

**ORDINANCE NO. 150-16**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH MEDINA UNITED METHODIST CHURCH AND MARK KLAUS, LLC FOR THE USE OF PARKING LOT AREAS LOCATED ON SOUTH COURT STREET, 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 enter into an Agreement with Medina United Methodist Church and Mark Klaus, LLC for the use of parking lot areas located on South Court Street; Permanent Parcel No. 028-19B-20-103, including the sidewalks thereon.

**SEC. 2:** That a copy of the Agreement is marked Exhibit A, attached hereto and incorporated herein and subject to the final approval of the Law Director.

**SEC. 3:** That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.

**SEC. 4:** That this Ordinance shall be considered an emergency measure necessary for the immediate preservation of the public peace, health and safety; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and signature by the Mayor.

**PASSED:** October 27, 2016

**SIGNED:** John M. Coyne, III  
President of Council

**ATTEST:** Kathy Patton  
Clerk of Council

**APPROVED:** October 28, 2016

**SIGNED:** Dennis Hanwell  
Mayor

**AGREEMENT**

This Agreement is hereby entered into this 28<sup>th</sup> day of October, 2016, by and between the **CITY OF MEDINA**, an Ohio Municipal Corporation, located at 132 North Elmwood Avenue, Medina, Ohio 44256, (hereinafter referred to as "the City") and the **MEDINA UNITED METHODIST CHURCH**, located at 4747 Foote Road, Medina, Ohio 44256, (hereinafter referred to as "Church"), and **MARK KLAUS, LLC**, 260 Wakefield Run, Hinckley, Ohio 44233.

**WITNESSETH:**

**WHEREAS**, the Medina United Methodist Church is the owner of property located on South Court Street, Medina, Ohio, known as Permanent Parcel No. 028-19B-20-103; and

**WHEREAS**, the Medina United Methodist Church is selling the subject property to Mark Klaus, LLC, 260 Wakefield Run, Hinckley, Ohio 44233 pursuant to a Land Installment Contract dated December 22, 2013, which contract has been recorded with the Medina County Recorder at Official Record 2014OR001052; and

**WHEREAS**, the City of Medina desires to use the parking lot area located on Permanent Parcel Nos. 028-19B-20-103, including the sidewalks located thereon ("Parking Lot"); and

**WHEREAS**, the City agrees to maintain the Parking Lot for the term of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, and agreements herein contained, the parties, City, Church, and Mark Klaus, LLC, their successors and assigns, hereby covenant, promise, and agree as follows:

**I. PREMISES**

The Church and Mark Klaus, LLC hereby jointly grant to the City the nonexclusive use and occupancy of the parking lot area located on South Court Street, Medina, Ohio, known as Permanent Parcel No. 028-19B-20-103. The City's use of the Parking Lot shall not be exclusive as Mark Klaus, LLC, retains use of the parking lot area. The parties agree and understand that the City may permit use of the Parking Lot by individuals associated with the Medina City Schools.

**II. MAINTENANCE**

The City of Medina hereby agrees to be solely responsible for all maintenance of the Parking Lot, including adjacent sidewalk areas, so as to keep the property in good condition during the term of this Agreement. The Church and Mark Klaus, LLC, shall not be responsible for any maintenance needs with respect to the Parking Lot if they should occur. No alterations

shall be made to the property except as required for purposes of maintenance and as set forth in this Agreement. The City's obligation to maintain the Parking Lot includes, but is not limited to, snow removal, deicing, crack repair, resurfacing, and striping of parking spaces.

The parties hereto specifically recognize that the Parking Lot known as Permanent Parcel No. 028-19B-20-103 located directly to the south of the Church building will be milled and repaved pursuant to the terms of the Crossroads Asphalt Recycling, Inc., proposal, attached hereto and incorporated herein as "Exhibit A," where there shall be a milling and repavement to the depth of two inches (2") for an estimated cost of Thirty-Eight Thousand Nine Hundred Twenty-three Dollars (\$38,923). In consideration of the monies expended for this repaving, the Church and Mark Klaus, LLC, specifically agree to a term of public use of said Parking Lot described herein for a term of four (4) years.

### **III. TERM**

The term of this Agreement shall be valid commencing on the date of full execution of this Agreement and end on the date four (4) years from the date the City of Medina completes the repaving of the Lot known as Permanent Parcel No. 028-19B-20-103 as outlined hereinabove.

The repaving described herein shall be completed as soon as reasonably possible after Medina County asphalt plants open in the spring of 2017, and the asphalt repavers that are utilized to complete the repaving can reasonably schedule the project.

### **IV. UTILITIES**

The City of Medina shall be responsible for all utility costs with respect to the Parking Lot.

### **V. REAL ESTATE TAXES**

Mark Klaus, LLC, agrees to remain solely responsible for the payment of real estate taxes on the subject property pursuant to the terms of the Land Installment Contract.

### **VI. RISK OF LOSS AND INSURANCE**

The City of Medina agrees to primary responsibility for damage and/or injury to person or property proximately caused by use of the subject parking lot property during the term of this Agreement. The City of Medina shall maintain, during the entire term of this Agreement, liability insurance coverage covering the City's use of the subject property in the amount of One Million Dollars (\$1,000,000). To the extent permissible under Ohio law and to the extent of the City's insurance liability coverage, the City agrees to indemnify, hold harmless, and defend the Church and Mark Klaus, LLC, from and against any and all liability, losses, damages, costs, and expenses, including reasonable attorneys' fees, incurred in connection with any claim, suit, proceeding, inquiry, or investigation based upon or relating to any use of the Parking Lot after the commencement date of this Lease and while the City is in possession of or has the right to possession of the Parking Lot pursuant to this Lease.

## **VII. TERMINATION**

This Agreement may only be terminated by any party for reasons of just cause or as agreed upon by the parties or as agreed upon by a court of law should the matter of termination be an issue that is not agreed upon as between the parties. In any event, this Agreement shall terminate at the expiration of the term described herein above in Section III.

## **VIII. NOTICES**

All notices which may be proper and necessary to be served hereunder shall be in writing and shall be served by personal delivery or by certified mail. Any such correspondence shall be sent to the following addresses:

**To the City:**

Office of the Mayor  
City of Medina  
132 North Elmwood Avenue  
Medina, OH 44256

**To the Church:**

ATTN: Trustees  
Medina United Methodist Church  
4747 Foote Road  
Medina, OH 44256

**To Mark Klaus, LLC:**

Mark Klaus, Member  
Mark Klaus, LLC  
260 Wakefield Run  
Hinckley, Ohio 44233

## **IX. FORCE MAJUERE**

Neither City nor Church nor Mark Klaus, LLC, shall be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations hereunder if, while and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of government authority, weather conditions, floods, riots, rebellion, sabotage, or any other circumstance for which it is not responsible and which are not within its control; provided that this provision shall not prevent either party from exercising its right of termination under this agreement.

Signed in the presence of:

**CITY OF MEDINA,  
an Ohio Municipal Corporation**

[Signature]

By: [Signature]  
DENNIS HANWELL, Mayor 10-28-16

[Signature]

STATE OF OHIO            )  
  )ss:  
COUNTY OF MEDINA    )

Before me, a Notary Public in and for said County and State, personally appeared the above-named City of Medina, an Ohio municipal corporation, by Dennis Hanwell, its Mayor, who executed the foregoing instrument in my presence and acknowledged the same to be the voluntary act of said City and his voluntary act individually and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal at Medina, Ohio, this 28 day of October, 2016.

[Signature]  
NOTARY PUBLIC my Commission Expires 9/29/2020



Signed in the presence of:

MEDINA UNITED METHODIST CHURCH

Dr. Howell

By: [Signature]

Jennifer Vasel

Its: Trustee

STATE OF OHIO            )  
  )  
COUNTY OF MEDINA    )ss:

Before me, a Notary Public in and for said County and State, personally appeared the above-named Medina United Methodist Church by Robert J Walker Jr, its Trustee, who executed the foregoing instrument in my presence and acknowledged the same to be the voluntary act of said Church and his/her voluntary act individually and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal at Medina, Ohio, this 28 day of October, 2016.

Jennifer Vasel  
NOTARY PUBLIC My Commission Expires 9/29/2020



Signed in the presence of:

*Raymond Moore*  
*Serapho S. Pruck*

MARK KLAUS, LLC,  
an Ohio Limited Liability Company

By: *Mark Klaus*  
MARK KLAUS, Member

STATE OF OHIO            )  
  )  
COUNTY OF MEDINA    )ss:

Before me, a Notary Public in and for said County and State, personally appeared the above-named Mark Klaus, LLC, by Mark Klaus, its Member, who executed the foregoing instrument in my presence and acknowledged the same to be the voluntary act of said company and his voluntary act individually and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal at Medina, Ohio, this 27<sup>th</sup> day of OCTOBER, 2016.

*Serapho S. Pruck*  
NOTARY PUBLIC  
*My Commission Expires  
October 26, 2019*

Document & Form Approved by:

*Gregory A. Huber*  
GREGORY A. HUBER, Law Director  
City of Medina

40,000

# PROPOSAL

~~CROSSROADS~~  
~~AGREEMENT~~

## CROSSROADS ASPHALT RECYCLING, INC

13421 HAWKLE ROAD  
COLUMBIA STATION, OHIO 44028  
Phone: 440-236-5066  
Fax: 440-236-3506

Quote To: City of Medina Job Name: Parking Lot  
Attention: Nino Piccoli  
Estimator:  
Date: 5/7/2016  
Fax:

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
<b>Mill &amp; Pave 4"</b>					
10	Asphalt Milling @ 4"	19,700.00	SF	0.55	10,835.00
20	Asphalt Intermediate @ 2.5"	19,700.00	SF	1.31	25,807.00
30	Asphalt Surface @ 1.5"	19,700.00	SF	0.90	17,730.00
40	Pavement Markings	1.00	LS	1,075.00	1,075.00
50	Remove & Reset Parking Bumpers	1.00	LS	2,585.00	2,585.00
4" Mill & Pave Total					\$58,032.00
<b>Mill &amp; Pave 2"</b>					
110	Asphalt Milling @ 2"	19,700.00	SF	0.42	8,274.00
120	Asphalt Surface @ 2"	19,700.00	SF	1.37	26,989.00
130	Pavement Markings	1.00	LS	1,075.00	1,075.00
140	Remove & Reset Parking Bumpers	1.00	LS	2,585.00	2,585.00
2" Mill & Pave Total					\$38,923.00

1075 3600 2923 6583 40000  
2585 3860  
3680 6583

**NOTES:**

- \*This proposal is a unit price bid.
- \*Final field measurements will prevail on unit pricing listed above for final billing.
- \*All licences, permits, testing inspections and fees by others.
- \* (1) mobilization is included in pricing above, additional mobilizations will be billed accordingly.
- \*All signage, barricades and traffic control by others.
- \*Water source provided on-site by others.
- \*Subgrade given is to be on grade.
- \*Staking and elevation provided by General Contractor.

EXHIBIT A