as of 5/1/18		\$ 9,087,439
<i>LESS: OPEN PRIOR YEAR ENCUMBRANCES</i>		\$ 1,374,352
<i>NET CASH AVAILABLE FOR 2018 USE</i>		\$ 7,713,087
 Fiscal Year 2018 Appropriation		 \$ 3,875,800
<i>LESS: PAYROLL AND OTHER COSTS (Budgeted)</i>	\$ 837,500	
<i>LESS: PROJECTS ENCUMBERED or DISBURSED</i>		
ASRY Trail Bridge (FY 2017 balance)	\$ 195,400	
Cleveland Commercial Railway Von Willer Yard	\$ 60,000	
<i>LESS: PROJECTS APPROVED BUT NOT ENCUMBERED</i>		
<i>LESS: PROPOSED COMMITMENTS FOR FY 2018</i>		
<i>NET SPENDING AUTHORITY/CASH AVAILABLE*</i>	\$ 2,782,900	\$ 3,837,287

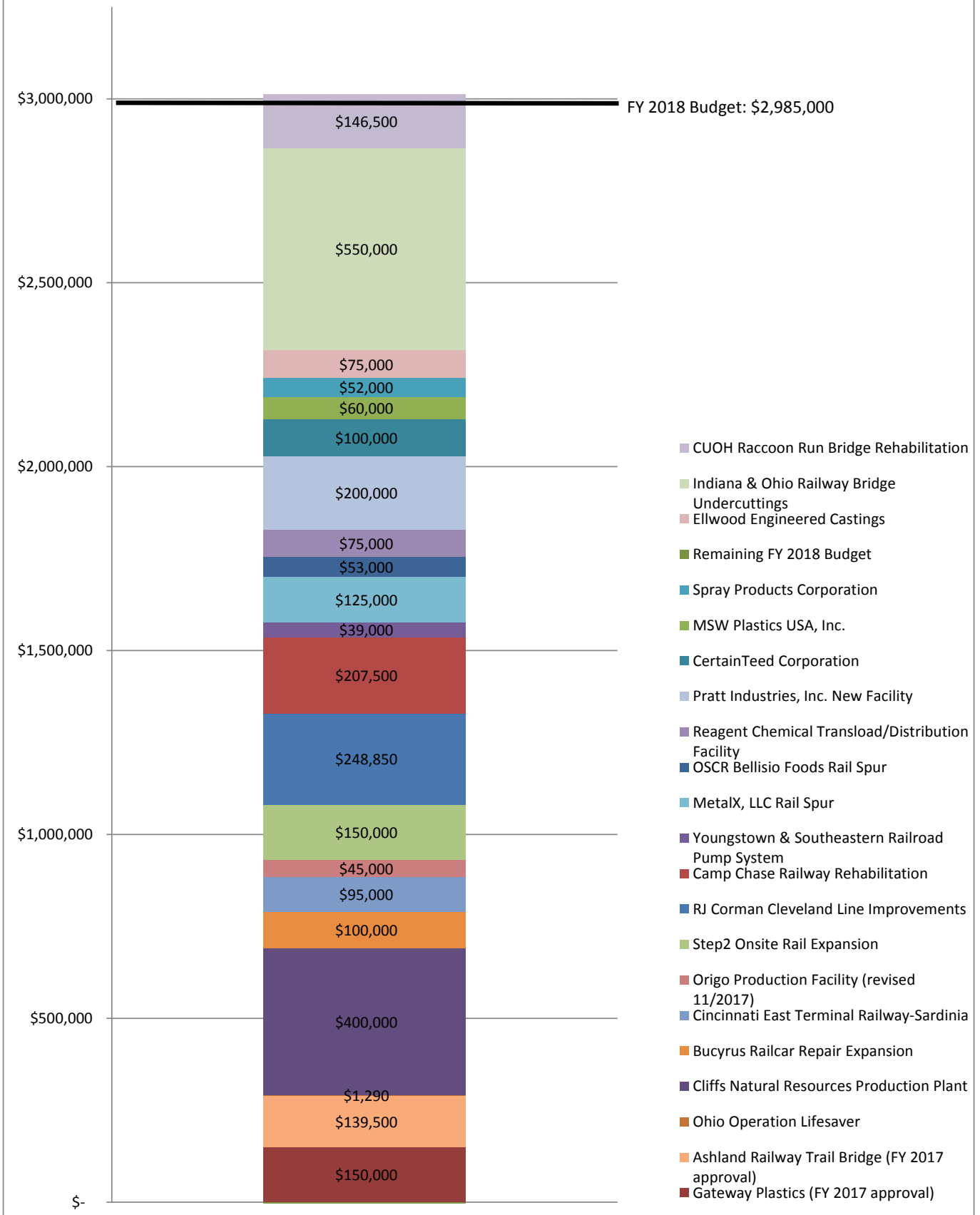
\*Controlling Board approval will be necessary to fund projects beyond the available spending authority.

**FISCAL YEAR 2018 BUDGET PROJECTIONS**  
**5/15/2018**

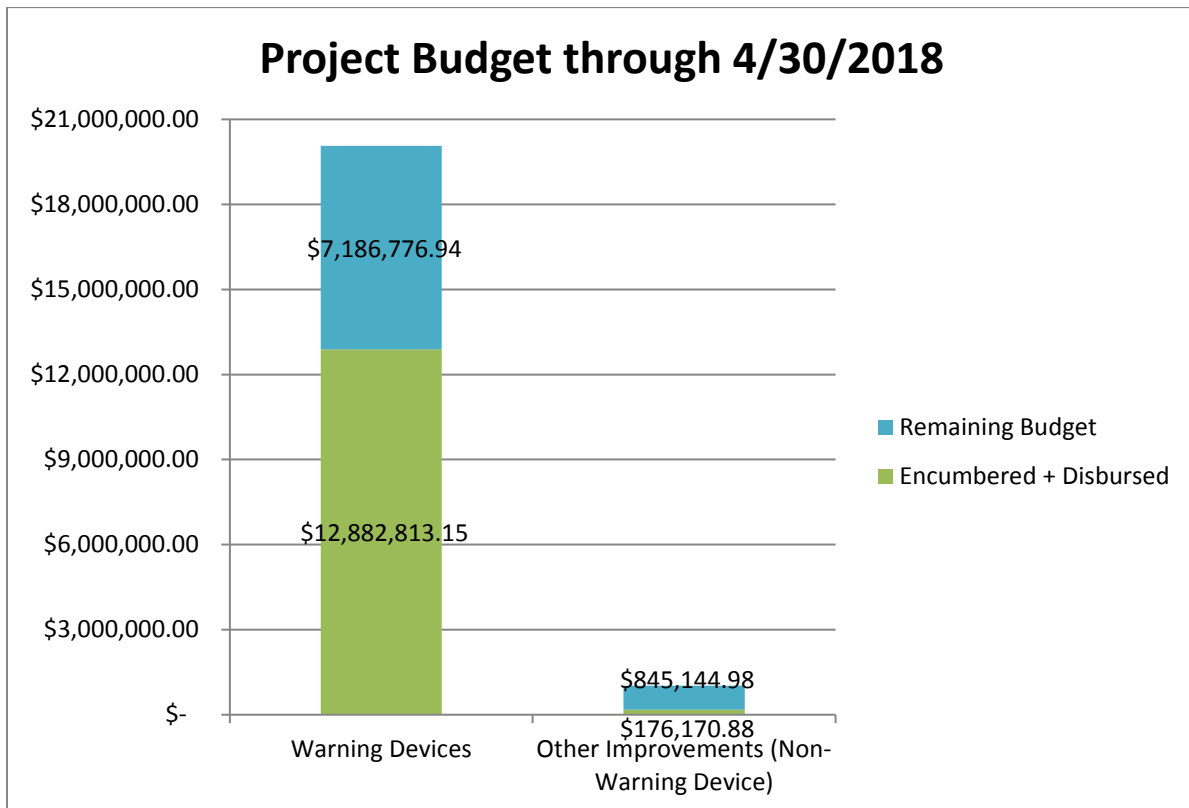
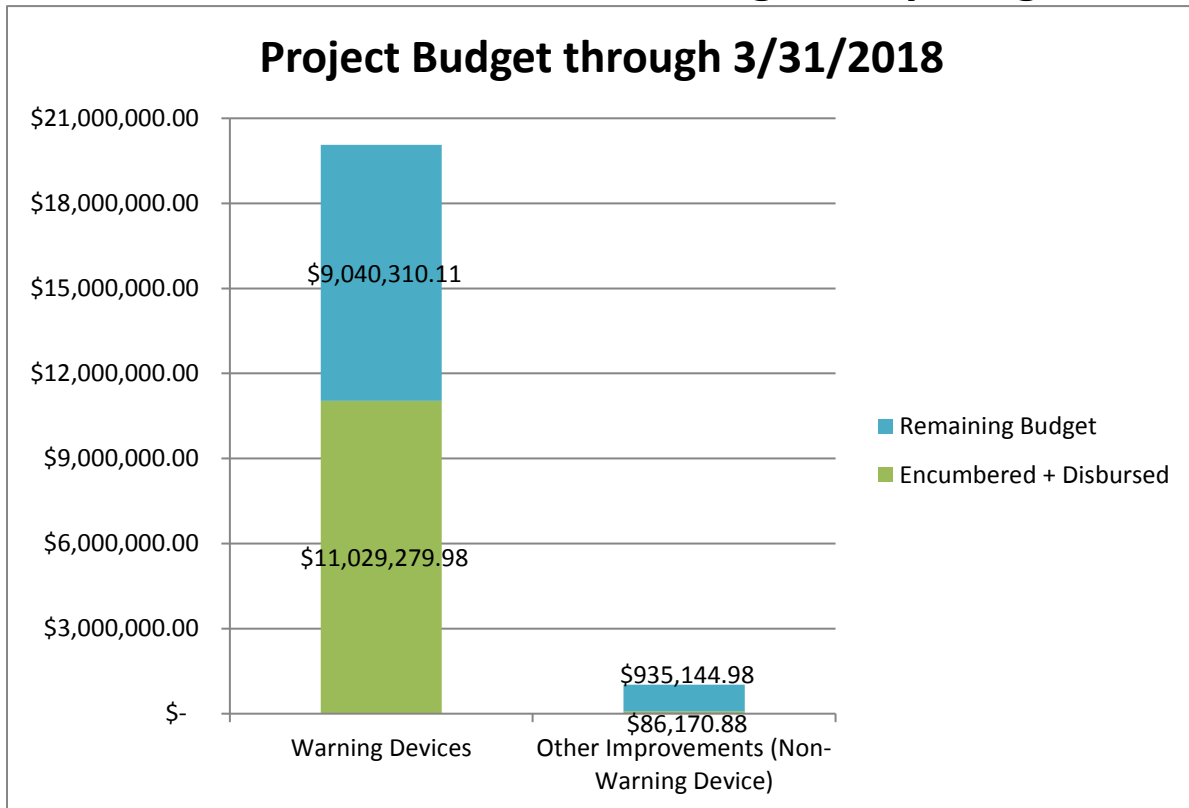
					Loan & Grant w/ Payback	
					Grants	
					Available Funds for FY 2018	\$ 2,985,000 \$ 5,600,000
					Requested Funding	
					Total Project	Rail Portion
					\$ - \$	\$ - \$
FY 2018 PROJECTS APPROVED						
Balance of FY 2017 project approvals (Gateway Plastics)	Spur	\$	-	\$	150,000	
Balance of FY 2017 project approvals (Ashland Railway)	Rehabilitation	\$	-	\$	139,500	\$ 195,400
Bucyrus Railcar Repair Expansion	Spur	\$	500,000	\$	100,000	\$ 100,000
Camp Chase Railway Rehabilitation	Rehabilitation	\$	415,000	\$	207,500	\$ 207,500
CertainTeed Corporation	Spur	\$	46,000,000	\$	100,000	\$ 100,000
Cincinnati East Terminal Railway Sardinia Area	Rehabilitation	\$	190,000	\$	95,000	\$ 95,000
Cleveland Commercial Railway Von Willer Yard	Rehabilitation	\$	60,000	\$	60,000	\$ 60,000
Cliffs Natural Resources Production Plant	Spur	\$	700,000,000	\$	400,000	\$ 400,000
MetaIX, LLC Rail Spur	Spur	\$	36,000,000	\$	125,000	\$ 125,000
MSW Plastics USA, Inc.	Spur	\$	12,000,000	\$	60,000	\$ 60,000
Ohio Operation Lifesaver	Safety	\$	1,290	\$	1,290	\$ 1,290
Ohio South Central Railroad Bellisio Foods Rail Spur	Spur	\$	352,000	\$	53,000	\$ 53,000
Origo Production Facility (updated 11/2017)	Spur	\$	7,300,000	\$	45,000	\$ 45,000
Pratt Industries, Inc. New Facility	Spur	\$	270,000,000	\$	200,000	\$ 200,000
Reagent Chemical Transload/Distribution Facility	Spur	\$	1,876,000	\$	75,000	\$ 75,000
RJ Corman Cleveland Line Improvements	Rehabilitation	\$	715,477	\$	442,074	\$ 248,850
Spray Products Corporation	Spur	\$	7,700,000	\$	52,000	\$ 52,000
Step2 Company On-Site Rail Expansion	Spur	\$	460,000	\$	150,000	\$ 150,000
Youngstown & Southeastern Railroad Pump System	Rehabilitation	\$	78,000	\$	39,000	\$ 39,000
TOTAL FOR APPROVED PROJECTS		\$	1,083,647,767	\$	2,204,864	\$ 2,241,140 \$ 255,400
FOR COMMISSION APPROVAL						
Columbus & Ohio River Rail Road Raccoon Run Bridge						
Rehabilitation	Rehabilitation	\$	293,000	\$	146,500	\$ 146,500
Ellwood Engineered Castings	Rehabilitation	\$	35,400,000	\$	262,500	\$ 75,000
Indiana & Ohio Railway Vertical Clearances	Spur	\$	5,100,000	\$	759,000	\$ 550,000
TOTAL FOR APPROVAL		\$	40,793,000	\$	1,168,000	\$ 771,500 \$ -
FUNDING REMAINING IF ALL PROJECTS APPROVED					\$ (27,640)	\$ 5,344,600
ACTIVE COMMITMENTS						
Cincinnati East Terminal Railway Stone Sidings	Spur	\$	500,000	\$	250,000	\$ 200,000
Eagle Rail Car	Spur	\$	4,000,000	\$	50,000	\$ 50,000
Ohio Logistics	Spur	\$	400,000	\$	200,000	\$ 200,000
ORPS LLC	Spur	\$	1,600,000	\$	1,000,000	\$ 1,000,000
Ravago Medina	Spur	\$	36,000,000	\$	100,000	\$ 100,000
TOTAL COMMITMENTS		\$	42,500,000	\$	1,600,000	\$ 1,200,000
FUNDING REMAINING AFTER APPROVED PROJECTS AND COMMITMENTS					\$ (377,640)	\$ 4,144,600



## Fiscal Year 2018 Grant Commitments vs. Budget



# Fiscal Year 2018 Grade Crossing Safety Program





[www.rail.ohio.gov](http://www.rail.ohio.gov)

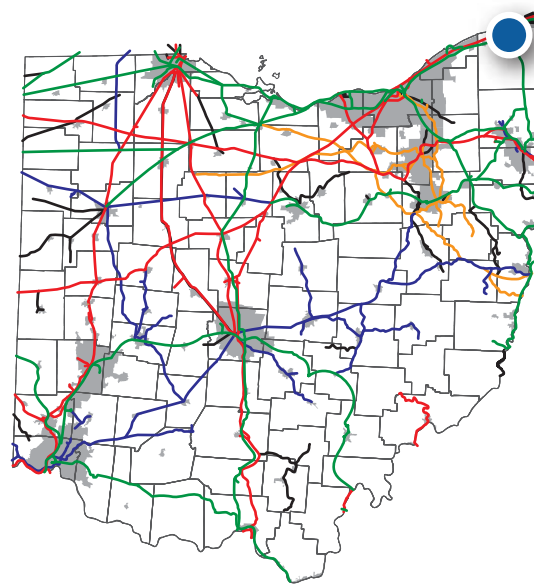
IMPROVING RAIL TODAY FOR TOMORROW'S ECONOMY

## Project Benefits

- Increased standardization of ORDC property leases
- Gives contract operator increased certainty to make investments on the line

## ORDC Goals and Objectives

This project meets ORDC's goal of Efficient Railways by helping to preserve a rail asset in the state and its continued operation by a contract operator.



**ASHTABULA CARSON AND JEFFERSON RAILROAD**  
**25 YEAR LEASE**  
**Ashtabula County**  
May 2, 2018

The Ashtabula, Carson and Jefferson Railroad (“ACJ”) respectfully requests that the Commission approve a new 25 year lease to operate the Jefferson Industrial Track in Jefferson County, Ohio. Staff recommends the Commission approve this request as the ACJ and Bob Callahan have been excellent stewards of the Jefferson Industrial Track since 1984, when the State of Ohio purchased the line.

The State of Ohio bought the Jefferson Industrial Track from Conrail with \$175,000 in State funds in 1984. The line had been part of the New York Central Railroad and Penn Central before Conrail was formed. The ACJ interchanges with Norfolk Southern (NS) in Carson Yard which is located at the north end of the Jefferson Industrial Track.

The ACJ Railroad has been the contract operator on the line since the State acquisition. Bob Callahan has been with the ACJ as an employee and part owner of the railroad operations since its inception in 1984, and has been the CEO and major stock holder in the railroad operations since 1991. ACJ is responsible for operations, compliance with FRA and PUCO regulations, track maintenance, taxes, and any other liabilities involved in railroad operations on the State tracks and right-of-way.

Attached to this briefing is the final lease which ORDC would enter with the ACJ upon approval by the Commission. This lease is substantially similar to all other ORDC-owned rail lines, with only minor changes to accommodate the different characteristics of the Jefferson Industrial Track as opposed to the Piney Fork, the Panhandle, or the Jackson Line (as ORDC provided the City of Jackson with our standard lease).

The benefits to entering into this lease include increased standardization of ORDC property leases, as the ACJ is currently not on the newer, template freight operations agreement. In addition, it gives the ACJ certainty going forward in order to be able to invest in the line and ensure there is enough time left to make an appropriate return on investment.

**RESOLUTION 18-03**  
**RE: ASHTABULA CARSON AND JEFFERSON RAILROAD**  
**JEFFERSON INDUSTRIAL TRACK 25 YEAR LEASE**

A RESOLUTION TO AUTHORIZE ORDC TO ENTER INTO A LEASE UNDER CHAPTER 4981 OF THE OHIO REVISED CODE.

WHEREAS, this Commission as the Ohio Rail Development Commission (“ORDC”) created by Chapter 4981 of the Ohio Revised Code, has the authority pursuant to Revised Code Section § 4981.08(A) to lease any rail property in which it has an interest for the continuation and operation of rail service; and

WHEREAS, the ORDC is authorized by ORC § 4981.14(B)(9) and (19) to exercise all powers necessary or appropriate to carry out its corporate purposes including the authority to make and enter all agreements necessary to the performance of its duties and the execution of its powers; and

WHEREAS, ORDC has leased the Jefferson Industrial Track to the Ashtabula Carson and Jefferson Railroad since 1984; and

WHEREAS, the ORDC now desires to enter into a new lease with the Ashtabula Carson and Jefferson Railroad for the period of May 23, 2018 thru December 31, 2042 and to terminate the current Lease/Operating Agreement;

NOW, THEREFORE, BE IT RESOLVED by the ORDC of the State of Ohio hereby authorizes its Executive Director and staff to exercise all powers necessary or appropriate to terminate the current Ashtabula Carson and Jefferson Railroad lease and to enter into a new lease of the Jefferson Industrial Track with the Ashtabula Carson and Jefferson Railroad in a form substantially similar to the form attached hereto as Exhibit A and incorporated as if fully rewritten herein.

Moved By \_\_\_\_\_

Seconded By \_\_\_\_\_

Mark Policinski, Chairman	___ Yes	___ No	___ Absent	___ Abstained	___ Recused
Andrew Pusateri for David Goodman	___ Yes	___ No	___ Absent	___ Abstained	___ Recused
Solomon Jackson	___ Yes	___ No	___ Absent	___ Abstained	___ Recused
Mark G. Johnson	___ Yes	___ No	___ Absent	___ Abstained	___ Recused
Dean Hempfling	___ Yes	___ No	___ Absent	___ Abstained	___ Recused
William Lozier	___ Yes	___ No	___ Absent	___ Abstained	___ Recused
Tom Maphet	___ Yes	___ No	___ Absent	___ Abstained	___ Recused
Anthony Reams	___ Yes	___ No	___ Absent	___ Abstained	___ Recused
Eric Richter	___ Yes	___ No	___ Absent	___ Abstained	___ Recused
Johann Klein for Jerry Wray	___ Yes	___ No	___ Absent	___ Abstained	___ Recused
Thomas Zitter	___ Yes	___ No	___ Absent	___ Abstained	___ Recused

**ORDC ACTION:**

Motion Approved \_\_\_\_\_  
Motion Denied \_\_\_\_\_

Other Action \_\_\_\_\_  
Date 5/23/18

**CERTIFICATE**

I, the undersigned Chair of the ORDC, hereby certify that the foregoing is a true and correct record of the resolution of said ORDC.

\_\_\_\_\_  
Mark Policinski, Chair

5/23/18  
Date

## **LEASE AND OPERATING AGREEMENT**

THIS LEASE AND OPERATING AGREEMENT (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2018 (“Effective Date”), between the STATE OF OHIO, OHIO RAIL DEVELOPMENT COMMISSION, hereinafter referred to as “ORDC”, with principal offices at 1980 West Broad Street, 2<sup>nd</sup> Floor, Columbus, Ohio 43223; and the ASHTABULA, CARSON, AND JEFFERSON RAILROAD, hereinafter referred to as “RAILROAD” with principal offices at PO Box 517, Jefferson, Ohio, 44047.

WHEREAS, ORDC, created by Chapter 4981 of the Ohio Revised Code (“ORC”), has the authority, pursuant to § 4981.08 to lease real property in which it has an interest for the continuation and operation of rail service; and

WHEREAS, ORDC is authorized by ORC § 4981.14 to exercise all powers necessary or appropriate to carry out its corporate purposes including the authority to make and enter all agreements necessary to the performance of its duties and the execution of its powers; and

NOW, THEREFORE, in consideration of the covenants and agreements herein contained and other good and valuable consideration, and intending to be legally bound, the parties agree as follows:

### **Article I. DESCRIPTION OF PROPERTY.**

Section 1.01 The Rail Line and related properties are listed below:

The Jefferson Industrial Track, beginning in Plymouth Township in the vicinity of Carson, Ashtabula County, Ohio in Township 12 North, Range 3 West at Railroad Milepost 5.38, and thence extending from said milepost in a general southerly direction through Plymouth Township and passing through the township line separating Plymouth Township in Township 12 North, Range 3 West from Jefferson Township in Township 11 North, Range 3 West in the vicinity of Griggs, Ohio and continuing and extending in that general southerly direction through Jefferson Township and crossing the South Branch of Mills Creek and continuing in the southerly direction and passing through Jefferson, Ohio to the point of ending at Railroad Milepost 11.63 in Township 11 North, Range 3 West in Jefferson Township, Ashtabula County, Ohio.

The above properties are described in detail in the attached “Exhibit A” and collectively are referred to as the “Rail Line”.

### **Article II. COMMON CARRIER RIGHTS.**

Section 2.01 Subject to other terms and conditions of this Agreement, RAILROAD shall have full right and responsibility to provide common carrier rail service on the Rail Line, and to use and manage the Rail Line for all purposes consistent with the duties, rights, obligations and responsibilities of a rail carrier under the jurisdiction of the Surface Transportation Board (the “STB”), the Federal Railroad Administration (the “FRA”), and other governing bodies or laws. Such rights shall include, but shall not be limited to, all rights of a rail carrier under the Revised

Interstate Commerce Act, 49 United States Code § 10101, et seq. and the ICC Termination Act (Public Law 104-88, 109 Stat. 803).

Section 2.02 ORDC shall not undertake, and, subject to the terms of this Agreement, hereby waives any right it may have, to conduct, or hold itself out to conduct, common carrier rail service on the Rail Line, for the term of this Agreement. RAILROAD shall not grant overhead rights, operating rights or trackage rights on the Rail Line to any party without the advance written consent of the ORDC. Notwithstanding anything herein to the contrary, RAILROAD shall retain the right to provide haulage services to third parties. Subject to the provisions of this Agreement, ORDC shall provide RAILROAD with quiet enjoyment of the Rail Line throughout the term of this Agreement.

### **Article III. TERM.**

Section 3.01 The term of this Agreement shall be for a period of twenty-five (25) years, commencing January 1, 2018 through and including December 31, 2042 (the “Initial Term”) unless sooner terminated in accordance with the provisions of this Agreement.

Section 3.02 After the Initial Term, this Agreement shall automatically renew for five (5) years (“Renewal Term”) unless terminated by either party upon one (1) year advance written notice to the other party prior to the end of the Initial Term, provided any such termination shall meet STB regulatory requirements.

### **Article IV. NON-EXCLUSIVE FREIGHT OPERATIONS.**

Section 4.01 This Agreement does not convey to RAILROAD exclusive freight rights to use the Rail Line. ORDC, in its sole discretion, may grant to other rail freight carrier(s) the right to jointly use all, or any portion of, the Rail Line as provided in this Article IV, Non-Exclusive Freight Operations and as stated below.

Section 4.02 ORDC may grant joint use access to another rail freight carrier if RAILROAD has petitioned the STB for authority to abandon or discontinue operations over all, or any portion of the Rail Line, or has ceased to provide common carrier rail service over all, or a portion of the Rail Line for a period of three consecutive months, other than pursuant to a lawful embargo or because of lack of demand for service.

Section 4.03 Under other conditions not identified in Section 4.02 above, ORDC may only grant other freight rail carrier(s) limited access to jointly use any portion of the Rail Line, if such other carrier:

- (a) agrees in writing to defend, indemnify and hold RAILROAD and its subsidiaries, parent and affiliates, harmless against any and all liability arising in any way whatsoever from the other carrier(s) use of the Rail Line;
- (b) is an existing rail freight carrier or newly created and can demonstrate its financial, insurance (including as set forth in Article XV) and operational capabilities to competently operate a railroad. In determining the operational capabilities of a carrier, the following items will be considered by the ORDC, in its sole discretion, however with



input from RAILROAD: safety record, accident and incident records, management expertise, personnel expertise, operating rules and practices, suitability of equipment, and capacity to make capital investments necessary to operate at the proposed traffic levels. Other criteria may be considered in addition to those listed above;

- (c) agrees that at all times, the operations of the other freight rail carrier(s) shall be conducted in a manner which does not unduly interfere with RAILROAD's operations and shall be in compliance with all dispatching orders, operating rules, safety rules, directives and schedules of RAILROAD;
- (d) Agrees to pay to RAILROAD: 1) a maintenance fee per each car and locomotive moved by such other user based on actual costs of maintaining the Rail Line; and 2) a usage fee per each car and locomotive moved by such other user. The actual cost component for the maintenance fee per car is hereinafter referred to as "Actual Costs Per Car" and shall be defined and calculated as follows: the total maintenance and capital improvement costs expended by RAILROAD, with its own funds, not counting any expenditure of public funds, for the maintenance and improvement of track, fixtures, and appurtenances on the Rail Line for the five year period defined below, divided by the total number of loaded cars for this same five year period. The initial five year period is defined as the period of time from January 1, 2018 to December 31, 2022. Beginning January 1, 2019, and occurring every year thereafter, the Actual Costs Per Car will be recalculated. A locomotive will be treated as the equivalent of a single car using the same formulas as delineated above. By February 15th of each year, RAILROAD shall provide the Actual Costs Per Car as well as the data evidencing the calculation to the ORDC. The usage fee per each car and locomotive moved by the other carrier across the Rail Line shall be an amount equal to RAILROAD's current payment under Section 5.01(a) on an annual basis divided by the number of cars moved by RAILROAD on the Rail Line that originate or terminate on the Rail Line. By February 15th of each year, RAILROAD shall provide such usage fee as well as the data evidencing the calculation to the ORDC;
- (e) Agrees to pay a per car payment to the ORDC equal to payments under Section 4.03(d), or in the event the cars the other freight rail carrier moved over the Rail Line originate or terminate on the Rail Line, an amount equal to RAILROAD's payment under Section 5.01(a) expressed on a proportional per car basis for the number of cars the other carrier moved across the Rail Line, without taking into account any reductions in Fixed Rent or Variable Rent based upon the provisions in Article VI;
- (f) In the event other freight rail carrier(s) agrees to meet and comply with Section 4.03 Section 4.05(a)(a) to (d) above, RAILROAD will make reasonable good faith efforts to accommodate the other carrier(s) operational requests.

Section 4.04 Any other provision of this Article notwithstanding, any joint use or operations over the Rail Line by any freight carrier other than RAILROAD shall be subject to such prior approval of the STB or other governmental bodies with jurisdiction over the premises as may be required under otherwise applicable law.

Section 4.05 Any other provision of this Article notwithstanding, ORDC shall in no event grant any rail freight carrier other than RAILROAD the right to jointly use or operate over the Rail Line during the term of this Agreement pursuant to the above provisions for the purpose of (1) providing transportation service of any kind to an Existing Rail User; (2) utilizing the Rail Line as a through route without serving a Rail User or (3) transporting traffic that is the subject of a

valid contract between RAILROAD and a shipper. For purpose of this Agreement, "Existing Rail User" is defined as any shipper, customer, facility or rail patron (irrespective of ownership) located along the Rail Line that shipped or received a rail car or cars via RAILROAD over the Rail Line at any time during the three years prior to the request of service and a "Rail User" is a shipper, customer, facility or rail patron (irrespective of ownership) located along the Rail Line that has not shipped or received a rail car or cars via RAILROAD over the Rail Line at any time during the three years prior to the request of service. For the avoidance of doubt, a plant or facility that changes ownership after that plant or facility has been closed for the period of two years shall not be considered an Existing Rail User for the purposes of this Article IV.

The procedure by which ORDC will determine whether to grant limited operating rights under the above provisions to a freight rail carrier other than RAILROAD pursuant to this Article shall be as follows:

- (a) The freight rail carrier shall first engage in discussion with RAILROAD to move the rail cars under normal commercial terms. Only when the freight rail carrier has demonstrated that the commercial terms cannot be met in a cooperative manner will this section be applicable. Normal commercial terms will include joint line freight rates, haulage, limited trackage rights agreed to by the parties and/or any other means by which the parties can agree acting reasonably.
- (b) Upon receipt of a written request for limited rights to jointly use any portion of the Rail Line under provisions of this Article IV, Non-Exclusive Freight Operations, ORDC will provide a copy of the request to RAILROAD.
- (c) Within forty-five (45) days after receipt of the request, RAILROAD shall (i) provide ORDC and the requesting freight rail carrier with a written explanation of the terms and conditions (excluding terms already defined in this Agreement) that will apply to the requesting freight rail carrier's operations over the Rail Line, consistent with this Article IV; and (ii) at RAILROAD's option, discuss with ORDC a confidential proposal of terms, including, where appropriate, rates or division of rates under which RAILROAD would agree to provide the service proposed to be provided by the requesting freight rail carrier. In the event RAILROAD provides a more advantageous proposal, in the opinion of the customer, to the customer than the requesting freight rail carrier, the requesting freight rail carrier will not be entitled to jointly use any portion of the Rail Line.
- (d) If the requesting freight rail carrier objects to terms or conditions provided by RAILROAD under (c) above, it shall so inform ORDC and promptly thereafter ORDC shall confer with RAILROAD with respect to the establishment of revised terms and conditions. If RAILROAD and ORDC have not agreed upon such revised terms or conditions within thirty (30) days after RAILROAD's response under (c) above, then subject to (e) below, ORDC, acting reasonably, may determine the revised terms and conditions that will apply.
- (e) In making its determination whether to grant joint rights to a requesting railroad under this Article IV, Non-Exclusive Freight Operations, ORDC shall consider the following:

- (i) The profitability of RAILROAD, especially any increase in RAILROAD operating or maintenance costs resulting from the provision of rights to the requesting railroad.
- (ii) The ability of RAILROAD to continue to meet the requirements of this Agreement, including track maintenance and repairs, RAILROAD's ability to invest in needed capital improvements on the Rail Line, and the ability of RAILROAD to provide effective service to Rail Line shippers. The extent to which the requesting railroad is willing to trade rights on the Rail Line for rights of RAILROAD or its affiliated railroads to operate over lines of the requesting railroad at terms and values similar to those the requesting railroad seeks from ORDC on the Rail Line.
- (f) If ORDC grants joint rights to freight rail carriers, in no event shall RAILROAD be obligated to bear any additional capital, maintenance or repair costs associated with the grant of such rights.
- (g) RAILROAD agrees, however, that RAILROAD shall fully cooperate as needed with ORDC before the STB, and/or any other federal or state entity with jurisdiction over the granting of joint rights, by providing any RAILROAD filings or documentation which is required for ORDC to grant joint use rights as allowed in this Article. ORDC agrees that any agreement with another carrier will require such other carrier to enter into an Operating Agreement with RAILROAD (the "Operating Agreement"). The Operating Agreement shall require the other carrier to: (i) defend, indemnify and hold harmless RAILROAD, and its subsidiaries, parents and affiliates, for actions of the other carrier and provide joint rights as described in this Article; (ii) pay fees as described in Section 4.03(d) hereof; and (iii) meet the insurance requirements in Article XV hereof, including providing proof of such insurance that includes ORDC and RAILROAD as an additional insured. ORDC shall retain the exclusive right to grant joint rights to freight rail carriers other than RAILROAD, subject to the terms and conditions of this Article.
- (h) Any other provision of this Agreement notwithstanding, and subject to any necessary regulatory approval, in the event that ORDC grants joint rights to another freight rail carrier under this Article IV, Non-Exclusive Operations over RAILROAD's objection, RAILROAD shall have the right to terminate this Agreement without further obligation to ORDC, except for the duty to facilitate the orderly change in service from RAILROAD to another carrier, and cease to operate over the Rail Line, upon one hundred eighty (180) days prior written notice to ORDC.

Section 4.06 RAILROAD will grant emergency detour rights to other rail carriers when requested in line with normal industry standard terms and conditions (as summarized in Appendix X).

Section 4.07 Nothing in this Article IV shall affect existing trackage rights and/or rail service agreements between RAILROAD and other railroads, provided the existing trackage rights and/or rail service agreement was in effect prior to January 1, 2018.

Section 4.08 Section 4.03 through Section 4.05 of this Article IV shall not take effect until January 1, 2028. This Section 4.08 shall not apply if the Rail User is a new rail user who brings a minimum 50 jobs and \$20,000,000 of investment to their contemplated facility.

## **Article V. RENT.**

Section 5.01 The following payments must be paid by RAILROAD to ORDC:

- (a) Fixed Rent. Fixed Rent shall be paid to ORDC on September 1 of each year and shall be an annual payment by RAILROAD to ORDC of \$250.
- (b) Variable Rent. Variable Rent shall be paid to ORDC on September 1 of each year and calculated as follows:  
Cumulative loaded carloads originated on, or terminated on the Rail Line for the preceding fiscal year, based on the following table:

Carloads	Per Car Cost
0-2000	\$0
2001+	\$10

For example, a total of 10,000 cars would be calculated as follows: 2000 cars at \$0, 8000 cars at \$10/car, for a total payment of \$80,000 for the 10,000 cars.

- (c) In addition to the amount calculated in Section 5.01(b) above, the Variable Rent shall include a payment to ORDC on September 1 of each year for Storage Cars for the same corresponding period of 5% of the total revenue received by RAILROAD for Storage Cars.

Section 5.02 The Payments required by Section 5.01(a) and Section 5.01(b) shall be subject to annual escalation from January 1, 2019, based upon the annual percentage change in the published Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor, Bureau of Labor Statistics. The adjustment will be based on the percentage change in the published CPI-U for the month of December 2018 as compared to the month of December 2017 and will be applied to the payments above to arrive at the applicable rates for Calendar Year 2019. Future adjustments will be made in the same manner with the CPI-U applied to the rates in effect for the previous calendar year.

## **Article VI. PERFORMANCE MEASURES.**

Section 6.01 At two (2) year intervals throughout the term of this Agreement ORDC shall conduct a review of RAILROAD performance in relation to this Agreement, and such review will consist of the following:

- (a) Track Maintenance: ORDC shall deem RAILROAD's performance to be satisfactory in this category if RAILROAD maintains the Rail Line in accordance with the standards set out in Article XII of this Agreement.
- (b) Liquidity: ORDC shall deem RAILROAD's performance to be satisfactory in this category if RAILROAD demonstrates that it has a Current Asset Ratio which is more than 0.75 for the previous twelve (12) month period or calendar year. ORDC shall calculate this Current Asset Ratio using the financial statements provided by RAILROAD under Section 8.01(f) below. The Current Asset Ratio will be calculated as follows: Current Assets divided by Current Liabilities.
- (c) No Arrears: ORDC shall deem RAILROAD's performance to be satisfactory in this category if RAILROAD is not in arrears on (other than usual and customary payment terms) and has no undisputed liens due to non-payment on any of the following:

- (i) Federal, state, and local taxes, fees or penalties;
- (ii) monies due contractors or vendors for performance of work on, or providing materials and equipment used on, the Rail Line;
- (iii) any monies due other railroads for charges resulting from operations on the Rail Line.
- (iv) Any items covered under this Section that are the subject of valid disputes by RAILROAD, whether in a court of competent jurisdiction, arbitration, or other appropriate forum are expressly to be considered by ORDC as satisfactory, provided that RAILROAD deposits any disputed payments in an escrow account suitable to ORDC.
- (d) Bankruptcy: ORDC shall deem RAILROAD's performance to be satisfactory in this category as long as RAILROAD is not declared insolvent and/or there are no filings against RAILROAD of a petition for relief or reorganization in bankruptcy or insolvency under the laws of any jurisdiction.

In the event that ORDC deems RAILROAD's performance in all of the categories included in this Section 6.01 to be satisfactory, the Agreement shall continue in its current form. In the event that ORDC deems RAILROAD's performance unsatisfactory in categories (a)-(c) included in this Section 6.01, ORDC will then conduct a review of that category on an annual basis. If, after three consecutive years of additional review, RAILROAD's performance is still unsatisfactory, RAILROAD will be considered in default under Article XXVI of this Agreement. In the event that ORDC deems RAILROAD's performance unsatisfactory in category (d), RAILROAD will be considered in default under Article XXVI of this Agreement.

**Section 6.02** At two (2) year intervals throughout the term of this Agreement, ORDC shall conduct a review of RAILROAD performance in relation to this Agreement, and such review will consist of the following:

- (a) Shipper Satisfaction: RAILROAD shall provide overall satisfaction survey results to the ORDC for the Rail Line. These results shall be based upon a survey developed by ORDC with input from RAILROAD. ORDC shall deem the performance of RAILROAD to be satisfactory in this category if the overall satisfaction for the customers on the Rail Line is above 80% as determined by the survey. Customer survey results shall be weighted according to carloads, with the percentage of total carloads shipped, by customer, on the Rail Line used to weight the survey results. RAILROAD and ORDC agree that the first survey will be conducted in 2019.
- (b) Safety: ORDC shall contact the Federal Rail Administration ("FRA") to determine RAILROAD's safety performance one year after the effective date of this Agreement and every two years thereafter. For the purposes of this agreement, ORDC will examine the safety performance for RAILROAD. ORDC will examine RAILROAD safety for the following ratios: FRA Employee On Duty Rate per 200,000 person hours worked (Deaths and Nonfatal Injuries and Illnesses); and the Total Train Accidents per Million Train Miles Operated. ORDC shall deem RAILROAD's performance to be satisfactory if the five year RAILROAD averages for these categories are lower than the five year average of the appropriate FRA classification of railroad types based on RAILROAD train miles operated and employee hours worked for the period being examined. The "Fifth Year" for purposes of this Agreement shall be the latest full year for which the FRA safety data has been gathered, with the other four years being the previous four years. Injuries or accidents that were induced by third party events, as determined by

ORDC, will be removed from the calculation of FRA injury rates and Train Accidents. In addition, in any five year period, up to two non-fatal accidents may be removed from the injury rate calculation at the discretion of ORDC in order to account for the small sample size of RAILROAD's operations.

In the event that ORDC deems RAILROAD's performance unsatisfactory in any category included in this Section 6.02, ORDC will then conduct a review of that category on an annual basis, for a period of three years, and corrective actions as agreed to by RAILROAD and ORDC per (c) and (d) below shall be implemented. If the results in either of the categories are not satisfactory after three years, RAILROAD will face a penalty of \$10,000 per year per violation, subject to annual escalation from January 1, 2014, based on the annual percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor, Bureau of Labor Statistics. The adjustment will be based on the percentage change in the published CPI-U for the month of December 2013 as compared to the month of December 2012 and will be applied to the penalty above to arrive at the applicable penalty for Calendar Year 2014. Future adjustments will be made in the same manner with the CPI-U applied to the penalty in effect for the previous calendar year. The performance in this Article will be reviewed at the end of the following year. If the performance of RAILROAD remains unsatisfactory after period of three additional years of penalty payments and implementing the corrective actions as agreed to by RAILROAD and ORDC per (c) and (d) below, RAILROAD may be considered in default under Article XXVI of this Agreement.

- (c) Shipper satisfaction survey results will be reviewed by ORDC and RAILROAD in an effort to identify the areas of dissatisfaction expressed by shippers within RAILROAD's control. ORDC acknowledges that not all issues raised by customers in the survey will be directly related to the specific service provided by RAILROAD. For example, a Shipper may express dissatisfaction with item such as freight rates, transit times, service schedules and other items that do not necessarily reflect on RAILROAD's service performance. Following identification of the correctable areas of dissatisfaction, RAILROAD will present a plan of corrective actions to ORDC designed to improve on the areas under the control of RAILROAD, in a manner that allows RAILROAD to operate effectively and efficiently. RAILROAD will provide ORDC with quarterly reports summarizing the implementation of this plan, and additional actions taken by RAILROAD, if any. The shipper satisfaction survey will continue to be conducted annually until the results meet the requirements of Section 6.02(a) above, or to the satisfaction of the Executive Director of the ORDC, based upon the completion of the plan of corrective action.
- (d) RAILROAD and ORDC will review the injuries and incidents that occurred on RAILROAD, the actions taken by RAILROAD to rectify the causes of the events and the ongoing action plans to prevent such incidents in the future. ORDC may monitor compliance with the action plan with the cooperation of RAILROAD as long as such cooperation does not adversely impact RAILROAD's attorney client privilege or legal standing in any pending or threatened litigation related to an injury or incident.

## **Article VII. INSPECTION AND AUDIT.**

Section 7.01 RAILROAD agrees that ORDC, or its duly authorized representatives, shall, during RAILROAD normal business hours, upon reasonable notice, in accordance with

RAILROAD safety rules and regulations, and accompanied by RAILROAD personnel, be permitted to inspect the Rail Line.

Section 7.02 RAILROAD agrees that ORDC, or its duly authorized representatives shall be permitted to:

- (a) Examine the records and data maintained by RAILROAD related to this Agreement as may be necessary to monitor RAILROAD's compliance with this Agreement; and
- (b) To request an interview with any employee of RAILROAD or any related companies regarding such records and data.

Section 7.03 RAILROAD and ORDC agree that it is the interest of both parties to develop new business along the Rail Line, including the facilitation of plant and business expansion, as well as the facilitation of new businesses locating along the line. Upon the written request of ORDC, but not more often than once every year, RAILROAD shall provide to ORDC a written narrative of the marketing and development efforts undertaken by RAILROAD in the previous year to advance business expansion and location along the Rail Line.

## **Article VIII. INFORMATIONAL REQUIREMENTS.**

Section 8.01 RAILROAD shall annually provide ORDC with the following documents:

- (a) Confidential carloading information in connection with operations over the Rail Line by customer, commodity, origin and destination, and interchange point(s) as of the end of RAILROAD's fiscal year, and further, provide to ORDC gross ton miles/mile information broken down by various segments as reasonably requested by ORDC;
- (b) A summary report indicating the number of storage cars billed by month and the total annual revenue for storage cars. Storage cars shall be defined as cars stored for non-freight customers of RAILROAD. The summary report shall include all storage cars on RAILROAD including those cars not located on the Rail Line;
- (c) Annual bridge reports (as provided to the Public Utilities Commission of Ohio ("PUCO"));
- (d) Annual review of track investments, according to the categories enumerated in Section 12.02, below;
- (e) Any reports issued by FRA or PUCO on track, equipment or operational issues;
- (f) Financial reports for the corporation including (i) a statement of assets, liabilities, and stockholders' equity; (ii) a statement of revenue and expenses; (iii) U.S. Corporation Income Tax Return (IRS form 1120 or its successor). All financial reports provided pursuant to this section shall be prepared by a Certified Public Accountant or shall be accompanied by a statement from a Certified Public Accountant that the reports have been verified by the Certified Public Accountant;
- (g) Proforma profit/loss statements for operations taking place on the Rail Line;
- (h) Copies of any liens, lawsuits, and any and all other legal actions taken against RAILROAD's operations, or filed by RAILROAD, regarding the Rail Line; and
- (i) A detailed, tentative plan and capital budget for the next full year, exhibiting the investments that shall be made in the Rail Line.

All reports as required by this Article VIII shall be provided by RAILROAD to ORDC by October 1st after the end of each successive year. Failure to provide this information shall be a condition of default under Article XXVI.

## **Article IX. CONFIDENTIALITY.**

Section 9.01 To the extent possible under applicable law, all aspects of ORDC's exercise of audit rights under Section 7.01 and the results thereof, and any and all information disclosed by RAILROAD to the ORDC under this Agreement, including without limitation under Section 7.01-Section 7.03 and Article VIII, shall at the request of RAILROAD be held confidential, and shall not be disclosed without RAILROAD's prior written consent. Nothing in this Agreement shall be construed to restrict the ORDC from disclosing such confidential information as required by law or by court or administrative order, provided in each case the ORDC shall timely inform RAILROAD, if legally permissible, of the request.

## **Article X. ALTERATIONS AND IMPROVEMENTS.**

Section 10.01 The prior written approval of the Executive Director of ORDC shall be required before RAILROAD makes Alterations and Improvements. "Alterations and Improvements" shall mean any activity which substantially changes the nature of the Rail Line, including but not limited to, the taking up of any portion of rail or track (mainline, branchline, or siding), or construction of significant new track, structure or appurtenances on or along the Rail Line; for greater certainty, Alterations and Improvements shall not include Maintenance (hereinafter defined Article XII). It is specifically understood and agreed to by the parties that all Alterations and Improvements to the Rail Line are owned by ORDC. Nothing in this Article shall be construed to grant to RAILROAD the right to sell, trade or otherwise profit from the removal of track, track structures or appurtenances. RAILROAD agrees that ORDC reserves the right to be the sole beneficiary of the proceeds of any salvaging of any track, track structure or appurtenances on the Rail Line; however, RAILROAD shall have the right to request in writing to the Executive Director of ORDC that RAILROAD be allowed to salvage un-needed track or track structures. RAILROAD's written request shall contain the reasons why the track or track structures are no longer needed for the operation of the Rail Line, an estimation of the Net Liquidation Value (as defined in 49 C.F.R. § 1152.34(c)) of the items to be salvaged, and a detailed description of the improvements to the Rail Line which will be made with the proceeds from the salvaging, including the exact location of such improvements. RAILROAD may commence with the salvaging of materials and retain the proceeds from such salvaging upon written permission to do so by the Executive Director of ORDC. For purposes of this Article, the sale of materials removed in Maintenance activities or for Alterations and Improvements; provided, however, the materials so removed are replaced in like kind or better condition, shall not be considered salvage and such sale is permitted by this Agreement.

Section 10.02 Upon the written request of ORDC, RAILROAD shall, at its sole cost and expense, remove any Alterations or Improvements and restore the Rail Line to its condition previous to the construction of any Alterations or Improvements which were performed by RAILROAD without the express written consent of the Executive Director of ORDC.



## **Article XI. UTILITIES.**

Section 11.01 RAILROAD, at its sole cost and expense, shall arrange for and obtain necessary water, electricity and other utility services required for its use. ORDC shall not be liable for any such services, or the suspension of such services.

## **Article XII. MAINTENANCE AND REPAIRS**

Section 12.01 RAILROAD shall have the right and responsibility to maintain the Rail Line and shall be allowed to perform normal Maintenance without prior approval of ORDC.

“Maintenance” includes, but is not limited to, tie replacement, surfacing, aligning, bolt tightening, replacement of rail, rail switches, or rail hardware (including signals), turning worn rail, replacing or augmenting ballast, maintaining proper drainage, normal bridge and tunnel maintenance, and other normal railroad maintenance activities.

Section 12.02 RAILROAD shall expend sufficient amounts of its own funds to satisfactorily perform all items on the “Normalized Maintenance Schedule” (identified below) on all segments (identified in Section 12.05 below) that are in service for any given year. On any segment where traffic levels of loaded revenue cars exceed an average of 100 cars per mile, or when and where special circumstances associated with lower levels of loaded revenue cars may dictate, RAILROAD and ORDC shall jointly review the need for capital spending on that segment. Such review shall consider, movement safety, sustainability of the traffic, economics of the traffic, and cost to upgrade the segment to FRA Class I standards. The goal of the review shall be to improve all segments with sufficient traffic to a minimum of FRA Class I standards and the parties agree to work in good faith to identify all funding sources available to achieve this goal. The “Normal Maintenance Schedule” consists of the items below:

- (a) Vegetation Control: spraying the line at least annually, clearing of vegetation obstructions at grade crossings, removal of downed trees encroaching on the track, selective bush hogging/mowing of accessible right of way in towns, removal of debris illegally dumped by third parties.
- (b) Signal Maintenance: maintain electrical power to existing signals, replacing signal batteries (including proper disposal), replacing light bulbs, LEDs, lenses and gates, periodic testing, repair of damage caused by third parties, replacement of insulated joints and repairs to bond wires above ground wiring, replacement of unusable signal heads, mast, cantilevers, electronic control boards, bungalows, cabinets, gate mechanisms, underground wiring, or signal upgrades.
- (c) Grade Crossings: patching of surface with hot or cold mix, repair of broken rails, repair of crossing timbers, redriving lags repair or replacement of crossbucks, rebuilding of surface, replacement of track structure.
- (d) Inspection: perform all FRA required track and bridge inspections per designated class of track and make copies of all inspections available to ORDC.
- (e) Switches: inspection, lubrication, and adjustment of all in-service switchines, replacement of loose, missing or broken bolts and cotter pins, replacement of banners as required welding of worn points or frogs, replacement of switch components (other than those available from on-line inventory), replacement of switch timbers.

- (f) Derailments: rerailling of all derailed cars and lading and repairs to track to return to same FRA class as prior to derailment; available on-line inventory components may be used.
- (g) Joints and broken rails: repair all missing or failed bolts, repair for existing FRA class, replace broken joint bars, repair or replace broken rails (bar and rail from available on-line inventory), purchase of new or relay bars or rails if not available from on-line inventory.
- (h) Ties and gage rods: spot respiking of ties to maintain proper gage for FRA class of track replacement of broken or failed gage rods as necessary, replacement of more than 100 ties and more than 10 gage rods per year.
- (i) Plates and anchors: reposition loose plates and redrive loose anchors (use of on-line inventory for replacements), purchase of new or relay plates, anchors or program anchoring.
- (j) Surfacing: spot jacking and tamping to meet FRA class of track, using existing ballast. program surfacing and new ballast.
- (k) Bridges: inspection, cleaning of drift, erosion control as practical, repair or existing walkway boards and handrails, prevention of ballast erosion as practical, adjustment of shims respiking of deck ties, replacement of major components including piles, sills, caps, stringers, girders, beams, hangers, sway braces, gussets, side boards, abutments, piers, headwalls, pedestals, bridge deck ties, walkways.
- (l) Culverts and drainage: clean culvert ingress and egress, patching of culvert separations, periodic ditching, erosion and vegetation control as practical, installation of new or additional culverts, increase in culvert capacity, replacement of failed or completely separated culverts (including metal, concrete or stone box types), removal of large slides blocking drainage ditches, redirecting of water flows, repairs needed due to serious flood damage.
- (m) Shoulders and stream banks: repair minor shoulder slips (requiring up to a backhoe), dump and reposition available rip rap along stream banks for erosion control (up to sizes handled by a backhoe), repair of major bank slips, repair of serious flood damage, replacement of large rip rap requiring heavy machinery.

Section 12.03 Inspections of the Rail Line will be conducted every two (2) years. The class of track of all properties of the Rail Line will be determined by PUCO inspectors or FRA inspectors, of which FRA's opinion shall be final on the matter in the event of a disagreement.

Section 12.04 RAILROAD has inspected and accepts the Rail Line in its present condition and agrees that no representations or warranties with regard to condition and fitness for use of the Rail Line have been made.

Section 12.05 RAILROAD agrees, at RAILROAD's sole cost and expense, to put, keep, and maintain the Rail Line in good order, repair and safe condition. RAILROAD agrees that the Rail Line will be kept at a minimum of FRA Excepted class, suitable for operations to serve customers. In addition, should improvements be made to a segment listed above that results in the segment moving up in FRA class, RAILROAD shall maintain the segment at the new FRA class. The failure to maintain any of the above mentioned segments at the appropriate FRA class shall be a condition of default.

Section 12.06 RAILROAD may request in writing to the Executive Director of ORDC that ORDC downgrade any segment of the track at any time during the period of this Agreement. Such request may be approved at the sole discretion of the Executive Director of ORDC.

### **Article XIII. PASSENGER AND EXCURSION SERVICE.**

Section 13.01 RAILROAD is prohibited from running passenger or excursion service over the Rail Line without the prior written approval of the Executive Director of ORDC.

### **Article XIV. ASSIGNMENT AND SUBLETTING.**

Section 14.01 This Agreement and all the terms and conditions hereof shall inure in favor of, and be binding upon, the parties hereto and upon their respective successors and permitted assigns.

Section 14.02 RAILROAD shall not assign or transfer this Agreement in whole or in part, or sublet the Rail Line, or any part thereof, without the prior written consent of the Executive Director of ORDC. An assignment, or transfer, or merger or consolidation by operation of law, or proceeding in equity, bankruptcy, insolvency or reorganization, or a transfer of any controlling interest of the stock and/or assets of RAILROAD to a person or persons not now in control, shall be deemed to be an assignment within the meaning of this provision; provided, however, RAILROAD shall be allowed to assign to a parent, subsidiary or corporate affiliate of RAILROAD and/or to a voting trustee under 49 C.F.R. Part 1013, a controlling interest of stock in RAILROAD without prior ORDC approval.

### **Article XV. INSURANCE AND INDEMNIFICATION.**

Section 15.01 This Agreement is without force and effect until such time that RAILROAD demonstrates to the satisfaction of ORDC that RAILROAD has liability insurance coverage (i.e., bodily injury and property damage coverage) in amounts not less than five million dollars (\$5,000,000.00) for each individual claim with regard to the operation of the Rail Line. Such insurance shall include ORDC as an additional insured under such policy(ies). RAILROAD shall provide a certificate of insurance to ORDC not more than ten (10) days prior to the execution of this Agreement. Each such policy of insurance shall be evidenced as follows: "Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail 30 days written notice to the certificate holder named to the left, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives." RAILROAD shall deliver to ORDC verification as to the replacement or renewal of each such policy prior to or upon the expiration (or other termination) date of any such policy.

Section 15.02 Failure to maintain said insurance as required by Section 15.01 above shall be a condition of default without regard to the cure period in Section 26.01 and will result in immediate termination of this Agreement.

Section 15.03 On every fifth anniversary after the Effective Date of this Agreement, the amount of insurance coverage required for RAILROAD shall be reviewed by ORDC. This review shall be done by mutual agreement, or, if no mutual agreement can be obtained, ORDC shall establish the level of insurance required by obtaining expert evaluation as to what the level of insurance should be. This expert evaluation shall include, but not be limited to, the following considerations: (1) the level of risk inherent in RAILROAD freight operations over the Rail Line; (2) the costs to RAILROAD of the insurance premium compared to the risks of RAILROAD operations; (3) the insurance coverage being purchased by other comparable rail operations within the State of Ohio; and (4) the availability of insurance coverage in the market. ORDC and RAILROAD must mutually agree to the person or firm, as well as the methodology, for providing ORDC this expert evaluation. ORDC shall undertake this expert evaluation at its sole cost and expense.

In the event that RAILROAD begins to carry Toxic Inhalation Hazard or Poison Inhalation Hazard (“TIH/PIH”) materials across the Rail Line, ORDC and RAILROAD shall meet no less than 60 days prior to the commencement of TIH/PIH service to determine the increased level of insurance needed to transport the TIH/PIH materials.

Section 15.04 RAILROAD agrees to indemnify and hold ORDC and the State of Ohio harmless from and against any loss, claim, damage, cause of action or absolute liability (including without limitation, reasonable counsel fees) caused by RAILROAD’s negligence, reckless, intentional or willful misconduct. RAILROAD shall inform ORDC in writing of any and all judgments, claims, actions, temporary restraining orders, injunctions, suits, proceedings, inquiries or investigations at law or in equity, before or by any judicial or administrative court or agency, pending or to the best knowledge of RAILROAD, threatened against or affecting, or involving the Rail Line.

Section 15.05 In no event shall RAILROAD or any of its employees, agents, contractors or subcontractors be considered agents or employees of ORDC or the State of Ohio. RAILROAD agrees to use its reasonable best efforts to ensure that none of its employees, agents, contractors or subcontractors hold themselves out as, or claim to be, agents, officers or employees of ORDC and the State of Ohio, and will not, by reason of any relationship with ORDC and the State of Ohio, make any claim, demand or application to any agent, officer or employee of the State of Ohio including, but not limited to, rights and privileges concerning worker’s compensation benefits, social security coverage or retirement membership or credit.

Section 15.06 The parties’ obligations under this Article shall survive the termination of this Agreement.

## **Article XVI. RIGHT OF FIRST REFUSAL.**

Section 16.01 If, during the Term of this Agreement, ORDC receives and desires to accept any bona fide offer or to make any offer (an “ORDC Offer”) for the sale of the Rail Line, ORDC shall notify RAILROAD in writing of each ORDC Offer (“Notice of ORDC Offer”) containing a copy of the ORDC Offer and all other terms and conditions applicable to the ORDC Offer. RAILROAD shall have the right to purchase (“Right of First Refusal”) the Jefferson Industrial Track at the purchase price set forth in the ORDC Offer. Notwithstanding anything to the

contrary in this Article, any ORDC Offer must acknowledge that this Agreement will remain in full force and effect over the Rail Line.

Section 16.02 If RAILROAD does not exercise the Right of First Refusal in regard to an ORDC Offer of which it has been given notice in accordance with Section 15.1, and if within one hundred twenty (120) days after RAILROAD's receipt of the Notice of ORDC Offer, the Rail Line is conveyed in accordance with the ORDC Offer, RAILROAD's Right of First Refusal shall terminate with respect to the Rail Line, so sold and conveyed, provided that:

- (a) Once an ORDC Offer, of which a Notice of ORDC Offer has been provided to RAILROAD, is accepted by ORDC, ORDC shall not agree to a reduction of the purchase price, more favorable terms or any change in the nature or amount of the consideration to be given in exchange for the Rail Line without first giving RAILROAD notice of the reduction, more favorable term or change, and upon receipt of that notice, RAILROAD shall again, in accordance with the provisions of Section 16.01, have the Right of First Refusal to purchase the Jefferson Industrial Track at the new price and new terms.

Section 16.03 If any ORDC Offer is not accepted by ORDC or if the Rail Line is not conveyed in accordance with the accepted ORDC Offer within one hundred twenty (120) days after the date RAILROAD received the Notice of ORDC Offer, then RAILROAD's Right of First Refusal shall be applicable to the Rail Line and to any subsequent offer received by ORDC with respect to the Rail Line during the Term of this Agreement. Nothing contained in this Article concerning either the termination of RAILROAD's Right of First Refusal or RAILROAD's failure to exercise the same shall in any way affect any of RAILROAD's other rights and privileges under this Agreement.

Section 16.04 Upon request of ORDC, RAILROAD shall furnish to ORDC, or the purchaser of the Rail Line, an affidavit in recordable form stating the extent to which RAILROAD's Right of First Refusal has terminated in accordance with this Article and setting forth such other matters as RAILROAD shall deem necessary or appropriate.

## **Article XVII. LEGAL REQUIREMENTS.**

Section 17.01 RAILROAD, in the execution of its duties and obligations under this Agreement, agrees to comply with all applicable federal, state and local law.

## **Article XVIII. TERMINATION.**

Section 18.01 RAILROAD shall have the right to terminate this Agreement at its discretion upon written notification to the Executive Director of ORDC three hundred sixty (360) days in advance of RAILROAD's actual cessation of service. ORDC shall have the right to terminate this Agreement, or any renewal of this Agreement, in accordance with the provisions of Article XXVI of this Agreement. Any termination shall meet STB regulatory requirements.

## **Article XIX. TAXES AND ASSESSMENTS.**

Section 19.01 RAILROAD shall have the sole responsibility to pay all taxes and assessments arising after the Effective Date of this Agreement for the Rail Line, or RAILROAD's use of the Rail Line including, but not limited to, real estate taxes and other assessments if any, throughout the Initial Term and any Renewal Term of this Agreement. RAILROAD shall pay such taxes and assessments directly to the taxing or assessing authority before such payments become delinquent and shall certify to ORDC that these tax obligations have been met. It is further agreed that RAILROAD shall have the right, at its sole cost and expense, to challenge the application, assessment or computation of any tax, as provided under applicable law. RAILROAD agrees to pay any penalties assessed to ORDC or to RAILROAD due to lack of payment or late payment by RAILROAD of any taxes described in this Article. The failure to comply with this Article XIX shall be considered a condition of default.

## **Article XX. FORCE MAJEURE**

Section 20.01 In the event of an occurrence beyond the reasonable control of RAILROAD, including but not limited to, a material derailment, an act of God, a flood, act of terrorism, a major explosion or fire, or an act of any government, which prevents or materially impairs RAILROAD's ability to provide rail service ("Force Majeure") over all or a part of the Rail Line (the "Damaged Rail Line"), RAILROAD's obligation to provide rail service over the Damaged Rail Line under this Agreement is excused until such time as the Damaged Rail Line becomes operational. In the event of such an occurrence, ORDC and RAILROAD shall determine jointly and in good faith how the expense of repairing or rebuilding the Damaged Rail Line shall be divided between ORDC and RAILROAD; provided, however, that in the absence of ORDC's commitment to pay for same, RAILROAD shall not be obligated to undertake any repair or replacement of asset or equipment that would not be required under otherwise applicable law. An incidence of Force Majeure shall excuse RAILROAD from its obligations under Article V Rent for the Damaged Rail Line for the duration of the event, provided that RAILROAD's Fixed Rent Payments shall be pro-rated for the number of days a Force Majeure was declared in any year and the carload impact of the Force Majeure.

Section 20.02 It is expressly agreed that ORDC or RAILROAD retains the option to terminate the Agreement in accordance with Article XVIII, Termination, upon the occurrence of any act deemed to be "Force Majeure" under this Article.

## **Article XXI. PROPERTY MANAGEMENT**

Section 21.01 RAILROAD shall be obligated to fulfill all current, existing responsibilities, obligations, and duties in managing and negotiating all current, existing property leases, crossings and other similar agreements related to the property. RAILROAD may enter into new leases or other property management responsibilities, hereinafter referred to as Property Transactions, which ORDC might enter into under the terms of this Agreement only after RAILROAD obtains written permission from the Executive Director of ORDC. ORDC shall have no obligations under such Property Transactions unless its Executive Director accepts such obligations in writing.

Section 21.02 Any and all fees acquired through Property Transactions shall be split 50%/50%, with RAILROAD keeping 50% of any fees and paying directly to ORDC the remaining 50% of any fees. This Section shall not apply to negotiations involving public entities or engineering fees.

- (a) 100% of engineering fees incurred as a result of Property Transactions that arise under this Article XXI shall be collected by RAILROAD.
- (b) 100% of fees collected from public entities as a result of Property Transactions shall be paid directly to ORDC. RAILROAD may retain from such fees reasonable expenses resulting from the transaction with the advanced written consent of ORDC.

Section 21.03 Nothing in this Article XXI precludes ORDC from entering into a Property Transaction involving the Rail Line with parties of ORDC's selection under terms and conditions consistent with this Agreement. However, ORDC shall coordinate and cooperate with RAILROAD to ensure that the interests of RAILROAD are not unduly harmed before entering into the proposed Property Transaction. In the event that RAILROAD has an objection to a proposed ORDC property Transaction, the decision of ORDC shall be final.

Section 21.04 All Property Transactions shall be built and maintained according to AREMA specifications, including but not limited to any improvements mandated by ORDC under Section 21.03.

## **Article XXII. NOTICES.**

Section 22.01 All notices, requests, demands, directions and other communications (collectively "notices") given to or made upon any party hereto under the provisions of this Agreement shall be in writing (including electronic mail) and shall be delivered or sent by first class, certified, return receipt requested, or first class express mail or overnight air courier service, or by electronic mail with confirmation in writing mailed first class, in all cases with postage or charges prepaid, to the applicable party, addressed:

- (a) If to ORDC: Executive Director, Ohio Rail Development Commission, 1980 West Broad Street, Mail Stop 3140, Columbus, Ohio 43223.
- (b) If to RAILROAD: President, Ashtabula Carson and Jefferson Railroad, PO Box 517, Jefferson, Ohio 44047.

Section 22.02 Or, notice may be given to another party and/or at another address in accordance with any unrevoked written direction from any party to any other party hereto. Each such notice shall be deemed to have been given or received on the date sent except when sent by first class express mail or overnight air courier service, in which case on the next Columbus Banking Day thereafter, and except when sent by first class mail, in which case on the third Columbus Banking Day thereafter.

## **Article XXIII. REMEDIES.**

Section 23.01 No remedy herein conferred upon or reserved by either party 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 this Agreement now or hereafter existing at law or in equity.

#### **Article XXIV. NO WAIVER.**

Section 24.01 No delay or omission to exercise any right or option accruing to either party upon any breach by the other party shall impair any such right or option or shall be construed to be 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 non-breaching party. Further, if any term, provision, covenant or condition contained in this Agreement is breached by either party and thereafter such breach is waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. A written record of such waiver shall be included in the records of this Agreement.

#### **Article XXV. NO ABANDONMENT.**

Section 25.01 RAILROAD shall not apply for abandonment of or discontinuance of service over any portion of the Rail Line without securing the advance written consent of the ORDC.

#### **Article XXVI. DEFAULT.**

Section 26.01 In the event that RAILROAD does not comply with any of the Articles of this Agreement at any time during the term of this Agreement, LESSOR may notify RAILROAD in writing of said default and the cure provisions of Section 26.03 shall apply, except with regards to the conditions and provisions enumerated in Section 26.02.

Section 26.02 Conditions and provisions upon which noncompliance would constitute automatic default, without regards to the notice or cure period in Section 26.03 below and resulting in the immediate termination of the Agreement upon the actual date of the violation are:

- (i) Article VI, Section 6.01(d) regarding insolvency and/or the filing against RAILROAD of a petition for relief or reorganization in bankruptcy or insolvency under the laws of any jurisdiction;
- (ii) Article XIV: Assignment and Subletting;
- (iii) Article XV: Insurance and Indemnification.

Section 26.03 In the event that LESSOR informs RAILROAD in writing of a RAILROAD default, RAILROAD shall have sixty (60) days from the date of the notice to cure the default except that for obligations that would be reasonably expected to take more than sixty (60) days to cure, RAILROAD shall begin steps to cure the default within thirty (30) days and thereafter make good faith efforts to prosecute same with due diligence so that the cure shall take place in a reasonable amount of time. If RAILROAD fails to so cure within this period, then LESSOR may terminate this Agreement. In the event LESSOR terminates this Agreement, in addition to any other action or remedy which LESSOR may have at law or in equity to recover damages or otherwise by reason of breach by RAILROAD of any provision of this Agreement, LESSOR



shall have the right to remove RAILROAD from the Rail Line and take possession thereof by all available legal means, including, but not limited to, the assignment of trackage operating rights to another carrier at LESSOR's discretion free and clear and discharged of this Agreement and of all rights of RAILROAD hereunder.

Section 26.04 At its discretion, LESSOR may request that RAILROAD continue operations on the line for an agreed upon period of time after LESSOR's termination of this Agreement because of RAILROAD default to facilitate the orderly change in service from RAILROAD to another carrier. Such continued operations shall be governed by the terms of this Agreement but shall not constitute a reinstatement of this Agreement.

## **Article XXVII. GOVERNING LAW AND VENUE.**

Section 27.01 This Agreement shall be construed, interpreted, and the right of all parties determined, in accordance with the laws of the State of Ohio. The parties agree that the exclusive venue for any dispute regarding this Agreement shall be in a court of competent jurisdiction located in Franklin County, Ohio.

## **Article XXVIII. NO THIRD PARTY BENEFICIARIES.**

Section 28.01 This Agreement and each and every provision throughout are for the exclusive benefit of the parties to this Agreement and not for the benefit of any third party.

## **Article XXIX. DRUG FREE WORKPLACE.**

Section 29.01 RAILROAD agrees to comply with all applicable state and Federal laws regarding drug-free workplace. RAILROAD shall make good faith efforts to ensure that all of its employees while working on the Rail Line will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any manner.

## **Article XXX. SEVERABILITY.**

Section 30.01 If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or enforceability of the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.

## **Article XXXI. LIMITATIONS.**

Section 31.01 Notwithstanding anything stated in this Agreement to the contrary, any provision, agreement, condition, understanding, or the like contained in this Agreement which contravenes, violates, conflicts with or is not authorized by the Constitution or Statutes of the State of Ohio shall be void ab initio.

**Article XXXII. ENTIRE AGREEMENT.**

Section 32.01 This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. No terms shall be altered or otherwise amended except by an instrument in writing signed by each party hereto.

**Article XXXIII. CAPTIONS.**

Section 33.01 The article 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.

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

**ASHTABULA CARSON AND JEFFERSON  
RAILRAOD:**

**OHIO RAIL DEVELOPMENT  
COMMISSION:**

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_  
Matthew Dietrich,  
Executive Director

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



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## Rail Project Funding

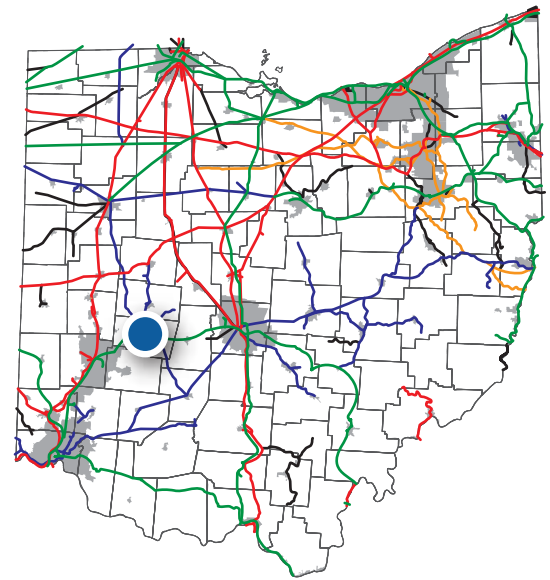
ORDC Grant	\$550,000
Railroad Investment	\$1,750,000
	<u>\$2,300,000</u>

## Project Benefits

- Facilitates new transportation opportunities for Ohio shippers
- Provides direct backhaul route for agricultural products, reducing shipping costs for area farmers

## ORDC Goals and Objectives

This project improves access to global markets through seamless intermodal connectivity and provides additional transportation choices for Ohio communities under ORDC's goal of Efficient Railways.



## **INDIANA & OHIO RAILWAY SPRINGFIELD, OHIO BRIDGE UNDERCUTTING**

May 15, 2018

Indiana & Ohio Railway (IORY) is requesting a grant from ORDC to perform undercutting and associated work to improve vertical clearances under four (4) bridges in Springfield, Ohio allowing for increased vertical clearance of twenty-one (21) feet, the required clearance for intermodal traffic. Staff recommends the approval of a grant in the amount of \$550,000 (22% contribution) matched at \$1,750,000 in railroad contributions. This project is a component of a larger effort spearheaded by Genesee & Wyoming (G&W, the parent company of IORY) to establish intermodal service from the Port of Vancouver to Jeffersonville, Ohio, in partnership with Canadian Pacific Railway (CP).

G&W and CP's partnership provides new opportunities for Ohio shippers. Before the establishment of this partnership, CP's reach did not extend into Ohio. By partnering with G&W, CP will be able to utilize G&W route from Chicago to Jeffersonville, OH. The end-to-end service product provides a steel wheel interchange in Chicago, with eight (8) day total transit time. In Jeffersonville, the Central Ohio Logistics Center (COLC) will serve as the intermodal facility where containers will be offloaded. Bluegrass Farms of Ohio, which owns the COLC, will operate the facility on behalf of CP. Bluegrass Farms and area farmers will be able to utilize on site bulk grain transloading at the facility. The direct backhaul route for agricultural products to be exported in shipping containers will reduce overall shipping costs.

A key component of providing competitive intermodal service is the ability to stack shipping containers two-high (known as "double-stack"). Four bridges in Springfield (N. Fountain Ave. at MP 195.3, N. Limestone St. at MP 195.4, Spring St. at MP 195.5, and Norfolk Southern Railway at MP 199.9) do not have sufficient clearance to allow for double-stacked containers to pass beneath them. The project before the commission consists of undercutting the existing subgrade, installing new track, constructing retaining walls, and relocating two turnouts.

G&W is making other significant investments into its infrastructure to facilitate this new intermodal opportunity. The railroad is investing \$7,700,000 into upgrading its line between Lima and Jeffersonville and Cincinnati. This investment will upgrade track, bridge and signal infrastructure to allow for operation at 40 mph (FRA Class 3 Track). Further, this new intermodal service will benefit from an ongoing - ORDC safety project in Lima. The \$2 million Sugar Street Interlocking project addresses deficiencies in the connection between the CFER (Chicago, Ft. Wayne, & Eastern RR) and IORY. This project will add a connecting track, upgrading the existing connecting track, and upgrade railroad signaling systems to prevent blocked grade crossings in Lima, improving the fluidity of railroad movements through the interlocking.

G&W and CP's intermodal partnership, and ORDC's participation in the bridge undercutting component of the project, provides numerous benefits to Ohio shippers. This new service will provide an additional intermodal shipping option to businesses in the Cincinnati, Dayton, and Columbus regions. Historically, the Port of Vancouver has not served markets in Ohio—most shipments have originated from the ports of Long Beach and Los Angeles, which have had long-standing issues with congestion. The partnership will also enhance the Fayette County Mega-Site, which is directly adjacent to the COLC. Additionally, the partnership will benefit agricultural shippers in the region by providing them with direct access to the international market. Bluegrass Farms, as operator of the COLC, will be able to ship agricultural products in emptied containers back to the Port of Vancouver for export.

**RESOLUTION 18-04**  
**RE: INDIANA & OHIO RAILWAY COMPANY**  
**BRIDGE UNDERCUTTING IN SPRINGFIELD, OH**

A RESOLUTION DETERMINING THE APPROPRIATENESS OF ASSISTANCE  
PROPOSED TO BE PROVIDED TO THE INDIANA AND OHIO RAILWAY COMPANY  
UNDER CHAPTER 4981 OF THE OHIO REVISED CODE.

WHEREAS, this Commission as the Ohio Rail Development Commission (“ORDC”) created by Chapter 4981 of the Ohio Revised Code, has the responsibility of reviewing and making recommendations to ORDC staff with respect to the assistance under Chapter 4981 of the Ohio Revised Code (the “Act”) proposed to be provided; and

WHEREAS, the ORDC has under consideration the provision of assistance under the Act to the Indiana & Ohio Railway Company (the “Company”); and

WHEREAS, the ORDC staff has submitted to this ORDC a Request for Assistance submitted by the Company; the determination of the Executive Director of the ORDC and the facts upon which such determination is based, that the proposed assistance will conform to the requirements of the Act and the terms of the proposed assistance; and

WHEREAS, the ORDC has reviewed such submissions and discussed them with the Executive Director and staff of the ORDC the proposed assistance; and

WHEREAS, on the basis of such review and discussions, the ORDC has determined that the provision of assistance to the Company, as set forth in the ORDC staff’s submissions, is appropriate.

NOW, THEREFORE, BE IT RESOLVED by the ORDC of the State of Ohio:

Section 1. That the ORDC determines that the assistance proposed to be provided under the Act to assist the Company with the Rail Service Project (as defined below) is appropriate.

Section 2. That the ORDC approves the proposed assistance to the Company, the nature, amount and terms of which are summarized in Exhibit A attached hereto.

Moved By \_\_\_\_\_  
Seconded By \_\_\_\_\_

Mark Policinski, Chairman	<u>      </u> Yes	<u>      </u> No	<u>      </u> Absent	<u>      </u> Abstained	<u>      </u> Recused
Andrew Pusateri for David Goodman	<u>      </u> Yes	<u>      </u> No	<u>      </u> Absent	<u>      </u> Abstained	<u>      </u> Recused
Solomon Jackson	<u>      </u> Yes	<u>      </u> No	<u>      </u> Absent	<u>      </u> Abstained	<u>      </u> Recused
Mark G. Johnson	<u>      </u> Yes	<u>      </u> No	<u>      </u> Absent	<u>      </u> Abstained	<u>      </u> Recused
Dean Hempfling	<u>      </u> Yes	<u>      </u> No	<u>      </u> Absent	<u>      </u> Abstained	<u>      </u> Recused
William Lozier	<u>      </u> Yes	<u>      </u> No	<u>      </u> Absent	<u>      </u> Abstained	<u>      </u> Recused
Tom Maphet	<u>      </u> Yes	<u>      </u> No	<u>      </u> Absent	<u>      </u> Abstained	<u>      </u> Recused
Anthony Reams	<u>      </u> Yes	<u>      </u> No	<u>      </u> Absent	<u>      </u> Abstained	<u>      </u> Recused
Eric Richter	<u>      </u> Yes	<u>      </u> No	<u>      </u> Absent	<u>      </u> Abstained	<u>      </u> Recused
Johann Klein for Jerry Wray	<u>      </u> Yes	<u>      </u> No	<u>      </u> Absent	<u>      </u> Abstained	<u>      </u> Recused
Thomas Zitter	<u>      </u> Yes	<u>      </u> No	<u>      </u> Absent	<u>      </u> Abstained	<u>      </u> Recused

**ORDC ACTION:**

Motion Approved \_\_\_\_\_  
Motion Denied \_\_\_\_\_

Other Action \_\_\_\_\_  
Date 5/23/18

# CERTIFICATE

I, the undersigned Chair of the ORDC, hereby certify that the foregoing is a true and correct record of the resolution of said ORDC.

---

Mark Policinski, Chair

5/23/18  
Date

**EXHIBIT A**

A grant to the Company pursuant to Section 4981.032 of the Ohio Revised Code in the amount of up to Five Hundred Fifty Thousand Dollars (\$550,000) (the "ORDC Grant") for a project to complete three bridge undercuttings in Springfield, Ohio in order to allow double stack container clearances to traverse the area.

The ORDC Grant is subject to the following conditions:

1. The Company must meet all standard ORDC program requirements, including any applicable prevailing wage provisions, in expending the ORDC Grant.
2. The Company shall be responsible for any and all costs in excess of the ORDC Grant.



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IMPROVING RAIL TODAY FOR TOMORROW'S ECONOMY

## Rail Project Funding

Federal Share	\$20,239,769
NS Share	\$13,493,179
	<u>\$33,732,948</u>

## Project Benefits

- Ensure that the rail portion of the region's multi-modal freight transportation network is efficient and reliable for potential rail traffic growth in shale energy, steel, coal, and other industries along the NS River Line
- Allow for the potential construction of a PTT Global Chemical Ethane Cracker facility, which would create thousands of construction jobs and hundreds of petrochemical jobs
- Encourage direct foreign investment in Appalachian Ohio
- Over 30 year period:
  - 24,349,424 rail tons and 13,022,071,994 rail ton-miles created
  - 1,432,319 long-haul truck trips removed from highways
  - 38,880,034 gallons net fuel consumption avoided
  - 520 fatal crashes avoided



**PROJECT BRIEFING:  
NS RIVER LINE BUILD GRANT SUBMISSION**

May 16, 2018

Staff and Norfolk Southern (“NS”) request the Commission approve a resolution of support for the joint submission of the Ohio River Rail project to the Better Utilizing Investments to Leverage Development (“BUILD”) Grant program. The BUILD program is a \$1.5 billion grant program being offered by the United States Department of Transportation for surface transportation projects that address safety, economic competitiveness, quality of life, environmental protection, state of good repair, innovation, and partnership. There is a particular emphasis on projects in rural areas. Grant applications are due July 19, 2018.

ORDC and NS will be submitting an approximately \$33,700,000 project to rehabilitate and improve capacity along NS’s River Line. Previously submitted under the FASTLANE and INFRA programs, the Ohio River Rail project is in support of a potential investment by PTT Global, a Thailand-based company looking to locate an ethane cracker facility in Dilles Bottom. The investment by PTT is estimated at over \$2,000,000,000 and will result in 1000+ jobs while under construction and 200+ full-time jobs after the proposed facility is in service.

ORDC and NS will be applying for 60% of the cost of the project, or approximately \$20,000,000, from the BUILD program. This will match approximately \$13,500,000 of NS investment, which will accomplish three main scope items: capacity improvements to yards at Mingo Junction and Martins Ferry and repairs to 30 miles of mainline between Mingo Junction and Dilles Bottom.

The estimated project budget is as follows:

<b>Project Component</b>	<b>Total Cost</b>	<b>Federal Share</b>	<b>NS Share</b>
Yard Expansion	\$6,625,000	\$3,975,000	\$2,650,000
Line Rehabilitation and Stabilization	\$27,107,948	\$16,264,769	\$10,843,179
<b>Total</b>	<b>\$33,732,948</b>	<b>\$20,239,769 (60%)</b>	<b>\$13,493,179 (40%)</b>

ORDC and NS will execute a Public-Private Partnership agreement to govern the project and will abide by all required federal provisions in the completion of the project.

**RESOLUTION 18-05**  
**RE: NORFOLK SOUTHERN**  
**OHIO RIVER RAIL PROJECT SUBMISSION TO BUILD PROGRAM**

A RESOLUTION SUPPORTING THE JOINT APPLICATION OF THE OHIO RIVER RAIL PROJECT TO THE BETTER UTILIZING INVESTMENTS TO LEVERAGE DEVELOPMENT (“BUILD”) GRANT PROGRAM.

WHEREAS, this Commission as the Ohio Rail Development Commission (“ORDC”) created by Chapter 4981 of the Ohio Revised Code, has the responsibility of developing, promoting, and supporting safe, adequate and efficient rail service throughout the state under Chapter 4981 of the Ohio Revised Code; and

WHEREAS, Norfolk Southern plans to rehabilitate and expand rail operations along the Ohio River to accommodate a potential \$2,000,000,000+ cracker plant resulting in thousands of construction jobs and hundreds of full-time jobs; and

WHEREAS, the ORDC has under consideration: (i) a plan to submit a joint ORDC-Norfolk Southern application to the BUILD grant program to fund said improvements along the Ohio River; and (ii) to serve as the recipient and administrator of the grant; and

WHEREAS, the ORDC is authorized by ORC 4981.031 to apply for and receive from the United States government loans and grants (subject to the approval of the Governor, as specified in ORC 4981.14(10)) in accordance with any federal law or program concerning rail transportation ;and

WHEREAS, the ORDC is charged by ORC 4981.03(A)(1) with developing, promoting and supporting safe, adequate and efficient rail service throughout the state; and

WHEREAS, ORC 4981.14 gives the ORDC the authority to do all acts necessary and proper to carry out the powers expressly granted to the Commission; and

NOW, THEREFORE, BE IT RESOLVED by the ORDC of the State of Ohio:

That the ORDC supports the Ohio River Rail project and that the ORDC hereby authorizes the ORDC staff to submit a joint application with Norfolk Southern to the BUILD grant program and to serve as co-recipient and administrator of the above-described grant.

Moved By \_\_\_\_\_  
Seconded By \_\_\_\_\_

Mark Policinski, Chairman	___ Yes	___ No	___ Absent	___ Abstained	___ Recused
Andrew Pusateri for David Goodman	___ Yes	___ No	___ Absent	___ Abstained	___ Recused
Dean Hempfling	___ Yes	___ No	___ Absent	___ Abstained	___ Recused
Solomon Jackson	___ Yes	___ No	___ Absent	___ Abstained	___ Recused
Mark G. Johnson	___ Yes	___ No	___ Absent	___ Abstained	___ Recused
William Lozier	___ Yes	___ No	___ Absent	___ Abstained	___ Recused
Tom Maphet	___ Yes	___ No	___ Absent	___ Abstained	___ Recused
Anthony Reams	___ Yes	___ No	___ Absent	___ Abstained	___ Recused
Eric Richter	___ Yes	___ No	___ Absent	___ Abstained	___ Recused
Johann Klein for Jerry Wray	___ Yes	___ No	___ Absent	___ Abstained	___ Recused
Thomas Zitter	___ Yes	___ No	___ Absent	___ Abstained	___ Recused

**ORDC ACTION:**

Motion Approved \_\_\_\_\_  
Motion Denied \_\_\_\_\_

Other Action \_\_\_\_\_  
Date 5/23/18

**CERTIFICATE**

I, the undersigned Chair of the ORDC, hereby certify that the foregoing is a true and correct record of the resolution of said ORDC.

\_\_\_\_\_  
Mark Policinski, Chair

5/23/18  
Date

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IMPROVING RAIL TODAY FOR TOMORROW'S ECONOMY

## Rail Project Funding

Federal Share	\$6,600,000
KNWA Share	\$4,400,000
	<u>\$11,000,000</u>

## Project Benefits

- Enhances fluidity of train operation by extending rail siding and rehabilitating yard tracks that currently act as bottlenecks
- Ensures uninterrupted operation of line and prevents diversion of heavy coal shipments to truck by rehabilitating more than 100 bridges on the line
- Leverages private investment in rail infrastructure



**PROJECT BRIEFING:  
KANAWHA RIVER RAILROAD CRISI GRANT SUBMISSION**

May 16, 2018

Staff and Kanawha River Railroad (“KNWA”) request the Commission approve a resolution of support for the joint submission of the Bridging Appalachia project to the Consolidated Rail Infrastructure and Safety Improvements (“CRISI”) Grant program. CRISI is a \$65 million grant program being offered by the Federal Railroad Administration for projects that improve railroad safety, efficiency, and reliability; mitigate congestion; and enhance multi-modal connections. Grant applications are due June 21, 2018.

KNWA and ORDC will be submitting an approximately \$11,000,000 project spanning Ohio and West Virginia to rehabilitate bridges, extend a siding, and reconstruct a rail yard. KNWA and the West Virginia Region 2 Planning and Development Council had previously submitted this project under the TIGER IX program. This project, brought about by an increase in coal and chemical business on KNWA’s line from Columbus, OH to Southern West Virginia, will have significant positive impacts on safety, state of good repair, and economic competitiveness.

ORDC and KNWA will be applying for 60 percent of the cost of this project, or roughly \$6,600,000, from the CRISI program. This will match over \$4,000,000 of private KNWA investment. The project will rehabilitate approximately 171 bridges across the line in both Ohio and West Virginia, double the capacity of a siding in Oak Hill, WV to improve fluidity of train movements, and rehabilitate tracks at Hobson Yard in Ohio to alleviate yard congestion and improve service to customers.

**RESOLUTION 18-06**  
**RE: KANAWHA RIVER RAILROAD**  
**CRISI GRANT SUBMISSION**

A RESOLUTION SUPPORTING THE JOINT APPLICATION OF A KANAWHA RIVER RAILROAD PROJECT TO THE CONSOLIDATED RAIL INFRASTRUCTURE AND SAFETY IMPROVEMENTS (“CRISI”) GRANT PROGRAM.

WHEREAS, this Commission as the Ohio Rail Development Commission (“ORDC”) created by Chapter 4981 of the Ohio Revised Code, has the responsibility of developing, promoting, and supporting safe, adequate and efficient rail service throughout the state under Chapter 4981 of the Ohio Revised Code; and

WHEREAS, the Kanawha River Railroad has plans to rehabilitate bridges across its mainline in rural, Appalachian Ohio and West Virginia, unlocking additional development opportunities across the corridor; and

WHEREAS, the ORDC has under consideration: (i) a plan to submit a joint ORDC-Kanawha River Railroad application to the CRISI grant program to fund said improvements on their mainline; and (ii) to serve as the recipient and administrator of the grant; and

WHEREAS, the ORDC is authorized by ORC 4981.031 to apply for and receive from the United States government loans and grants (subject to the approval of the Governor, as specified in ORC 4981.14(10)) in accordance with any federal law or program concerning rail transportation; and

WHEREAS, the ORDC is charged by ORC 4981.03(A)(1) with developing, promoting and supporting safe, adequate and efficient rail service throughout the state; and

WHEREAS, ORC 4981.14 gives the ORDC the authority to do all acts necessary and proper to carry out the powers expressly granted to the Commission;

NOW, THEREFORE, BE IT RESOLVED by the ORDC of the State of Ohio:

That the ORDC supports the Kanawha River Railroad project and that the ORDC hereby authorizes the ORDC staff to submit a joint application with the Kanawha River Railroad to the CRISI grant program and to serve as co-recipient and administrator of the above-described grant.

Moved By \_\_\_\_\_  
Seconded By \_\_\_\_\_

Mark Policinski, Chairman	___Yes	___No	___Absent	___Abstained	___Recused
Andrew Pusateri for David Goodman	___Yes	___No	___Absent	___Abstained	___Recused
Dean Hempfing	___Yes	___No	___Absent	___Abstained	___Recused
Solomon Jackson	___Yes	___No	___Absent	___Abstained	___Recused
Mark G. Johnson	___Yes	___No	___Absent	___Abstained	___Recused
William Lozier	___Yes	___No	___Absent	___Abstained	___Recused
Tom Maphet	___Yes	___No	___Absent	___Abstained	___Recused
Anthony Reams	___Yes	___No	___Absent	___Abstained	___Recused
Eric Richter	___Yes	___No	___Absent	___Abstained	___Recused
Johann Klein for Jerry Wray	___Yes	___No	___Absent	___Abstained	___Recused
Thomas Zitter	___Yes	___No	___Absent	___Abstained	___Recused

**ORDC ACTION:**

Motion Approved \_\_\_\_\_  
 Motion Denied \_\_\_\_\_

Other Action	Date

5/23/18

# CERTIFICATE

I, the undersigned Chair of the ORDC, hereby certify that the foregoing is a true and correct record of the resolution of said ORDC.

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Mark Policinski, Chair

5/23/18  
Date





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IMPROVING RAIL TODAY FOR TOMORROW'S ECONOMY

## Rail Project Funding

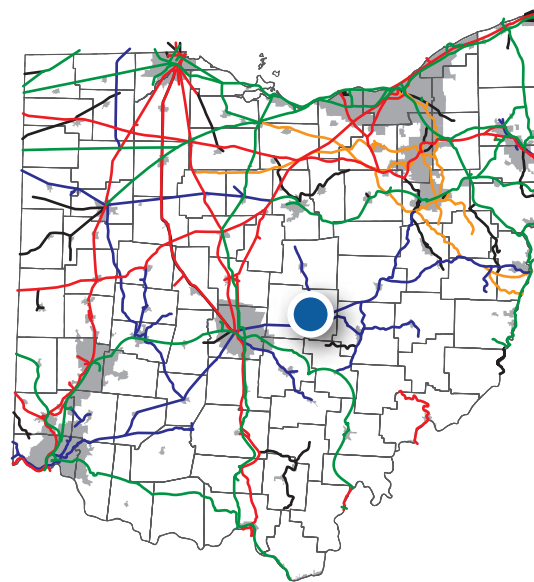
ORDC Grant	\$146,500
CUOH Investment	\$146,500
	<u>\$293,000</u>

## Project Benefits

- Helps ensure continuance of uninterrupted service to and from Columbus on CUOH and for other area shortline railroads
- Improves safety for trains traversing the bridge

## ORDC Goals and Objectives

This project meets ORDC's goal of Efficient Railways by modernizing an important piece of infrastructure for shippers on the Panhandle and connecting shortline railroads. Additionally, this project meets ORDC's goal of Safety by reducing the risk of derailment related to the existing condition of this bridge.



## **COLUMBUS & OHIO RIVER RAIL ROAD RACCOON RUN BRIDGE REPAIR**

**Newark**  
May 3, 2018

The Columbus & Ohio River Rail Road (“CUOH”) requests a grant in the amount of \$146,500 in order to facilitate repairs of the Raccoon Run Bridge in Newark, Ohio, located on the state-owned Panhandle Line. The Raccoon Run Bridge consists of two deck plate girder spans crossing both Raccoon Drive and Raccoon Creek. The bridge was constructed in 1907 and is 102 feet in length. The bridge work will consist of stripping the track and ballast and rebuilding a new open-deck timber trestle on top of the existing concrete deck. Removal of the ballast will immediately reduce loading on the abutments and alleviate further settlement. This work is estimated to cost approximately \$293,000. Staff supports this project as this is the culmination of a multi-year effort to remedy the situation at the bridge.

The bridge is the gateway to Columbus for the CUOH itself, and two other G&W shortlines in eastern Ohio: the Ohio Southern Railroad; and the Ohio Central Railroad. The bridge sees a significant amount of traffic, as quality connections to both CSX and NS are located in Columbus, and thus traffic to/from those railroads must traverse the bridge. 71% of all of the traffic on the 3 G&W railroads listed above depend on the bridge.

The CUOH originally approached ORDC with a potential fix to the bridge in July of 2015. At that time, the recommended fix was in the range of approximately \$3,000,000, which far outstripped the resources available to both ORDC and CUOH. All parties involved investigated a variety of funding options, including submission to the most recent state capital bill (which was unsuccessful). However, as these avenues for funding were investigated, the railroad’s engineers refined the scope of the problem and engineering solutions and settled upon the current plan, at a significant cost savings.

The project scope involves essentially building an entirely new bridge on top of the currently existing bridge. This option will be completed during a weekend track outage and would result in an immediate increase in the load rating of the bridge from E32 at 10MPH to E72 at 25MPH. After completion of the project, it is estimated the new bridge will have a life of 20-30 years.

Staff supports this project as the benefits include prolonged life to the Raccoon Run Bridge, the removal of slow orders and continuance of uninterrupted service to and from Columbus, and safer operations over the bridge.



# OHIO RAIL DEVELOPMENT COMMISSION

Mail Stop #3140, 1980 West Broad Street, Columbus OH 43223

John R. Kasich, Governor • Mark Policinski, ORDC Chairman

May 23, 2018

Pursuant to Ohio Rail Development Commission Resolution 99-15 “Spending and Signatory Guidelines,” the undersigned hereby approves of the project described in the Project Briefing entitled **COLUMBUS & OHIO RIVER RAIL ROAD RACCOON RUN BRIDGE REPAIR** and dated May 3, 2018, as described in that briefing.

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Matthew R. Dietrich  
Executive Director

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Mark Policinski  
Chairman





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## Project Funding

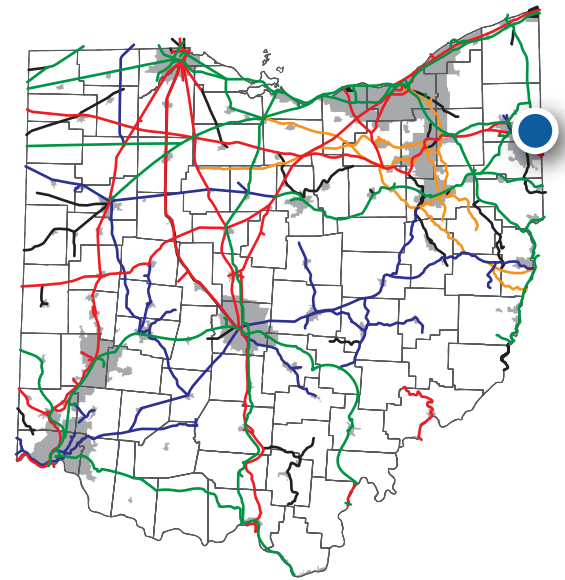
ORDC Grant	\$75,000
Ellwood Bridge Investment	\$475,000
Ellwood Expansion Investment	\$50,000,000
	<u>\$50,550,000</u>

## Project Benefits

- Helps ensure uninterrupted service for Ellwood by rehabilitating a bridge on their lead track
- Supports the creation of 30 new jobs and retention of 95 existing jobs

## ORDC Goals and Objectives

This project meets ORDC's goal of Economic Development by enhancing existing rail infrastructure to support the expansion of an Ohio business.





**ELLWOOD ENGINEERED CASTINGS  
ALUMINUM EXPANSION AND BRIDGE REHAB**

**Hubbard**

April 24, 2018

Ellwood Engineered Castings (“Ellwood”) requests a grant in the amount of \$75,000 in order to offset the repair costs of a rail bridge on Ellwood property in Hubbard, Ohio that is their link to Norfolk Southern. Current estimates of the bridge repair costs are approximately \$550,000. Staff supports this project as Ellwood is currently expanding and has committed to 30 new and 95 retained jobs at their facility.

Located in Hubbard, Ohio, Ellwood is a subsidiary of Ellwood Group, Incorporated (“EGI”). EGI is a vertically integrated provider of specialty engineered forging steels, iron castings, forgings, and other alloy parts. Ellwood was formed in 1992 when EGI purchased the former Valley-Vulcan Mold plant in Hubbard, and currently the facility produces ingot molds for processing, primarily by another EGI-owned company, Ellwood Quality Steels.

Rail service is provided on-site by Norfolk Southern via an existing lead on-site. This lead contains a bridge that is in need of rehabilitation and is the subject of this grant. The repair will involve moving the bridge slightly and improving all aspects of the bridge’s structure. If the bridge were to fail there would be no rail access to any of Ellwood’s property.

Ellwood will commit to creating 30 new jobs and retaining 95 existing jobs at the Hubbard facility. Ellwood plans to invest approximately \$50,000,000 into the facility in order to begin a new product line. This new expansion will house an aluminum stamping process that will be located in a previously unused building adjacent to Ellwood’s current operations.

May 23, 2018

Pursuant to Ohio Rail Development Commission Resolution 99-15 “Spending and Signatory Guidelines,” the undersigned hereby approves of the project described in the Project Briefing entitled **ELLWOOD ENGINEERED CASTINGS ALUMINUM EXPANSION AND BRIDGE REHAB** and dated April 24, 2018, as described in that briefing.

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Matthew R. Dietrich  
Executive Director

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Mark Policinski  
Chairman