

ORDINANCE NO. 211-14

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A RIGHT-OF-WAY PURCHASE AGREEMENT WITH MCJ ENTERPRISES FOR 750 W. SMITH ROAD (PARCEL #8) FOR THE WEST SMITH ROAD RECONSTRUCTION PROJECT, AND DECLARING AN EMERGENCY.

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

SEC. 1: That the Mayor is hereby authorized and directed to execute a Contract for Sale and Purchase of Real Property with MCJ Enterprises for 750 W. Smith Road (Parcel #8) for the West Smith Road Reconstruction Project.

SEC. 2: That the funds to cover the sale of said real property, in the amount of \$1,750.00 are available in Account No. 108-0610-54411.

SEC. 3: That a copy of said Contract is marked "Exhibit A", attached hereto and incorporated herein.

SEC. 4: That this Ordinance shall be considered an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason to finalize said transactions as soon as possible; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and signature by the Mayor.

PASSED: December 8, 2014

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: December 9, 2014

SIGNED: Dennis Hanwell
Mayor

ORD. 211-14
Exh. A

CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY
WITHOUT BUILDING(S)

PARCEL(S): 8 WDV, TV, TV-1
MED-West Smith Road (PID 81334)

This Agreement is by and between the City of Medina ["Purchaser"] and MCJ Enterprises, LLC, an Ohio Limited Liability Company ["Seller"; "Seller" includes all of the foregoing named persons or entities]. Purchaser and Seller are referred to collectively in this Agreement as "Parties."

In consideration of the mutual promises, agreements and covenants herein contained the Parties contract as follows:

1. Price and Consideration

Purchaser shall pay to Seller the sum of \$1,750.00, which sum shall constitute the entire amount of compensation due Seller for: (a) the real property to be conveyed, including all fixtures; (b) any and all damages to any residual lands of Seller; (c) Seller's covenants set forth herein; (d) any and all supplemental instruments reasonably necessary to transfer the title of the subject property; and (e) *other items*.

Seller shall be exclusively responsible for all delinquent taxes and assessments, including penalties and interest, and for all other real estate taxes and assessments that are a lien as of the date on which this Agreement closes. The taxes and assessments for the current calendar year shall be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever is earlier in time. Seller shall be responsible for any and all future installments of any special assessments levied and assessed against the real property, whether or not any such special assessment has been certified to the county auditor for collection, provided that such installments of special assessments shall be a lien on the subject real property as of the date of transfer of title. Purchaser may withhold in escrow a sufficient amount of the purchase money to satisfy the foregoing items to be paid by Seller; any balance remaining after such taxes, assessments, etc., are discharged shall be paid to Seller and any deficiency shall be the responsibility of Seller.

2. Estate Sold and Deed to Transfer

Seller, upon fulfillment of all the obligations and terms of this Agreement, shall sell and convey to Purchaser, its successors and assigns, the property which is more particularly described in Exhibit A attached hereto and by this reference incorporated herein, together with all improvements now located thereon and all fixtures of every nature now attached to or used with said land and improvements including, but not limited to, driveways, signs, utility fixtures, shrubbery and trees.

If the rights, titles and estates described in Exhibit A constitute the fee simple in, to and of the real property, then such sale and conveyance by Seller shall be by a good and sufficient general warranty deed with, if applicable, full release of dower. In the event the rights, titles, and estates described in

Exhibit A constitute something less than the fee simple of the real property, then such sale and conveyance by Seller shall be by a good and sufficient deed or other instrument regularly and ordinarily used to transfer such lesser rights, titles and estates with, if applicable, full release of dower.

3. Limited Access Parcels - Waiver of Abutters' Rights

If the property described in Exhibit A is designated by Purchaser as a limited access parcel, then Seller further agrees to release to Purchaser, its successors and assigns, any and all abutters' rights, including access rights, appurtenant to any remaining lands of Seller (from which the property described in Exhibit A is being severed) in, over, on, from and to the property described in Exhibit A.

4. Supplemental Instruments

Seller agrees to execute any and all supplemental instruments or documents necessary to vest Purchaser with the rights, titles and interests described in Exhibit A.

5. Warranty of Title

Seller shall, and hereby does, warrant that the property described in Exhibit A is free and clear from all liens and encumbrances whatsoever, except: (a) easements, restrictions, conditions and covenants of record; (b) all legal highways; (c) zoning and building laws, ordinances, rules and regulations; and (d) any and all taxes and assessments not yet due and payable.

6. Elimination of Others' Interests

Seller shall assist, in whatever manner reasonably possible under the circumstances, to procure and deliver to Purchaser releases and cancellations of any and all other rights, titles and interests in the property described in Exhibit A, such as, but not limited to, those belonging to tenants, lessees, mortgagees or others now in possession or otherwise occupying the subject premises, and all assessment claims against said property.

Seller and Purchaser agree that if a mortgagee of Seller or of a predecessor in title fails to cooperate with the efforts to obtain a release of that mortgagee's mortgage lien secured by the property described in Exhibit A, then and in that event this Agreement shall become null and void and the parties to this Agreement shall be discharged and released from any and all obligations created by this Agreement; for the purposes of this provision, the term "fails to cooperate" shall include a demand or request by any such mortgagee for a fee to process such a release of that mortgagee's mortgage lien that Purchaser, in its sole discretion, deems to be excessive.

7. No Change in Character of Property

Seller shall not change the existing character of the land or alter, remove, destroy or change any improvement located on the property described in Exhibit A. If, prior to the date on which possession of the subject property is surrendered to Purchaser, the subject property suffers any damage, change, alteration or destruction then, and without regard to the cause thereof, Seller shall restore the subject

property to the condition it was in at the time Seller executed this Agreement; in the alternative, Seller may agree to accept the abovementioned purchase price less the costs associated with such restoration. If the Seller refuses to either restore the premises or accept the decreased consideration as aforementioned, then Purchaser, at its option after discovery or notification of such damage, change, alteration or destruction, may terminate and cancel this Agreement upon written notice to Seller.

8. Offer to Sell

If Seller executes this Agreement prior to Purchaser, then this Agreement shall constitute and be an Offer to Sell by Seller that shall remain open for acceptance by Purchaser for a period of 20 days immediately subsequent to the date on which Seller delivers such executed Agreement to Purchaser. Upon Purchaser's acceptance and execution of this Agreement within said period of 20 days, this Agreement shall constitute and be a valid Contract for Sale and Purchase of Real Property that is binding upon the Parties.

9. Designation of Escrow Agent

Seller agrees that Purchaser may designate an escrow agent to act on behalf of the Parties in connection with the consummation and closing of this Agreement.

10. Closing Date

The consummation and closing of this Agreement shall occur at such time and place as the Parties may agree, but no later than 10 days after Purchaser notifies Seller in writing that Purchaser is ready to consummate and close this Agreement. Provided, however, in no event shall such consummation and closing occur more than 120 days after the last date on which one of the Parties executes this Agreement.

11. Physical Possession of Structures Occupied by Seller

Seller shall surrender physical possession of the land and improvements to Purchaser not later than the date on which Purchaser tenders the purchase price to Seller.

12. Control of Property Occupied by Seller's Tenant(s)

Control of property occupied by Seller's tenant(s) shall be assumed by Purchaser on the date Purchaser tenders the purchase price to Seller. From that date forward, Purchaser shall be entitled to collect and retain as its own funds any and all rental payments thereafter made by such tenant(s). If any rents due under the lease(s) with Seller have been prepaid by Seller's tenant(s), then said prepaid rents shall be prorated to the date on which the purchase price is tendered by Purchaser, and said prepaid rents shall be paid to Seller and Purchaser in accordance with such proration.

13. Binding Agreement

Any and all of the terms, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective heirs, executors, administrators, successors and assigns.

14. Multiple Originals

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

15. Entire Agreement

This instrument contains the entire agreement between the Parties, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions or obligations whatsoever, either express or implied, other than herein set forth, shall be binding upon Seller or Purchaser.

16. Amendments and Modifications

No amendment or modification of this Agreement shall be valid or binding upon the Parties unless it is made in writing, cites this Agreement and is signed by Seller and Purchaser.

IN WITNESS WHEREOF, the parties hereto, namely the City of Medina and MCJ Enterprises, LLC, an Ohio Limited Liability Company have executed this Agreement on the date(s) indicated immediately below their respective signatures.

MCJ ENTERPRISES, LLC, AN OHIO LIMITED LIABILITY COMPANY

By: [Signature]
Its: member
Date: 11/20/14

STATE OF OHIO, COUNTY OF MEDINA ss:

BE IT REMEMBERED, that on the 20 day of November, 20 14, before me the subscriber, a Notary Public in and for said state and county, personally came the above named Jonathan Cronick, who acknowledged being the Member and duly authorized agent of MCJ Enterprises, LLC, an Ohio Limited Liability Company, and who acknowledged the foregoing instrument to be the voluntary act and deed of said entity.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

[Signature]
NOTARY PUBLIC
My Commission expires: 4/23/18
KELLIE CONETSCO
Notary Public - State of Ohio
My Commission Expires 4/23/18

City of Medina

Dennis Hanwell

Dennis Hanwell

Mayor

Date: December 9, 2014

STATE OF OHIO, COUNTY OF MEDINA ss:

BE IT REMEMBERED, that on the 9th day of December, 2014, before me the subscriber, a Notary Public in and for said state and county, personally came the above named Dennis Hanwell, the Mayor and duly authorized representative of City of Medina, who acknowledged the signing of the foregoing instrument to be the voluntary act and deed of City of Medina.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

Kimberly A. Walter

NOTARY PUBLIC

KIMBERLY A. WALTER

Notary Public - State of Ohio

My Commission expires My Commission Expires Aug. 3, 2018

EXHIBIT A

Page 1 of 2

RX 251 WDV

Rev. 05/09

Ver. Date 12/17/2012

PID 81334

**PARCEL 8-WDV ~~PM~~
WEST SMITH ROAD
ALL RIGHT, TITLE AND INTEREST IN FEE SIMPLE
IN THE FOLLOWING DESCRIBED PROPERTY
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
CITY OF MEDINA, MEDINA COUNTY, OHIO**

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Medina, City of Medina, and known as being part of Medina City Lot No. 1740 and being part of a parcel conveyed July 20, 2007 to MCJ Enterprises LLC. by Document No. 2007OR019999 of the Medina County Recorders Records and being a parcel of land lying on the right side of the centerline of right of way of West Smith Road, width 60.00 feet, and bounded and described as follows:

BEGINNING from the intersection of the centerline of right of way of West Smith Road, at Station 64+97.29, and the centerline of right of way of State Road, at Station 00+00.00; thence South 89 degrees 11 minutes 47 seconds West along the centerline of right of way of West Smith Road a distance of 623.62 feet; thence South 00 degrees 48 minutes 13 seconds East a distance of 30.00 feet to the existing southerly right of way line of West Smith Road and the northerly line of MCL 1740 and being the **TRUE POINT OF BEGINNING**.

1. thence North 89 degrees 11 minutes 47 seconds East along said existing right of way line a distance of 10.20 feet to an Iron Pin Set and said grantor's easterly property line;
2. thence South 00 degrees 01 minutes 05 seconds East along the easterly property line of Medina City Lot 1740, a distance of 8.00 feet to an Iron Pin Set;
3. thence South 89 degrees 11 minutes 47 seconds West a distance of 10.09 feet to an Iron Pin Set;
4. thence North 00 degrees 48 minutes 13 seconds West a distance of 8.00 feet to an Iron Pin Set and to the northerly line of MCL 1740 and existing southerly right of way line of West Smith Road and being the **TRUE POINT OF BEGINNING**.

The above described area is contained within Medina County Auditor's Permanent Parcel Number 028-19C-04-007 and contains a gross take of 0.0019 acres more or less.

EXHIBIT A

Page 2 of 2

RX 251 WDV

Rev. 05/09

All Bearings are relative to Grid North based on the Ohio State Plane Coordinate System, North Zone on NAD 83, (CORS96).

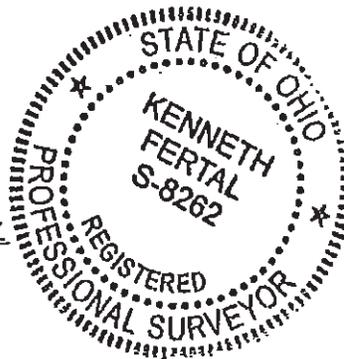
This description was prepared by Kenneth Fertal, Professional Surveyor Number 8262 of HNTB Ohio, Inc., on December 17, 2012.

This description is based on a survey made in 2011 by Campbell and Associates, Inc. under the direction and supervision of James P. Yurkschatt, Professional Land Surveyor Number 7809.



Kenneth Fertal
Professional Surveyor #8262
HNTB Ohio, Inc.
1100 Superior Avenue, Suite 1310
Cleveland, OH 44114

12/17/2012
Date



Legal Approved
Date 1-8-2013
By Becky Mika

EXHIBIT A

Page 1 of 2

RX 287 TV

Rev. 06/09

Ver. Date 12/17/2012

PID 81334

**PARCEL 8-TV AM
WEST SMITH ROAD
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
RECONSTRUCT THE EXISTING CURB AND GRADING
FOR 18 MONTHS FROM DATE OF ENTRY BY THE
CITY OF MEDINA, MEDINA COUNTY, OHIO**

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Medina, City of Medina, and known as being part of Out Lots No. 1737, 1738, 1739 and being part of parcel conveyed July 20, 2007 to MCJ Enterprises LLC. by Document No. 2007OR019999 of the Medina County Recorders Records and being a parcel of land lying on the right side of the centerline of right of way of West Smith Road, width 60.00 feet, and bounded and described as follows:

BEGINNING from the intersection of the centerline of right of way of West Smith Road, at Station 64+97.29, and the centerline of right of way of State Road, at Station 00+00.00; thence South 89 degrees 11 minutes 47 seconds West along the centerline of right of way of West Smith Road a distance of 913.42 feet; thence South 00 degrees 48 minutes 13 seconds East a distance of 30.00 feet to the intersection of the existing southerly right of way line of West Smith Road and the westerly line of Medina City Lot 1737 and being the **TRUE POINT OF BEGINNING**.

1. thence North 89 degrees 11 minutes 47 seconds East along said existing right of way line a distance of 224.99 feet to a point;
2. thence South 00 degrees 01 minutes 05 seconds East a distance of 5.00 feet to a point;
3. thence South 89 degrees 11 minutes 47 seconds West a distance of 150.00 feet to a point;
4. thence South 00 degrees 01 minutes 05 seconds East a distance of 4.00 feet to a point;
5. thence South 89 degrees 11 minutes 47 seconds West a distance of 75.00 feet to a point and the grantor's westerly property line;
6. thence North 00 degrees 01 minutes 05 seconds West along said property line a distance of 9.00 feet to a point and the existing southerly right of way line of West Smith Road and being the **TRUE POINT OF BEGINNING**.

The above described area is contained within Medina County Auditor's Permanent Parcel Number 028-19C-04-006 and contains a gross take of 0.0327 acres more or less.

All Bearings are relative to Grid North based on the Ohio State Plane Coordinate System, North Zone on NAD 83, (CORS96).

EXHIBIT A

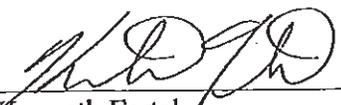
Page 2 of 2

RX 287 TV

Rev. 06/09

This description was prepared by Kenneth Fertal, Professional Surveyor Number 8262 of HNTB Ohio, Inc., on December 17, 2012.

This description is based on a survey made in 2011 by Campbell and Associates, Inc. under the direction and supervision of James P. Yurkschatt, Professional Land Surveyor Number 7809.



Kenneth Fertal
Professional Surveyor #8262
HNTB Ohio, Inc.
1100 Superior Avenue, Suite 1310
Cleveland, OH 44114

12/17/2012
Date

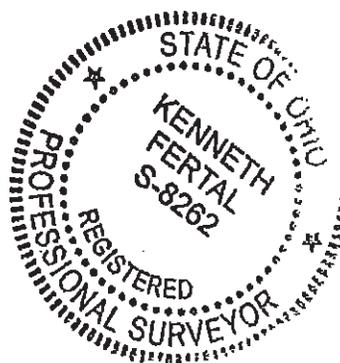


EXHIBIT A

Page 1 of 2

RX 287 TV

Rev. 06/09

Ver. Date 12/17/2012

PID 81334

**PARCEL 8-TV1 814
WEST SMITH ROAD
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
RECONSTRUCT THE EXISTING CURB AND GRADING
FOR 18 MONTHS FROM DATE OF ENTRY BY THE
CITY OF MEDINA, MEDINA COUNTY, OHIO**

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Medina, City of Medina, and known as being part of Out Lot No. 1740 and being part of a parcel conveyed July 20, 2007 to MCJ Enterprises LLC. by Document No. 2007OR019999 of the Medina County Recorders Records and being a parcel of land lying on the right side of the centerline of right of way of West Smith Road, width 60.00 feet, and bounded and described as follows:

BEGINNING from the intersection of the centerline of right of way of West Smith Road, at Station 64+97.29, and the centerline of right of way of State Road, at Station 00+00.00; thence South 89 degrees 11 minutes 47 seconds West along the centerline of right of way of West Smith Road a distance of 688.42 feet; thence South 00 degrees 48 minutes 13 seconds East a distance of 30.00 feet to the intersection of the existing southerly right of way line of West Smith Road and the westerly line and being the **TRUE POINT OF BEGINNING**.

1. thence North 89 degrees 11 minutes 47 seconds East along said existing right of way line a distance of 64.80 feet to a point;
2. thence South 00 degrees 48 minutes 13 seconds East a distance of 5.00 feet to a point;
3. thence South 89 degrees 11 minutes 47 seconds West a distance of 64.87 feet to a point;
4. thence North 00 degrees 01 minutes 05 seconds West a distance of 5.00 feet to a point and the existing southerly right of way line of West Smith Road and being the **TRUE POINT OF BEGINNING**.

The above described area is contained within Medina County Auditor's Permanent Parcel Number 028-19C-04-007 and contains a gross take of 0.0074 acres more or less.

All Bearings are relative to Grid North based on the Ohio State Plane Coordinate System, North Zone on NAD 83, (CORS96).

This description was prepared by Kenneth Fertal, Professional Surveyor Number 8262 of HNTB Ohio, Inc., on December 17, 2012.

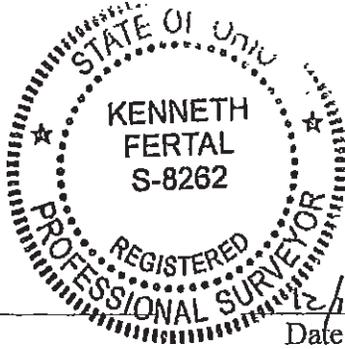
EXHIBIT A

Page 2 of 2

RX 287 TV

Rev. 06/09

This description is based on a survey made in 2011 by Campbell and Associates, Inc. under the direction and supervision of James P. Yurkschatt, Professional Land Surveyor Number 7809.



A handwritten signature in black ink, appearing to read "KFertal", written over a horizontal line.

Kenneth Fertal
Professional Surveyor #8262
HNTB Ohio, Inc.
1100 Superior Avenue, Suite 1310
Cleveland, OH 44114

12/17/2012
Date

ORD. 211-14



O. R. Colan ASSOCIATES

REAL ESTATE SOLUTIONS FOR INFRASTRUCTURE

December 2, 2014

Patrick Patton, P.E.
City Engineer
City of Medina
132 N. Elmwood Avenue
Medina, Ohio 44256

Re: **MED-West Smith Road**
PID No.: 81334
Parcel No. 8-WDV, TV (MCJ Enterprises, LLC)

Dear Mr. Patton:

The property owner of the above referenced parcel has requested \$1,750.00 as settlement in regard to the above referenced project.

The fee owner was offered \$500.00. They have requested an additional \$1,250.00 for the temporary loss of property and the need to purchase or lease additional property in order to maintain their current level of business during the 18 month construction period. The fee owner originally counteroffered at \$2,500.00 and ORC was able to negotiate the requested settlement from \$2,500.00 to \$1,750.00. This settlement is considerably less than the cost of an appropriation action, where the legal and appraisal fees could range from \$8,000.00 to \$15,000.00. I recommend the counter offer be approved.

If you are in agreement with the settlement, please sign off on the enclosed VA, and return it to our office for further processing. If any further information or assistance is required, please do not hesitate to contact me at (440) 827-6116 ext. 204.

Respectfully,

Matthew Starling
Project Manager

VALUE ANALYSIS (\$10,000 OR LESS)

OWNER'S NAME

MCJ Enterprises, LLC.

COUNTY MED
 ROUTE West Smith Road
 SECTION N/A
 PID# 81334

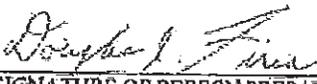
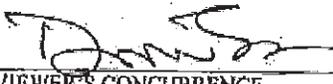
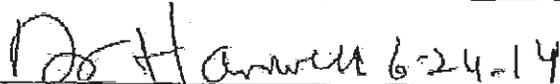
Federal Project # E060 (657)

Based on comparable sales, which are attached, the following compensation has been established.
 Temporary taking(s) have been based on an 18 month period.

Parcel #	Net Take Area	Land	Improvement	Remarks	Total
8-WDV	0.0019 acres (83 SF)	@ \$35,000/Ac. = \$66.50		Rounded to	\$75
8-WDV			83 SF of asphalt @ \$2.00/SF depreciated 25% = \$124.50	Rounded to	\$125
8-WDV			5.5 LF of vinyl fence @ \$15.00/LF depreciated 5% = \$78.38	Rounded to	\$75
8-TV	0.0327 acres (1,424 SF)	@ \$35,000/Ac. x 10% x 1.5 years = \$171.68		Rounded to	\$175
8-TV1	0.0074 acres (322 SF)	@ \$35,000/Ac. x 10% x 1.5 years = \$38.85		Rounded to	\$50
				Total (Rounded to)	\$600

Conflict of Interest Certification (9CFR 24.102(n) and OAC 5501: 2-5-06(B)(3)(a))

1. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
2. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this compensation recommendation.
3. I have no direct or indirect present or contemplated future personal interest in such property or in any benefit from the acquisition of such property valued, and no personal interest with respect to the parties involved.
4. In recommending the compensation for the property, I have disregarded any decrease or increase in the fair market value of the real property that occurred prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner.
5. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.

	5/5/2014		5/20/14
SIGNATURE OF PERSON PREPARING ANALYSIS	DATE	REVIEWER'S CONCURRENCE	DATE
TYPED NAME: Douglas J. Firca		TYPED NAME: Dean T. Smith, MAI	
NAME OF AGENCY (IF DIFFERENT FROM ODOT)			
City of Medina		6-24-14	
TITLE: Mayor		AGENCY SIGNATURE ESTABLISHING FMVE	
		TYPED NAME: Dennis Hanwell	
ADMINISTRATIVE SETTLEMENT:			
SIGNATURE		DATE	
TYPED NAME: Dennis Hanwell, Mayor			
		F.M.V.E. AMOUNT \$500.00	
		ADDITIONAL AMOUNT \$1,250.00	
		TOTAL SETTLEMENT \$1,750.00	

(SEE FOLLOWING PAGES FOR ADDITIONAL DOCUMENTATION)

Administrative Review

The fee owner was offered \$500.00. They have requested an additional \$1,250.00 for the loss of property during the 18 month construction period and the need to purchase or lease additional property in order to maintain their current level of business during that time. The fee owner had counteroffered in the amount of \$2,500.00. The temporary construction easement impacts 1,750 square feet of their property and they feel that to rent additional space to store and display their trailers will cost approximately \$2,000.00 for the year and a half duration of the temporary construction easement. ORC has been able to negotiate the settlement from \$2,500.00 to \$1,750.00 as stated above. This settlement is considerably less than the cost of an appropriation action, where the legal and appraisal fees could range from \$8,000.00 to \$15,000.00. I recommend the counter offer be approved.



Dennis Hanwell

Mayor

Date: December 9, 2014