

**CITY OF MEDINA  
AGENDA FOR COUNCIL MEETING**

February 10, 2014  
Medina City Hall  
7:30 p.m.

**Call to Order.**

**Roll Call.**

**Reading of minutes.** (January 27, 2014)

**Reports of standing committees.**

Motion to suspend the Rules of Council and to move the regularly scheduled Monday, February 24, 2013 Finance and City Council meetings to Wednesday, February 26, 2013.

**Requests for council action.**

**Reports of municipal officers.**

**Notices, communications and petitions.**

**Unfinished business.**

**Introduction of visitors.**  
(speakers limited to 5 min.)

**Introduction and consideration of ordinances and resolutions.**

Ord. 16-14

An Ordinance authorizing the purchase of 56 desktop computers, 4 laptop computers, 2 spare monitors and 2 spare speaker sets from DELL Inc. for the Citywide Computer Upgrade/Replacement.  
(emergency clause requested)

Ord. 17-14

An Ordinance authorizing the purchase of two (2) DELL Power Edge R620 Servers, two (2) DELL switches, and one (1) DELL EqualLogic SAN from DELL Inc. for the Citywide Server Replacement.

Ord. 18-14

An Ordinance amending Section 149.01(a) of the codified ordinances of the City of Medina, Ohio relative to the Shade Tree Commission.  
(emergency clause requested)

Medina City Council  
February 10, 2014

Ord. 19-14

An Ordinance authorizing the Mayor to accept four (4) miscellaneous Easements for various City projects.

Ord. 20-14

An Ordinance authorizing the Mayor to execute a Subsidy Stipulation Agreement between the Public Utilities Commission of Ohio, the Wheeling and Lake Erie Railway Company and the City of Medina, relative to the installation of gates and flashers at the Guilford Boulevard Railroad Crossing.

Ord. 21-14

An Ordinance authorizing the Mayor to enter into an Agreement with the Public Utilities Commission of Ohio (PUCO) for the installation of gates and flashers at the City's State Road Railroad Crossing.

**Council comments.**

**Adjournment.**

**MEDINA CITY COUNCIL**

January 27th, 2014, Regular Session

**Opening:**

Medina City Council met in regular, open session on Monday, January 27<sup>th</sup>, 2014. The meeting was called to order at 7:30 p.m. by President of Council John Coyne. Cub Scout Pack 3462 4<sup>th</sup> graders from Northrup Elementary and Eagle Scout Award recipient Michael Kovack led the Pledge of Allegiance.

**Roll Call:**

The roll was called with the following members of Council present B. Lamb, P. Rose, J. Shields, D. Simpson, J. Coyne, B. Hilberg, and M. Kolesar.

Also present were the following members of the Administration: Mayor Dennis Hanwell, Keith Dirham, Greg Huber, Nino Piccoli, Jonathan Mendel, Chief Berarducci, Chief Painter, Jansen Wehrley, Kimberly Rice and Patrick Patton.

**Minutes:**

Mr. Shields moved that the minutes from the January 13<sup>th</sup>, Council meeting as prepared and presented by the Clerk be approved, seconded by Mr. Simpson. The roll was called and the minutes were approved by the yea votes of P. Rose, J. Shields, D. Simpson, J. Coyne, B. Hilberg, M. Kolesar, and B. Lamb.

**Reports of Standing Committees:**

Finance Committee: Mr. Coyne reported the Finance Committee met prior to Council meeting.

Health, Safety & Sanitation Committee: Mr. Rose is working on scheduling a meeting in which they will discuss trash.

Public Properties Committee: Mr. Shields had no report.

Special Legislation Committee: Mr. Lamb had no report.

Streets & Sidewalks Committee: Mr. Simpson had no report.

Water & Utilities Committee: Mr. Kolesar stated a meeting is scheduled on Tuesday, February 11<sup>th</sup> at 5:30 p.m. downstairs at City Hall. A representative from Avon Lake will be present to discuss the issues we had with the emergency water conservation and boil alert. We will also talk about our emergency backup options.

**Requests for Council Action:**

- 14-010-1/27 – Amendment to Agreement w/ Brunswick – Building Official Services
- 14-011-1/27 – Expenditure Over \$15,000 – Protech Police Equipment
- 14-012-1/27 – Purchase State Bid from DELL – 41 Desktop Computers & Equipment
- 14-013-1/27 – Expenditure Over \$15,000 – CDW-G, Microsoft Office 2013 Licensing
- 14-014-1/27 – Purchase State Bid from DELL - Citywide Server Replacement
- 14-015-1/27 – Amending Cod. Ord. 149.01(a) – Shade Tree Commission Membership
- 14-016-1/27 – Accepting Four (4) Miscellaneous Easements
- 14-017-1/27 – Agreement w/ Wheeling Railroad & PUCO – Guilford Blvd. Railroad Crossing
- 14-018-1/27 – Agreement w/ PUCO – State Road Railroad Crossing
- 14-019-1/27 – Expenditure Over \$15,000 – Wingfoot Tire, Service Dept.

**Reports of Municipal Officers:**

**Dennis Hanwell, Mayor** reported the following:

- 1) ACH- Automated Clearing House - Customers can sign up for automated payment from your bank account to avoid late fees and mail charges. Application forms are available at the Finance Window.
- 2) On line bill pay - Customers may also pay by credit card. Signup is on city website- [www.medinaoh.org](http://www.medinaoh.org)
- 3) Ni Source/Columbia Gas- Are requesting customers this week to conserve natural gas as much as possible to help ensure supplies are adequate to meet increased demands during these record cold temperatures that the midwest region will experience this week.
- 4) Building Official replacement process - Resumes were collected through Wed., 1/15/14. Interviews scheduled for next Monday 2/3/14.
- 5) Governor John Kasich selected Medina for his 2014 State of State Address - It will be Monday, February 24, 2014 at 7 p.m. at the Performing Arts Center. A limited number of tickets will be available by lottery by contacting Nicole Kostura at the Governor's Cleveland office, 216-386-0546; or email [Nicole.Kostura@governor.ohio.us](mailto:Nicole.Kostura@governor.ohio.us). Those unable to attend to obtain tickets are welcome to attend a Watch Party at the Medina High School gym. Use door B3 at NW corner of High School and doors will open at 5:30 p.m. Medina TV will also broadcast the address live on Cable 37. This event will permit the city and community to be showcased by state media and state legislators from the Ohio House of Representatives and the Ohio Senate, Ohio Supreme Court Justices and Governor's Cabinet members. We are very thankful and appreciative of Medina being chosen for this annual address.

Mayor Hanwell presented Ed Wright the Chairman of the Board of Main Street Medina with a Proclamation. Mr. Wright was personally named "Spirit of Main Street" for his leadership and enthusiasm embracing the ideals of the Main Street Program.

Mr. Wright expressed his gratitude to the mayor and councilmen and was sincerely honored.

**Keith Dirham, Finance Director**, reported the following: All City residents are required to file City Income Tax returns with the Central Collection Agency. Tax returns must be filed by April 15<sup>th</sup>, 2014. The CCA offers free assistance with filling out the forms. The dates are Saturday, March 1<sup>st</sup> from 9 a.m. – 4 p.m., Wed. March 12<sup>th</sup> from 1 p.m. – 8 p.m., Wed. April 2<sup>nd</sup> from 1 p.m. – 8 p.m., and Saturday April 12<sup>th</sup> from 9 a.m. – 4 p.m., those opportunities will be held at the Medina Recreation Center. The forms are available here at City Hall or you can print them from the city web site there is a link to it.

**Greg Huber, Law Director**, had no report.

**Chief Berarducci, Police Chief**, asked that the citizens of Medina check on their neighbors during

this unprecedented cold weather which presents a lot of hazards.

**Kimberly Rice, Economic Development Director**, had no report.

**Jonathon Mendel, Planning and Community Development Director**, had no report.

**Chief Painter, Fire Chief**, had no report.

**Jansen Wehrley, Parks and Recreation Director**, reported the All Sports registration on Jan. 18th was well attended. If you are still interested in registering you can access the various sports associations on the city website under the Parks Department.

**Patrick Patton, City Engineer**, reported the following:

ODOT is conducting a public Open House for their State Route 18 Corridor Project. This project will enhance Rt. 18 from west of Albert Dr. in the city all the way to Nettleton Rd. and it is designed to relieve congestion in the corridor, improve safety, improve access, enhance pedestrian and bicycle facilities, improve the aesthetic quality of the corridor, and set the tone for this corridor for the next couple of generations. All public is welcome to come see the project, ask questions, and offer suggestions. Open House is Thursday, February 6<sup>th</sup> from 5 p.m. to 8 p.m. at Rustic Hills Country Club located at 5399 Riverstyx Rd. in Medina.

**Nino Piccoli, Service Director**, reported the following:

We've certainly have had our share of water breaks, frozen customer water service lines, snow storms as well as frigid temperatures. He acknowledged the city employees that have put many hours in servicing the public and appreciate all their efforts and the patience and understanding of the public.

#### **Notices, Communications and Petitions:**

##### **Liquor Permit:**

Mr. Shields moved not to object to the transfer of a D-1 and D-2 permit from JRoll LLC, dba Sushi on the Roll, 985 Boardman Alley North Unit & Patio, to Alsatian LLC, dba Sushi on the Roll 985 Boardman Alley North Unit & Patio, seconded by Mr. Simpson. The roll was called and the motion was approved by the yea votes of J. Shields, D. Simpson, J. Coyne, B. Hilberg, M. Kolesar, B. Lamb and P. Rose.

##### **Liquor Permit:**

Mr. Shields moved not to object to the issuance of a new D-3 permit to Alsatain LLC, dba Sushi on the Roll, 985 Boardman Alley, seconded by Mr. Simpson. The roll was called and the motion was approved by the yea votes of D. Simpson, J. Coyne, B. Hilberg, M. Kolesar, B. Lamb, P. Rose, and J. Shields.

**Unfinished Business:**

**Res. 7-14:**

**A Resolution congratulating Michael Kovack on attaining the rank of Eagle Scout.** Mr. Shields moved for the adoption of Ordinance/Resolution No. 7-14, seconded by Mr. Simpson. The roll was called and Ordinance/Resolution No. 7-14 passed by the yea votes of J. Coyne, B. Hilberg, M. Kolesar, B. Lamb, P. Rose, J. Shields, and D. Simpson.

Mayor Hanwell presented Michael Kovack with a proclamation.

**Introduction of Visitors:**

There were none.

**Introduction and Consideration of Ordinances and Resolutions:**

**Ord. 11-14:**

**An Ordinance authorizing the expenditure of \$60,000 to Emergitech, INC. for the annual subscription fees and related expenses for the computer aided dispatch and records management system for the Police Department.** Mr. Shields moved for the adoption of Ordinance/Resolution No. 11-14, seconded by Mr. Simpson. Chief Berarducci stated that approximately \$50,000 of that amount are subscription fees and maintenance. This includes the software to dispatch for Montville Township Police and Fire, Medina Township Police and Fire, Medina City Police and Fire, and the Life Support Team of Medina City. The roll was called and Ordinance/Resolution No. 11-14 passed by the yea votes of B. Hilberg, M. Kolesar, B. Lamb, P. Rose, J. Shields, D. Simpson, and J. Coyne.

**Ord. 12-14:**

**An Ordinance amending section 351.09 of the codified ordinances of the City of Medina, Ohio relative to loading zones.** Mr. Shields moved for the adoption of Ordinance/Resolution No. 12-14, seconded by Mr. Simpson. Mayor Hanwell stated this is a request to amend our local ordinance for loading zones to include/permit the loading or unloading of persons as well as materials. The roll was called and Ordinance/Resolution No. 12-14 passed by the yea votes of M. Kolesar, B. Lamb, P. Rose, J. Shields, D. Simpson, J. Coyne, and B. Hilberg.

**Ord. 13-14:**

**An Ordinance authorizing the Mayor to enter into a contract with Rea & Associates, INC. for consulting services for the year ending December 31, 2013 and the preparation of GAAP conversion and general purpose financial reports for the City of Medina for the years ending December 31, 2013, December 31, 2014 and December 31, 2015.** Mr. Shields moved for the adoption of Ordinance/Resolution No. 13-14, seconded by Mr. Simpson. Mr. Dirham explained this is the firm that the Auditors' Office selected to do our audit and they will handle the conversion as well. The roll was called and Ordinance/Resolution No. 13-14 passed by the yea votes of B. Lamb, P. Rose, J. Shields, D. Simpson, J. Coyne, B. Hilberg, and M. Kolesar.

**Ord. 14-14:**

**An Ordinance amending Ordinance No. 208-13, passed December 9, 2013. (2013 Carryforward)** Mr. Shields moved for the adoption of Ordinance/Resolution No. 14-14, seconded by Mr. Simpson. Mr. Coyne stated we operate under a 5-year budget determining the budgets for each of the department heads of the city for 5 years out and projecting those costs during those periods of time. The carryforward component of our budgets incentivize the department heads to save money. What we do here on council which is different than most cities is that at the end of the year once we give a budget to the department head and they actually save some money during their budgeting process we allow that savings to be kept by that department to be used for a special project in the future or on any other expenditure that they may incur during the next previous years, therefore at the end of the year instead of trying to spend all of your budget we encourage them to save. Mr. Dirham feels we will need to be very careful moving forward. Over the last five years the income tax that we have received has been 3 million dollars less than it would have been if we would have simply received 1% annual increases in the revenue. Between that, cuts in the local Government funds and elimination of the estate tax, we have taken a lot of hits that we've taken and have managed to get through them but at some point we will have to make adjustments to those. The roll was called and Ordinance/Resolution No. 14-14 passed by the yea votes of P. Rose, J. Shields, D. Simpson, J. Coyne, B. Hilberg, M. Kolesar, and B. Lamb.

**To be added to the agenda:**

Mr. Shields moved to add Ordinance/Resolution No.15-14 to the agenda, seconded by Mr. Simpson. The roll was called and Ordinance/Resolution No. 15-14 was added by the yea votes of J. Shields, D. Simpson, J. Coyne, B. Hilberg, M. Kolesar, B. Lamb and P. Rose.

**Ord. 15-14:**

**An Ordinance adopting the First Amendment to the agreement with the City of Brunswick for Reciprocal Backup Chief Building Official Services.** Mr. Shields moved for the adoption of Ordinance/Resolution No. 15-14, seconded by Mr. Simpson. Mr. Shields moved that the emergency clause be added to Ordinance/Resolution No. 15-14, seconded by Mr. Simpson. Mayor Hanwell stated there is an agreement between our Building Department and the Brunswick Building Department, the original agreement was for 5 years and passed in 2007 then was renewed in 2012. What this agreement does is provides if our Building Official is out of town or ill or at training and we need their Building Official, they respond and assist us and we do the same in return. Our Building Official was relieved of duty in November 2013 and we called on the Brunswick Building Dept. to provide that service for us and they have since. We've negotiated an amendment to the agreement that limits that service without compensation to three weeks which will take us back retroactively to December 12<sup>th</sup> 2013 and then at that point for any hours that the city is served by Brunswick we will reimburse them 1 ½ hrs. hourly rate. The emergency clause is needed because we've been provided service from them for the better part of two months now. The roll was called on adding the emergency clause and was approved by the yea votes of J. Coyne, B. Hilberg, M. Kolesar, B. Lamb, P. Rose, J. Shields, and D. Simpson. The roll was called and Ordinance/Resolution No. 15-14 passed by the yea votes of D. Simpson, J. Coyne, B. Hilberg, M. Kolesar, B. Lamb, P. Rose, and J. Shields.

Medina City Council  
January 27th, 2014

**Council Comments:**

Mr. Simpson expressed gratitude to the Mayor, Chief and all communication specialists for their extensive training they've had to endure in learning a new system in dispatching emergency calls.

A member of our administration will be passing the half century mark, Happy Birthday to Mr. Piccoli.

Mr. Kolesar and Mr. Rose thanked Mr. Ed Wright for his work and dedication to Main Street Medina and the City of Medina.

Mr. Rose asks if you have a fire hydrant in or around your property please make sure it is cleared. In an unlikely event that the fire department does have to find it they can find it quickly.

Mr. Lamb congratulated Ed Wright. He thanked Nino and the Service Dept. for their hard work during this very cold weather and snow. Thanks to the residents who shovel and clear their sidewalks it is a big help to the walking community.

**Adjournment:**

There being no further business before Council, the meeting adjourned at 8:02 p.m.

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Kathy Patton, Clerk of Council

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John M. Coyne, President of Council

**ORDINANCE NO. 16-14**

**AN ORDINANCE AUTHORIZING THE PURCHASE OF 56 DESKTOP COMPUTERS, 4 LAPTOP COMPUTERS, 2 SPARE MONITORS AND 2 SPARE SPEAKER SETS FROM DELL INC. FOR THE CITYWIDE COMPUTER UPGRADE/REPLACEMENT, AND DECLARING AN EMERGENCY.**

**WHEREAS:** In accordance with ORC 125.04 the City of Medina, Ohio requested authority to participate in State contracts which the Department of Administrative Services has entered into for the purchase of supplies, services, equipment and certain materials; and

**WHEREAS:** The request for participation provides for the waiving of the state and local competitive bidding requirements and allows the City the ability to purchase from centralized state contracts; and

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

**SEC. 1:** That the purchase of 56 desktop computers, 4 laptop computers, 2 spare monitors and 2 spare speaker sets from DELL Inc. under State Purchasing Contract Number 090701.02 is hereby authorized.

**SEC. 2:** That the funds to cover this purchase, in the estimated amount of \$66,000.00, are available as follows: \$15,000.00 in Account No. 574-0350-53315, and \$50,000.00 in Account No. 388-0714-53315.

**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, and for the further reason that Windows XP is no longer supported as of April 2014; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and signature by the Mayor.

**PASSED:** \_\_\_\_\_

**SIGNED:** \_\_\_\_\_  
President of Council

**ATTEST:** \_\_\_\_\_  
Clerk of Council

**APPROVED:** \_\_\_\_\_

**SIGNED:** \_\_\_\_\_  
Mayor

ORDINANCE NO. 17-14

**AN ORDINANCE AUTHORIZING THE PURCHASE OF TWO (2) DELL POWER EDGE R620 SERVERS, TWO (2) DELL SWITCHES, AND ONE (1) DELL EQUAL LOGIC SAN FROM DELL INC. FOR THE CITYWIDE SERVER REPLACEMENT.**

**WHEREAS:** In accordance with ORC 125.04 the City of Medina, Ohio requested authority to participate in State contracts which the Department of Administrative Services has entered into for the purchase of supplies, services, equipment and certain materials; and

**WHEREAS:** The request for participation provides for the waiving of the state and local competitive bidding requirements and allows the City the ability to purchase from centralized state contracts; and

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

**SEC. 1:** That the purchase of two (2) DELL Power Edge R620 Servers, two (2) DELL switches, and one (1) DELL Equal Logic SAN from Dell Inc. for the citywide server replacement under State Purchasing Contract Number 090701.02 is hereby authorized.

**SEC. 2:** That the funds to cover this purchase, in the estimated amount of \$60,000.00, are available in Account No. 388-0714-53315.

**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 in full force and effect at the earliest period allowed by law.

**PASSED:** \_\_\_\_\_

**SIGNED:** \_\_\_\_\_  
President of Council

**ATTEST:** \_\_\_\_\_  
Clerk of Council

**APPROVED:** \_\_\_\_\_

**SIGNED:** \_\_\_\_\_  
Mayor

**ORDINANCE NO. 18-14**

**AN ORDINANCE AMENDING SECTION 149.01(a) OF THE  
CODIFIED ORDINANCES OF THE CITY OF MEDINA, OHIO  
RELATIVE TO THE SHADE TREE COMMISSION, AND  
DECLARING AN EMERGENCY.**

**WHEREAS:** Section 149.01(a) of the codified ordinances of the City of Medina, Ohio presently reads as follows:

**149.01 MEMBERSHIP; TERM; POWERS AND DUTIES.**

(a) Membership. The Shade Tree Commission shall consist of the following members:

The **Director of Public Service**, one member of Council appointed by the President of Council, the **City Forester**, and a minimum of not less than three nor more than five citizens and residents of the City appointed by the Mayor with the approval of Council. The Commission is encouraged to seek input from representatives of utilities which might be affected by the shade tree program.

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

**SEC. 1:** That Section 149.01(a) of the codified ordinances of the City of Medina, Ohio shall be amended to read as follows:

**149.01 MEMBERSHIP; TERM; POWERS AND DUTIES.**

(a) Membership. The Shade Tree Commission shall consist of the following members:

The **Parks Director** ~~Director of Public Service~~, one member of Council appointed by the President of Council, the **City Arborist** ~~Forester~~, and a minimum of not less than three nor more than five citizens and residents of the City appointed by the Mayor with the approval of Council. The Commission is encouraged to seek input from representatives of utilities which might be affected by the shade tree program.

**SEC. 2:** 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. 3:** 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 conduct the next Shade Tree meeting in February, 2014; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and signature by the Mayor.

**PASSED:** \_\_\_\_\_

**SIGNED:** \_\_\_\_\_  
President of Council

**ATTEST:** \_\_\_\_\_  
Clerk of Council

**APPROVED:** \_\_\_\_\_

**SIGNED:** \_\_\_\_\_  
Mayor

**ORDINANCE NO. 19-14**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ACCEPT FOUR (4) MISCELLANEOUS EASEMENTS FOR VARIOUS CITY PROJECTS.**

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

**SEC. 1:** That the Mayor is hereby authorized to accept two (2) Perpetual Highway Easements and R-O-W, one (1) Temporary Easement and one (1) Storm Sewer and Drainage Easement for various city projects.

**SEC. 2:** That the Easement for 800 Lafayette Road, Permanent Parcel No. 028-19C-08-130, part of Medina City Lot 8884, is marked Exhibit A, attached hereto and incorporated herein.

**SEC. 3:** That the Easement for 200 Highland Drive, Permanent Parcel No. 028-19A-13-122, part of Medina City Lot 962, is marked Exhibit B, attached hereto and incorporated herein.

**SEC. 4:** That the Easement for Permanent Parcel No. 028-19B-06-022, part of Medina City Lot 2680, is marked Exhibit C, attached hereto and incorporated herein.

**SEC. 5:** That the Temporary Easement for Permanent Parcel No. 028-19C-03-021, part of Medina City Lot 8569, is marked Exhibit D, attached hereto and incorporated herein.

**SEC. 6:** 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. 7:** That this Ordinance shall be in full force and effect at the earliest period allowed by law.

**PASSED:** \_\_\_\_\_

**SIGNED:** \_\_\_\_\_  
President of Council

**ATTEST:** \_\_\_\_\_  
Clerk of Council

**APPROVED:** \_\_\_\_\_

**SIGNED:** \_\_\_\_\_  
Mayor

ORD. 19-14  
Exhibit A

## Perpetual Highway Easement and Right of Way

### KNOW ALL MEN BY THESE PRESENTS:

That in consideration of (NINETY NINE and 40/100) Dollar (\$99.40) and other good and valuable consideration recited herein given to SB ONE LLC hereinafter "Grantor(s)" by the CITY OF MEDINA, Ohio, hereinafter "Grantee", the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell, transfer and convey unto the Grantee, its successors and assigns, a perpetual right-of-way and easement for the purpose of erecting, constructing, installing and thereafter using, operating, inspecting, maintaining, repairing, replacing and removing ROADWAY PAVEMENT, SIDEWALK, UTILITES AND APPURTENANCES under, across, and through certain land of the Grantor(s) situated in the City of Medina, County of Medina and State of Ohio and more particularly described as follows:

Situated in the City of Medina, County of Medina, State of Ohio, also known as being part of Medina City Lot 8884 and part of a parcel conveyed to SB One LLC as recorded on September 3, 2010 in Document No. 2010OR017447 of the Medina County Recorder's Records, being further bounded and described as follows:

Beginning at the intersection of the centerline of Lafayette Road (60 feet) with the centerline of Ryan Road (60 feet), also being the Northeast corner of said City Lot 8884; thence, South 65° 24' 16" West, a distance of 32.96 feet to a point on the centerline of said Lafayette Road; thence, South 00° 08' 38" East, a distance of 32.96 feet to a point at the intersection of the South right of way line of said Lafayette Road and West right of way line of said Ryan Road, said point being the TRUE PLACE OF BEGINNING for the following described parcel:

Thence South 00° 08' 38" East, continuing along the West right of way line of said Ryan Road, a distance of 24.85 feet to a point;

Thence along the arc of a curve to the left, said curve has a radius of 16.00 feet, a delta of 114° 27' 06", a chord length of 26.91 feet; a chord bearing of North 57° 22' 11" West, and an arc length of 31.96 feet to a point;

Thence, North 65° 24' 16" East, along the North right of way line of said Lafayette Road, a distance of 24.85 feet to the PLACE OF BEGINNING, containing 0.0033 acres (141.9401 square feet) of land, more or less, but subject to all legal highways and easements of record, as determined from a survey made under the direction of Joseph A. Burgoon, Registered Surveyor No. 8325, August 2013, for and on behalf of Lewis Land Professionals, Inc.

The BASIS OF BEARING for this description is assumed and used to denote angles only.

together with the right of reasonable ingress and egress over the immediately adjacent lands of the Grantor(s) for the purpose and use of said easement.

As additional consideration for this easement and right-of-way, the Grantee covenants and agrees as follows:

1. Grantee shall repair any and all damage arising from the installation or subsequent repair, maintenance or reconstruction of ROADWAY PAVEMENT, SIDEWALK, UTILITIES AND APPURTENANCES.
2. Grantee shall replace any driveway, lawn, shrubbery, or other improvement which may be damaged as a result of construction.
3. Within a reasonable time after completion of construction, and in no event later than forty-five (45) days, Grantee will return the ground to its original condition.
4. Grantee will secure and protect all permanent structures within the construction zone.
5. Grantee will pay for all costs of surveying, recording of documents, filing and transfer fees, escrow costs and title expenses, if any.

Grantor(s) covenant and agrees as follows:

1. Grantor will not install, erect or maintain any structure, fixture or device upon the easement which could in any way interfere with Grantee's use of the easement and right-of-way; however, Grantor retains the right to use the surface of the easement area provided said use does not interfere with the uses granted to Grantee.
2. Authorize the City of Medina, its Engineer, and all other officials, assistants, employees, agents and contractors thereof to enter upon the property designated as 800 Lafayette Road, Permanent Parcel No. 028-19C-08-130, Medina City Lot Nos. 8884 with the necessary equipment to remove vegetation and brush as necessary to allow for the proposed grading for the pavement and sidewalk installation; to install pavement and sidewalk; to install storm sewer; to complete grading as necessary; to restore the affected areas with topsoil, seed, fertilizer, and mulch; in accordance with the plans and/or specifications as prepared by the City of Medina or its agents during the period of time commencing with the breaking of ground for the above described proposed work and terminating when the work has been completed and/or accepted by the City; and
3. Release the City of Medina, its Engineer, and all other officials, assistants, employees, agents and contractors thereof, from claims of damage, of compensation by reason of the above described work as called for by the said plans and/or specifications provided that the property designated as 800 Lafayette Road, Permanent Parcel No. 028-19C-08-130, Medina City Lot Nos. 8884 is restored to the condition before construction or as close as reasonably possible in conformance with the plans and/or specifications and/or proposed work described above.

All the terms and conditions of this Easement and Right-of-way shall be binding upon and inure to the benefit of the Grantor(s), the Grantee, their heirs, executors, administrator, successors and assigns.

The grant of this Easement and Right-of-way shall constitute a covenant running with the land for the benefit of the Grantee, its successors and assigns.

IN WITNESS WHEREOF, the undersigned have executed this instrument this 30<sup>th</sup> day of DECEMBER, 2013.

Grantor:

Signature: [Handwritten Signature]

Print Name: SCOTT E. RAHMAN

Title: OWNER

Company: SB One LLC

State of Ohio )  
County of Medina) SS:

Before me, a Notary Public, in and for said County and State, personally appeared the Grantor, Scott E. Rahman, who acknowledged that he/she/they did sign the foregoing instrument and that the same is his/her/their free act and deed.

In testimony whereof, I have set my hand and official seal at Medina, Ohio, this 30<sup>th</sup> day of December, 2013.

Notary Signature: Kimberly A. Walter

Print Name: Kimberly A. Walter

My Commission Expires: KIMBERLY A. WALTER  
Notary Public - State of Ohio  
My Commission Expires Aug. 3, 2015

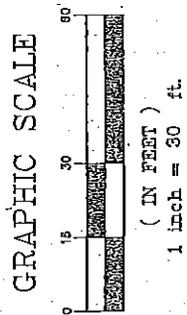
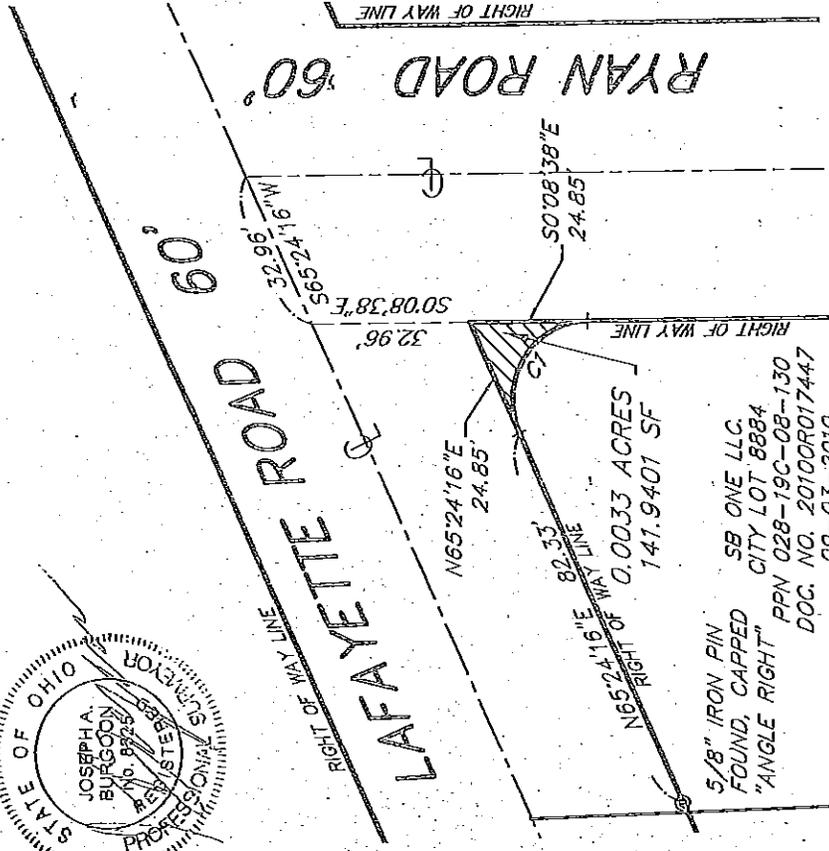
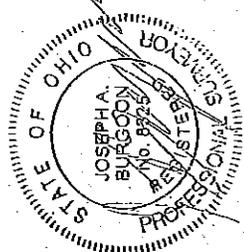
Notary Seal:

This instrument was prepared by:  
Gregory Huber, Law Director  
City of Medina, Ohio  
132 N. Elmwood Avenue  
Medina, OH 44256

# HIGHWAY EASEMENT EXHIBIT

Situated in the City of Medina, County of Medina, and State of Ohio, and known as being part of City Lot 888A.

Curve Table					
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	31.96'	16.00'	114-27'06"	N57° 22' 11" W	26.91'



The BASIS OF BEARING for this survey is ASSUMED and used to denote angles only.



**Lewis Land Professionals, Inc.**

Civil Engineering & Surveying  
 8691 Wadsworth Rd. Suite 100 Wadsworth, Ohio 44281  
 Phone: (330) 335-8232 Fax: (330) 335-0242  
 www.landprosinc.com

Date of Easement: August 2013

PROJ. No. 13-150 DRAWING NAME 13-150.dwg

5/8" IRON PIN FOUND, CAPPED "ANGLE RIGHT"  
 SB ONE LLC CITY LOT 888A  
 PPN 028-19C-08-130  
 DOC. NO. 2010OR017447  
 09-03-2010

ORD. 19-14  
Exhibit B

## Perpetual Highway Easement and Right of Way

### KNOW ALL MEN BY THESE PRESENTS:

That in consideration of (ONE HUNDRED THIRTY ONE and 36/100) Dollars (\$131.36) and other good and valuable consideration recited herein given to BRUNSWICK HOUSING DEVELOPMENT CORPORATION hereinafter "Grantor(s)" by the CITY OF MEDINA, Ohio, hereinafter "Grantee", the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell, transfer and convey unto the Grantee, its successors and assigns, a perpetual right-of-way and easement for the purpose of erecting, constructing, installing and thereafter using, operating, inspecting, maintaining, repairing, replacing and removing ROADWAY PAVEMENT, SIDEWALK, UTILITIES AND APPURTENANCES under, across, and through certain land of the Grantor(s) situated in the City of Medina, County of Medina and State of Ohio and more particularly described as follows:

Situated in the City of Medina, County of Medina and State of Ohio and known as being part of Medina City Lot No. 962 as shown by the Replat of Longview Development Phase No. 1 as recorded in Plat Volume 9, Page 43 of the Medina County Recorder's Records and is bounded and described as follows: Beginning at the northwesterly corner of Medina City Lot No. 962, as aforementioned, said point also being on the southerly right of way line of Highland Drive, 60 feet in width; thence North 89° 14' 00" East, along the southerly right of way line of Highland Drive, 10.57 feet to a point thereon and the PRINCIPAL PLACE OF BEGINNING of the easement herein to be described;

Thence North 89° 14' 00" East, continuing along the southerly right of way line of Highland Drive, 35.18 feet to an angle point thereon;

Thence South 39° 54' 53" East, along the southwesterly right of way line of Highland Drive, 35.18 feet to a point thereon;

Thence northwesterly, along the arc of a curve, deflecting to the left, 65.68 feet to the Principal Place of Beginning, said curve has a radius of 74.00 feet and a chord which bears North 65° 20' 26" West, 63.54 feet, containing 173 square feet or 0.0040 acres of land according to a survey by Guy P. Haney, Professional Surveyor No. S-7631, for TGC Engineering, LLC dated November 8, 2013.

Bearings are based on the centerline of Highland Drive, North 89° 14' 00" East, as shown by the plat recorded in Plat Volume 9, Page 43 of Medina County Recorder's Records.

together with the right of reasonable ingress and egress over the immediately adjacent lands of the Grantor(s) for the purpose and use of said easement.

As additional consideration for this easement and right-of-way, the Grantee covenants and agrees as follows:

1. Grantee shall repair any and all damage arising from the installation or subsequent repair, maintenance or reconstruction of ROADWAY PAVEMENT, SIDEWALK, UTILITIES AND APPURTENANCES.
2. Grantee shall replace any driveway, lawn, shrubbery, or other improvement which may be damaged as a result of construction.
3. Within a reasonable time after completion of construction, and in no event later than forty-five (45) days, Grantee will return the ground to its original condition.
4. Grantee will secure and protect all permanent structures within the construction zone.
5. Grantee will pay for all costs of surveying, recording of documents, filing and transfer fees, escrow costs and title expenses, if any.

Grantor(s) covenant and agrees as follows:

1. Grantor will not install, erect or maintain any structure, fixture or device upon the easement which could in any way interfere with Grantee's use of the easement and right-of-way; however, Grantor retains the right to use the surface of the easement area provided said use does not interfere with the uses granted to Grantee.
2. Authorize the City of Medina, its Engineer, and all other officials, assistants, employees, agents and contractors thereof to enter upon the property designated as 200 Highland Drive, Permanent Parcel No. 028-19A-13-122, Medina City Lot Nos. 962 with the necessary equipment to remove grass, vegetation and brush as necessary to allow for the proposed grading for the sidewalk installation; to install sidewalk; to complete grading as necessary; to restore the affected areas with topsoil, seed, fertilizer, and mulch; in accordance with the plans and/or specifications as prepared by the City of Medina or its agents during the period of time commencing with the breaking of ground for the above described proposed work and terminating when the work has been completed and/or accepted by the City; and
3. Release the City of Medina, its Engineer, and all other officials, assistants, employees, agents and contractors thereof, from claims of damage, of compensation by reason of the above described work as called for by the said plans and/or specifications provided that the property designated as 200 Highland Drive, Permanent Parcel No. 028-19A-13-122, Medina City Lot Nos. 962 is restored to the condition before construction or as close as reasonably possible in conformance with the plans and/or specifications and/or proposed work described above.

All the terms and conditions of this Easement and Right-of-way shall be binding upon and inure to the benefit of the Grantor(s), the Grantee, their heirs, executors, administrator, successors and assigns.

The grant of this Easement and Right-of-way shall constitute a covenant running with the land for the benefit of the Grantee, its successors and assigns.

IN WITNESS WHEREOF, the undersigned have executed this instrument this 4th day of December, 2013.

Grantor:

Signature: [Handwritten Signature]

Print Name: JAMES A. SIPES, Agent for Brunswick Housing Development Corp

Title: \_\_\_\_\_

Company: Brunswick Housing Development Corporation

State of Ohio )  
County of Medina) SS:

Before me, a Notary Public, in and for said County and State, personally appeared the Grantor, JAMES A SIPES, who acknowledged that he/she/they did sign the foregoing instrument and that the same is his/her/their free act and deed.

In testimony whereof, I have set my hand and official seal at Medina, Ohio, this 4th day of December, 2013.

Notary Signature: Mary K Frohlich

Print Name: Mary K Frohlich

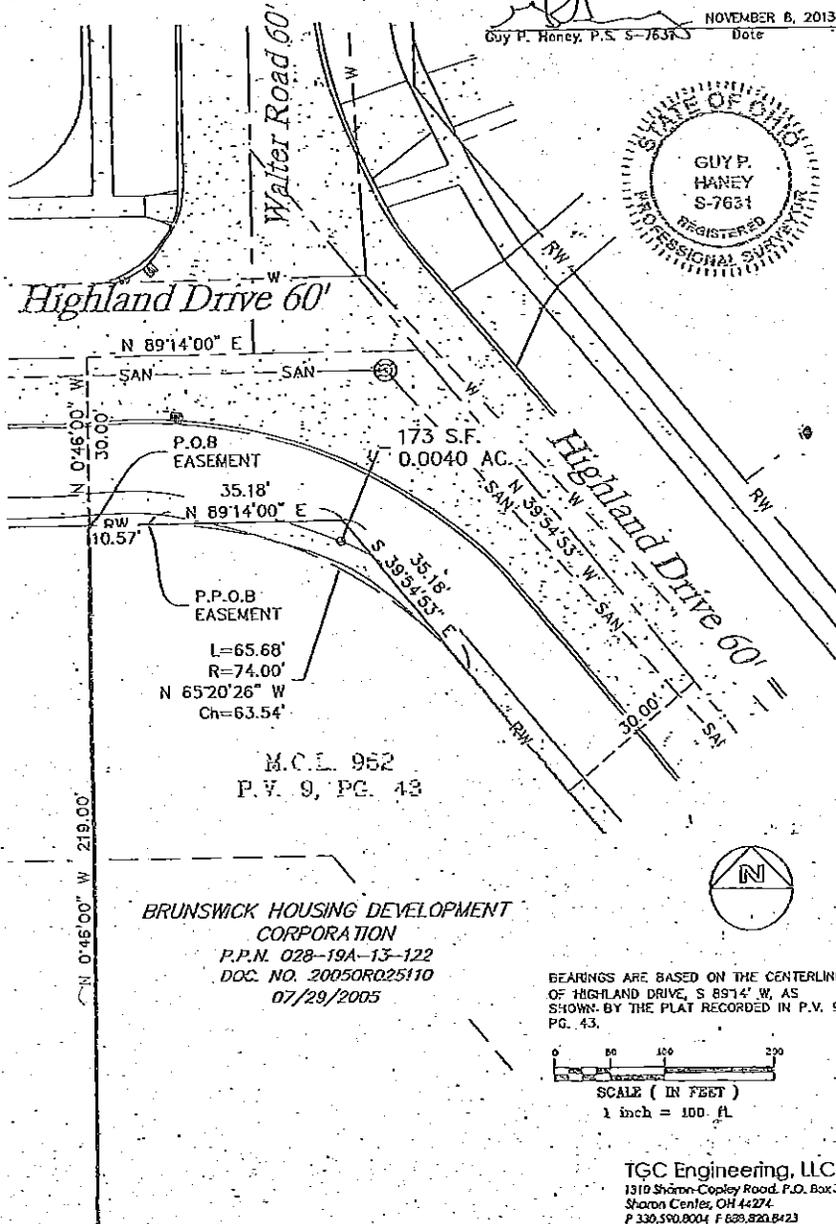
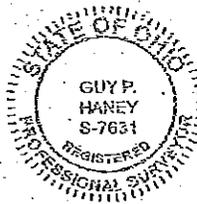
My Commission Expires: \_\_\_\_\_  
MARY K. FROHLICH, Notary Public  
Residence - Medina County  
State Wide Jurisdiction, Ohio

Notary Seal: \_\_\_\_\_  
My Commission Expires Oct. 18, 2012

This instrument was prepared by:  
Gregory Huber, Law Director  
City of Medina, Ohio  
132 N. Elmwood Avenue  
Medina, OH 44256

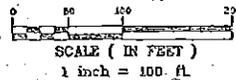
**SKETCH OF EASEMENT FOR  
STANDARD HIGHWAY EASEMENT  
CITY OF MEDINA, MEDINA COUNTY, OHIO  
PART OF MEDINA CITY LOT NO. 962 AS SHOWN BY THE REPLAT OF LONGVIEW  
DEVELOPMENT PHASE NO. 1 AS RECORDED IN PLAT VOLUME 9, PAGE 43 OF  
MEDINA COUNTY RECORDERS RECORDS.**


 NOVEMBER 8, 2013  
 Guy P. Honey, P.S. S-7634 Date



**BRUNSWICK HOUSING DEVELOPMENT  
CORPORATION**  
 P.P.N. 028-19A-13-122  
 D.C. NO. 20050R025110  
 07/29/2005

BEARINGS ARE BASED ON THE CENTERLINE  
 OF HIGHLAND DRIVE, S 89°14' W, AS  
 SHOWN BY THE PLAT RECORDED IN P.V. 9,  
 PG. 43.



**TGC Engineering, LLC**  
 1310 Sharon-Copley Road, P.O. Box 37  
 Sharon Center, OH 44274  
 P 330.590.8004 F 638.820.8423  
 Job No. 1292A, Page 1 of 1

952 A  
CLOVERDALE  
ORD. 19-14  
Exhibit C

**Storm Sewer and Drainage Easement**

**KNOW ALL MEN BY THESE PRESENTS:**

That in consideration of (ONE HUNDRED SIXTY SEVEN and 70/100) Dollars (\$167.70) and other good and valuable consideration recited herein given to FOREST MEADOWS LAKE PARK ASSOCIATION, INC. hereinafter "Grantor(s)" by the CITY OF MEDINA, Ohio, hereinafter "Grantee", the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell, transfer and convey unto the Grantee, its successors and assigns, a drainage and storm sewer easement for the purpose of erecting, constructing, installing and thereafter using, operating, inspecting, maintaining, repairing, replacing and removing STORM SEWER AND APPURTENANCES under, across, and through certain land of the Grantor(s) situated in the City of Medina, County of Medina and State of Ohio and more particularly described as follows:

Situated in the City of Medina, County of Medina, State of Ohio and known as being part of Medina City Lot 2680 being now or formerly owned by the Forest Meadows Lake Park Association, Inc. and is further bounded and described as follows:

Beginning at the intersection of the centerline of Cloverdale Avenue (60 feet) with the centerline of Hickory Grove Avenue (60 feet), also being the PLACE OF BEGINNING of the storm sewer and drainage easement herein described; thence North 02° 26' 09" West a distance of 32.06 feet to a point in the north right of way of said Hickory Grove Avenue;

Thence, continuing along the north right of way line of said Hickory Grove Avenue, along the arc of a curve to the left, said curve has a radius of 219.11 feet, a delta of 4° 35' 15", a chord length of 17.54 feet, a chord bearing of South 72° 38' 33" East, and an arc length of 17.54 feet to a point, said point also being the PRINCIPAL PLACE OF BEGINNING of the storm sewer and drainage easement herein described;

Thence North 06° 20' 54" East a distance of 81.33 feet to a point;

Thence South 83° 39' 06" East a distance of 36.00 feet to a point;

Thence South 06° 20' 54" West a distance of 83.85 feet to a point on the north right of way of said Hickory Grove Avenue;

Thence, continuing along the north right of way line of said Hickory Grove Avenue, along the arc of a curve to the right, said curve has a radius of 219.11 feet, a delta of 9° 26' 50", a chord length of 36.09 feet, a chord bearing of North 79° 39' 35" West, and an arc length of 36.13 feet to the Principal Place of Beginning of the storm sewer and drainage easement hereon described.

Bearings are based on an assumed meridian and are used herein to indicate angles only.

together with the right of reasonable ingress and egress over the immediately adjacent lands of the Grantor(s) for the purpose and use of said easement. The Grantee covenants and agrees that it will not use said easement for public right-of-way purposes.

As additional consideration for this easement and right-of-way, the Grantee covenants and agrees as follows:

1. Grantee shall repair any and all damage arising from the installation or subsequent repair, maintenance or reconstruction of a STORM SEWER AND APPURTENANCES.
2. Grantee shall replace any driveway, lawn, shrubbery, or other improvement which may be damaged as a result of construction.
3. Within a reasonable time after completion of construction, and in no event later than forty-five (45) days, Grantee will return the ground to its original condition.
4. Grantee will secure and protect all permanent structures within the construction zone.
5. Grantee will pay for all costs of surveying, recording of documents, filing and transfer fees, escrow costs and title expenses, if any.

Grantor(s) covenant and agrees as follows:

1. Grantor will not install, erect or maintain any structure, fixture or device upon the easement which could in any way interfere with Grantee's use of the easement and right-of-way, however, Grantor retains the right to use the surface of the easement area provided said use does not interfere with the uses granted to Grantee.
2. Authorize the City of Medina, its Engineer, and all other officials, assistants, employees, agents and contractors thereof to enter upon the property designated as Permanent Parcel No. 028-19B-06-022, part of Medina City Lot 2680 with the necessary equipment to remove any obstructions as necessary to allow for the proposed storm sewer installation including brush, vegetation and existing storm sewer; to install the proposed storm sewer and appurtenances; to complete grading as necessary; to restore the affected areas with topsoil, seed, fertilizer, and mulch; in accordance with the plans and/or specifications as prepared by the City of Medina or its agents during the period of time commencing with the breaking of ground for the above described proposed work and terminating when the work has been completed and/or accepted by the City; and
3. Release the City of Medina, its Engineer, and all other officials, assistants, employees, agents and contractors thereof, from claims of damage, of compensation by reason of the above described work as called for by the said plans and/or specifications provided that the property designated as Permanent Parcel No. 028-19B-06-022, part of Medina City Lot 2680 is restored to the condition before construction or as close as reasonably possible in conformance with the plans and/or specifications and/or proposed work described above.

All the terms and conditions of this Easement and Right-of-way shall be binding upon and inure to the benefit of the Grantor(s), the Grantee, their heirs, executors, administrator, successors and assigns.

The grant of this Easement and Right-of-way shall constitute a covenant running with the land for the benefit of the Grantee, its successors and assigns.

IN WITNESS WHEREOF, the undersigned have executed this instrument this 23rd day of December, 2013.

Grantor: Forest Meadows Lake Park Association, Inc.

Signature: [Handwritten Signature]

Print Name: Chris M. Sawicki

Title: President

Company: Forest Meadows Lake Park Association, Inc.

State of Ohio )  
County of Medina) SS:

Before me, a Notary Public, in and for said County and State, personally appeared the Grantor, Chris M. Sawicki, who acknowledged that he/she/they did sign the foregoing instrument and that the same is his/her/their free act and deed.

In testimony whereof, I have set my hand and official seal at Medina, Ohio, this 23rd day of December, 2013

Notary Signature: [Handwritten Signature]

Print Name: SCARLETT S. PICCOLI

My Commission Expires: October 26, 2014

Notary Seal:

This instrument was prepared by:  
Gregory Huber, Law Director  
City of Medina, Ohio  
132 N. Elmwood Avenue  
Medina, OH 44256

# SKETCH OF EASEMENT

Part of Medina City Lot No. 2680  
 Date: October, 2013  
 Owner: Forest Meadows Lake Park Assn.  
 Parcel Number: 028-19B-06-022

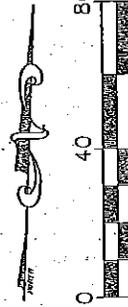
STORM SEWER EASEMENT  
 GRANTED TO THE  
 CITY OF MEDINA

PART OF MCL 2680  
 P.N. 028-19B-06-022  
 FOREST MEADOWS LAKE  
 PARK ASSOCIATION, INC.

LINE TABLE		
LINE	LENGTH	BEARING
L1	32.06'	N 02°26'09" W

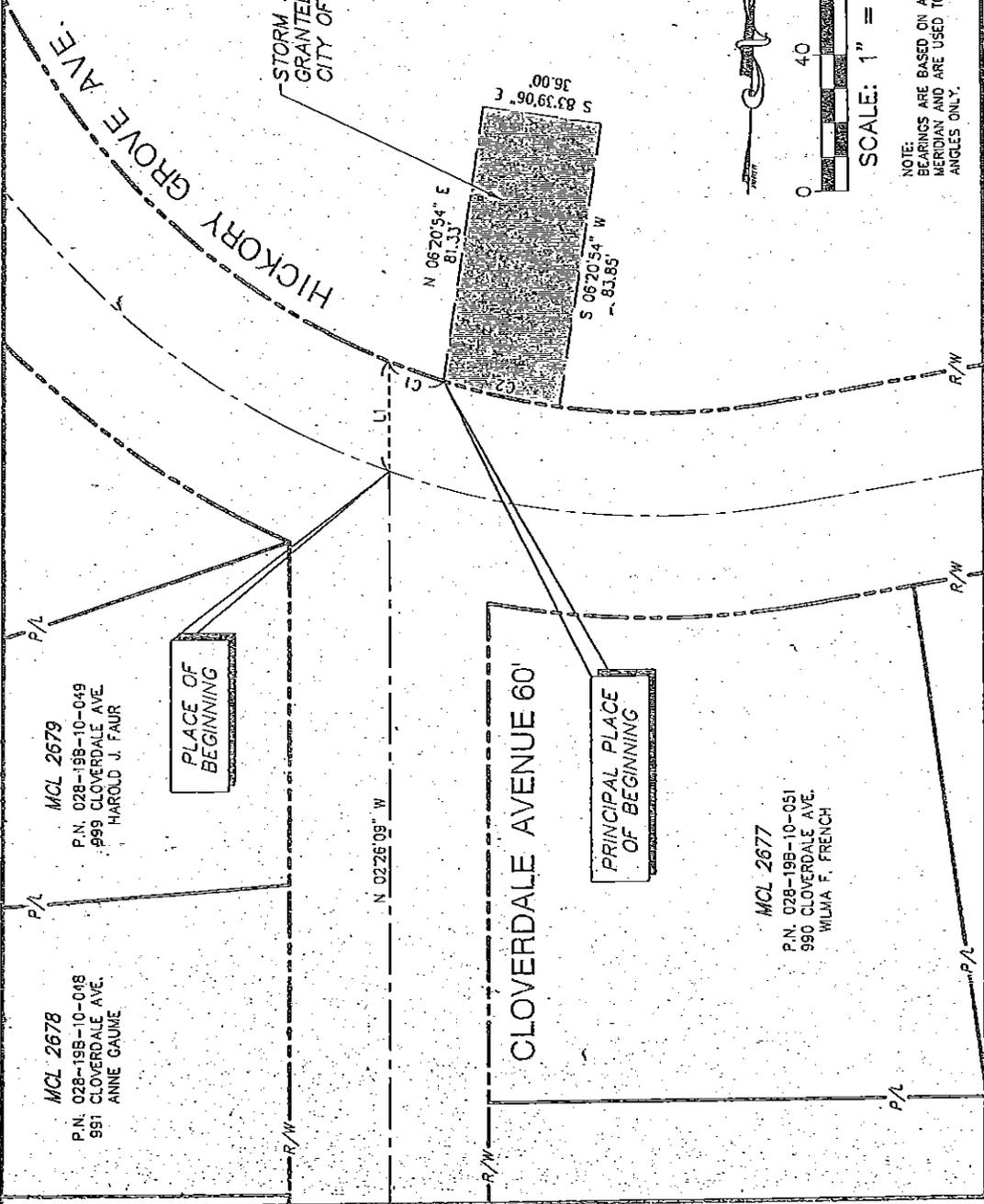
CURVE TABLE			
CURVE	RADIUS	LENGTH	CHORD
C1	219.11'	17.54'	17.54'
C2	219.11'	36.13'	36.09'

CITY OF MEDINA  
 DEPARTMENT OF ENGINEERING  
 132 N. ELMWOOD AVENUE  
 MEDINA, OHIO 44256  
 CITY JOB No. 952A



SCALE: 1" = 40'

NOTE:  
 BEARINGS ARE BASED ON AN ASSUMED  
 MERIDIAN AND ARE USED TO DENOTE  
 ANGLES ONLY.



ORD. 19-14  
Exhibit D

## TEMPORARY EASEMENT

KNOW ALL MEN BY THESE PRESENTS THAT: TABB Realty, LLC, a Michigan Limited Liability Company, the Grantor(s) herein, in consideration of the sum of \$300.00, to be paid by the City of Medina, the Grantee herein, does hereby grant, bargain, sell, convey and release to said Grantee, its successors and assigns, a temporary easement to occupy and use for the purposes mentioned in Exhibit A the following described real estate:

PARCEL(S): 9 T, T-1, T-2  
MED-West Smith Road

SEE EXHIBIT A ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF Medina County Current Tax Parcel No. 028-19C-03-021; Prior Instrument Reference: Quit Claim Deed Instrument #2000OR012329, Quit Claim Deed Instrument #2000OR013092, Quit Claim Deed Instrument #2000OR013093 and Plat #2001PL000079, Medina County Recorder's Office.

To have and to hold said temporary easement, for the aforesaid purposes and for the anticipated period of time described below, unto the Grantee, its successors and assigns.

The duration of the temporary easement herein granted to the Grantee is 18 months immediately following the date on which the work described above is first commenced by the Grantee, or its duly authorized employees, agents, and contractors. All covenants contained within the herein-described grant of easement are released and the property shall be considered free and clear of any restriction or any right or privilege attaching to the herein-described grant of easement.

The temporary easement interest granted herein is being acquired by Grantee for a public purpose, namely the establishment, construction, reconstruction, widening, repair or maintenance of a public road.

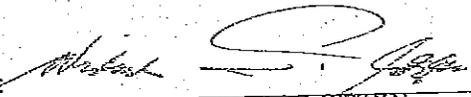
The Grantee hereby agrees to restore the premises to as near the original condition as possible. Grading within the Temporary Construction Easement may result in a grade change.

The Grantee hereby agrees to indemnify, defend and hold Grantor, its heirs, representations, agents, employees, successors and assigns harmless from and against any and all claims and damages, including reasonable attorney's fees, resulting from any injury to persons or property either now or in the future arising from Grantee's, its guests, invitees, agents, or contractors' negligence or willful misconduct or Grantee's use of the easement herein granted, this indemnification to survive expiration of the easement.

Grantee shall obtain for itself, its agents, successors, and permitted assigns, necessary and adequate workers' compensation insurance, personal injury insurance, and property damage insurance, naming Grantor as an additional insured, with limits commensurate with the hazards and risks associated with the use of the Temporary Construction Easement Area.

IN WITNESS WHEREOF TABB Realty, LLC, a Michigan Limited Liability Company has caused its name to be subscribed by Michael J. Plotzke, its duly authorized Treasurer / CFO, and its duly authorized agent on the 8th day of October, 2013.

TABB REALTY, LLC, A MICHIGAN LIMITED LIABILITY COMPANY

Signature:   
Print Name: MICHAEL J. PLOTZKE  
TREASURER / CFO

Michigan Wayne  
STATE OF OHIO, COUNTY OF MEDINA SS:

BE IT REMEMBERED, that on the 8th day of October, 2013,  
before me the subscriber, a Notary Public in and for said state and county, personally came the  
above named Michael J. Plotzke, who acknowledged being the  
Treasurer/CFO and duly authorized agent of TABB Realty, LLC, a  
Michigan 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.

Victoria F. Demers

NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

This document was prepared by: The City of Medina

VICTORIA F. DEMERS  
Notary Public, State of Michigan  
County of Wayne  
My Commission Expires Jan. 07, 2019  
Acting in the County of Wayne

Ver. Date 10/19/12

PARCEL 9-T  
WEST SMITH ROAD

TEMPORARY EASEMENT FOR THE PURPOSE OF  
PERFORMING THE WORK NECESSARY TO  
RECONSTRUCT THE EXISTING DRIVE 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 Medina City Lot 8569 and being a 15.4290 acre parcel conveyed on May 12, 2000 to Tabb Realty LLC. by Document No. 2000OR013093 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 a Monument found on the centerline Right of Way of West Smith Road, at Station 20+00.00, point being the intersection with the centerline Right of Way of Lake Road, at Station 10+00.00; thence North 89 degrees 04 minutes 36 seconds East along the centerline Right of Way of West Smith Road a distance of 661.63 feet to a point found on the centerline Right of Way of West Smith Road at Station 26+61.63; thence North 89 degrees 07 minutes 47 seconds East a distance of 1179.49 feet; thence South 00 degrees 52 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 being the TRUE POINT OF BEGINNING.

1. thence North 89 degrees 07 minutes 47 seconds East along said existing right of way line a distance of 35.00 feet to a point;
2. thence South 00 degrees 52 minutes 13 seconds East a distance of 6.00 feet to a point;
3. thence South 89 degrees 07 minutes 47 seconds West a distance of 35.00 feet to a point;
4. thence North 00 degrees 52 minutes 13 seconds West a distance of 6.00 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-03-021 and contains a gross take of 0.0048 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 October 19, 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 Surveyor Number 7809.

Ver. Date 10/19/12

PARCEL 9-T1  
WEST SMITH ROAD

TEMPORARY EASEMENT FOR THE PURPOSE OF  
PERFORMING THE WORK NECESSARY TO  
RECONSTRUCT THE EXISTING DRIVE 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 Medina City Lot 8569 and being a 15.4290 acre parcel conveyed on May 12, 2000 to Tabb Realty LLC. by Document No. 2000OR013093 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 a Monument found on the centerline Right of Way of West Smith Road, at Station 20+00.00, point being the intersection with the centerline Right of Way of Lake Road, at Station 10+00.00; thence North 89 degrees 04 minutes 36 seconds East along the centerline Right of Way of West Smith Road a distance of 661.63 feet to a point found on the centerline Right of Way of West Smith Road at Station 26+61.63; thence North 89 degrees 07 minutes 47 seconds East a distance of 1374.41 feet; thence South 00 degrees 52 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 being the TRUE POINT OF BEGINNING.

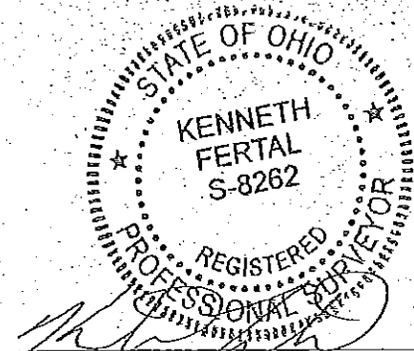
1. thence North 89 degrees 07 minutes 47 seconds East along said existing right of way line a distance of 160.00 feet to a point;
2. thence South 00 degrees 52 minutes 13 seconds East a distance of 5.00 feet to a point;
3. thence South 89 degrees 07 minutes 47 seconds West a distance of 160.00 feet to a point;
4. thence North 00 degrees 52 minutes 13 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-03-021 and contains a gross take of 0.0184 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 October 19, 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 Surveyor Number 7809.



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

12/17/2012  
Date

Ver. Date 10/19/12

PARCEL 9-T2  
WEST SMITH ROAD

TEMPORARY EASEMENT FOR THE PURPOSE OF  
PERFORMING THE WORK NECESSARY TO  
RECONSTRUCT THE EXISTING DRIVE 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 Medina City Lot 8569 and being a 15.4290 acre parcel conveyed on May 12, 2000 to Tabb Realty LLC. by Document No. 2000OR013093 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 a Monument found on the centerline Right of Way of West Smith Road, at Station 20+00.00, point being the intersection with the centerline Right of Way of Lake Road, at Station 10+00.00; thence North 89 degrees 04 minutes 36 seconds East along the centerline Right of Way of West Smith Road a distance of 661.63 feet to a point found on the centerline Right of Way of West Smith Road at Station 26+61.63; thence North 89 degrees 07 minutes 47 seconds East a distance of 1712.62 feet; thence South 00 degrees 52 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 being the TRUE POINT OF BEGINNING.

1. thence North 89 degrees 07 minutes 47 seconds East along said existing right of way line a distance of 42.48 feet to a point;
2. thence South 00 degrees 15 minutes 00 seconds East a distance of 15.00 feet to a point;
3. thence South 89 degrees 07 minutes 47 seconds West a distance of 42.32 feet to a point;
4. thence North 00 degrees 52 minutes 13 seconds West a distance of 15.00 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-03-021 and contains a gross take of 0.0146 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 October 19, 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 Surveyor Number 7809.



12/17/2012  
Date

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

**ORDINANCE NO. 20-14**

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A SUBSIDY STIPULATION AGREEMENT BETWEEN THE PUBLIC UTILITIES COMMISSION OF OHIO, THE WHEELING AND LAKE ERIE RAILWAY COMPANY AND THE CITY OF MEDINA, RELATIVE TO THE INSTALLATION OF GATES AND FLASHERS AT THE GUILFORD BOULEVARD RAILROAD CROSSING.**

**WHEREAS:** Resolution No. 61-12, passed March 26, 2012 supported an application to the Public Utilities Commission of Ohio (PUCO) for funding assistance for installation of lights and gates at the railroad crossing on Guilford Boulevard; and

**WHEREAS:** In December, 2013 the PUCO advised the City that the crossing did warrant the installation of lights and gates and that PUCO funds were available for the cost of this installation

**NOW, THEREFORE, 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 Subsidy Stipulation Agreement between the Public Utilities Commission (PUCO), the Wheeling and Lake Erie Railway Company (W&LE) and the City of Medina relative to the installation of gates and flashers at the Guilford Boulevard railroad crossing.

**SEC. 2:** That a copy of the Subsidy Agreement is marked Exhibit A, attached hereto, and incorporated herein.

**SEC. 3:** That the funds to cover this Agreement, in the estimated amount of \$70,000.00 are available in Account No. 108-0610-54411.

**SEC. 4:** 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. 5:** That this Ordinance shall be in full force and effect at the earliest period allowed by law.

**PASSED:** \_\_\_\_\_ **SIGNED:** \_\_\_\_\_  
President of Council

**ATTEST:** \_\_\_\_\_ **APPROVED:** \_\_\_\_\_  
Clerk of Council

**SIGNED:** \_\_\_\_\_  
Mayor



**Public Utilities  
Commission**

John R. Kasich, Governor  
Todd A. Snitchler, Chairman

976

Commissioners

Steven D. Lesser  
Asim Z. Haque  
Lynn Slaby  
M. Beth Trombold

December 4, 2013

Mr. Patrick Patton  
City Engineer  
City of Medina  
132 North Elmwood Ave.  
P.O. Box 703  
Medina, Ohio 44258-0703

Re: Guilford Blvd. (DOT#002-090H), Wheeling & Lake  
Erie Railroad

Dear Mr. Patton:

Enclosed is the Agreement for the above-mentioned project. I have forwarded an original of this for signature by an authorized representative on behalf of the City of Medina.

I do request that you have this document executed promptly and returned to the following address:

Jill Henry  
Rail Division  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43215-3793

Thank you for your attention to this matter, if you need any additional information, I can be contacted at 614-466-0435.

Sincerely,

Jill Henry  
Rail Specialist  
PUCO Rail Division

Enclosure

cc: File

180 East Broad Street  
Columbus, Ohio 43215-3793

(614) 466-3016  
www.PUCO.ohio.gov

An equal opportunity employer and service provider

ORD 20-14  
Exh. A

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of a Request for the :  
Installation of Active Warning Devices at : Case No. \_\_\_\_\_ -RR-STP  
the Wheeling & Lake Erie Railroad Grade :  
Crossing, DOT# 002-090H, Guilford :  
Boulevard, in Medina, Ohio. :

SUBSIDY STIPULATION

THIS SUBSIDY STIPULATION ("Subsidy Stipulation") is entered into on this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and among the Public Utilities Commission of  
Ohio Railroad Staff ("PUCO"), Wheeling & Lake Erie Railroad ("Railroad"), and the  
City of Medina, Medina County, Ohio ("LHA").

WITNESSETH:

WHEREAS, Rule 4901-1-30 of the Ohio Administrative Code provides that any two or  
more parties to a proceeding may enter into a written or oral stipulation concerning the  
issues presented in such proceeding; and

WHEREAS, The Public Utilities Commission of Ohio ("PUCO") has statutory authority  
to regulate and promote the welfare and safety of railroad employees and the traveling  
public pursuant to Ohio Revised Code ("ORC") §4905.04; and

WHEREAS, the PUCO is responsible for evaluating public highway railroad grade  
crossings to determine the need for upgrading the warning devices and apportioning the  
costs thereof pursuant to ORC§ 4907.471;

WHEREAS, the PUCO is responsible for the administration and implementation of the  
State Grade Crossing Protection Fund pursuant created under ORC§ 4907.472 to help  
defray the public's share of costs to install or modernize warning devices at Ohio's  
highway railroad grade crossings;

WHEREAS, the parties hereto propose to facilitate the upgrade identified in this Subsidy  
Stipulation in manner approved by the PUCO in accordance with the Federal Aid Policy  
Guide and applicable provisions of Title 23 of the United States Code pursuant to the  
terms hereof; and

WHEREAS, the parties hereto believe this Subsidy Stipulation to be reasonable and  
entitled to careful consideration by the PUCO;

WHEREAS, the parties hereby declare it to be in the public interest that they jointly and fully participate in this Subsidy Stipulation to facilitate the upgrade in accordance with plans, specifications, and estimates to be approved by the PUCO Staff.

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

### Article I. PURPOSE

The Subsidy Stipulation is a joint collaboration by the Railroad, the LHA, and the PUCO Staff to promote the health and safety of the traveling public who are required to travel through these public highway-railroad grade crossings in Medina, Ohio.

### Article II. PROJECT

A. The project work to be completed shall include the following upgrade ("Project"):

<u>Grade Crossing #</u>	<u>Location</u>	<u>Nature of Upgrades</u>
002-090H	Guilford Boulevard City of Medina Medina County	Lights and Gates

B. The Project shall be completed within 12 months from the date of the PUCO order adopting this Subsidy Stipulation. The parties agree to comply with the terms of the Subsidy Stipulation and the PUCO order adopting the Subsidy Stipulation.

### Article III. ALLOCATION OF PROJECT COSTS

A. The costs of the Project shall be apportioned as between the PUCO and the Railroad, as follows:

<u>Grade Crossing</u>	<u>Railroad</u>	<u>LHA</u>	<u>PUCO</u>
Guilford Blvd. (002-090H)	10% of 100% plus maintenance	35% of 90%	65% of 90%

B. The Railroad shall be responsible for initially paying all of the actual costs to upgrades of the warning devices identified above. However, the PUCO shall be legally bound to reimburse the Railroad for the above-mentioned amounts upon proper application by the Railroad, consistent with the terms of this Subsidy Stipulation and in accordance with all applicable state regulations.

- C. The LHA shall, within 30 days of the adoption of this Subsidy Stipulation, certify in writing to the PUCO the authority to participate in this Project as described herein. The PUCO shall have no obligation to expend funds hereunder until the LHA have submitted documentation in proper form as described in this section.
- D. The PUCO has agreed to provide funds from the State Grade Crossing Protection Fund, pursuant to ORC§ 4907.472, to cover that portion of the upgrade cost to be borne by the PUCO proposed above. The actual respective dollar amount, which the Railroad and the PUCO shall bear, will be based upon the actual cost noted in the plans and estimates to be approved by the PUCO Staff and incurred by the Railroad for this Project.
- E. All plans, specifications, estimate of cost, acceptance of work, and procedures in general, to facilitate the construction of the safety upgrade described above, shall conform in all respects to federal laws, rules, regulations, orders, and approvals applicable to state aid projects. The Railroad shall render billings to the PUCO Staff in accordance with said rules and regulations, and shall provide and furnish such itemized records of and substantiating data for such cost that may be required.
- F. The LHA shall furnish advance warning signs and pavement markings as specified in the Manual on Uniform Traffic Control Devices and shall assume all costs to maintain such signage and markings in the future at each of the subject grade crossings. The LHA shall arrange for the relocation, rearrangement or alteration of all utilities of any nature, which are located on public right of way, and which will affect by or interfere with the construction of the said Project. Said relocation, rearrangement or alteration will be done at such time as requested by the PUCO Staff and will be performed solely at the expense of the utility and at no cost to this Project or the Railroad.

#### Article IV. BILLING

- A. The Railroad may bill the PUCO monthly or periodically for its costs when costs exceed \$1,000.00. The Railroad shall submit three (3) copies of its bill and in accordance with said rules and regulations as they have been issued or as thereafter may be supplemented or revised. A final bill covering the actual costs and showing all details shall be submitted to the PUCO Staff, within ninety (90) days after completion of each project, the PUCO Staff shall pay all bills within sixty (60) days after receipt thereof, except that the PUCO may hold a retainer on all bills not to exceed eight percent (8%) until final payment. The PUCO Staff shall make final payment for all amounts due the Railroad within sixty (60) days after a final audit has been performed and approved by the PUCO Staff. The Railroad agrees to cooperate and assist, as requested, in any such audit. At any time during normal business hours upon three (3) days written notice and as often as the PUCO Staff may deem necessary and in such a manner as not to interfere with the normal business operations, the Railroad shall make available to the PUCO Staff for examination, and to appropriate state agencies or officials, all of its records with respect to matters covered by this Subsidy Stipulation including, but not limited to, records of personnel and conditions of employment and shall permit the PUCO Staff to audit, examine and make excerpts or transcripts from such records. In the event of a controversy as to the eligibility for reimbursement of any charges claimed against the Project, as set in this Subsidy Stipulation, all parties agree to work in good faith with the other parties to resolve the controversy. After attempting to resolve any dispute regarding this Subsidy Stipulation, if the parties are still unable to resolve their dispute, any party shall have the right to seek enforcement of the terms of the Subsidy Stipulation by the PUCO. The decision of the PUCO regarding this dispute is final.
- B. No Project activity reimbursable under this Subsidy Stipulation, including, without limitation, preliminary engineering, shall be commenced until all of the following have occurred: (1) this Subsidy Stipulation shall have been approved and the Railroad directed to submit plans and estimates by the PUCO; (2) all financial obligations of the PUCO and LHA, as provided for in this Stipulation are subject to the provisions of ORC§ 126.07 of the Ohio Revised Code and shall not be valid and enforceable unless funds are appropriated by the Ohio General Assembly and encumbered by the PUCO Staff; and, (3) the Railroad has been notified by the PUCO Staff to proceed with construction of the Project work. Work on the improvements shall commence within 30 days of the occurrence of events (1), (2), and (3) described herein. Said work shall be pursued diligently by the Railroad until completed.

## Article V. NOTIFICATION

All notices, consents, demands, requests and other communications which may or are required hereunder by the Railroad shall be in writing and shall be deemed duly given if personally delivered or sent by facsimile and confirmed by telephone or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

RAILROAD:                    Wheeling & Lake Erie Railroad  
                                  Dan Reinsel  
                                  Signal & Communication Supervisor  
                                  100 E. First Street  
                                  Brewster, OH 44613  
                                  (330) 767-7202  
                                  [dreinsel@wlerwy.com](mailto:dreinsel@wlerwy.com)

PUCO:                        Public Utilities Commission of Ohio  
                                  Jill Henry  
                                  Rail Specialist  
                                  Transportation Department, Rail Division  
                                  180 East Broad Street  
                                  Columbus, Ohio 43215-3793  
                                  (614) 466-0435  
                                  (614) 995-5535 (fax)  
                                  [jill.henry@puc.state.oh.us](mailto:jill.henry@puc.state.oh.us)

City:                         City of Medina  
                                  Patrick Patton  
                                  City Engineer  
                                  132 North Elmwood Ave.  
                                  P.O. Box 703  
                                  Medina, Ohio 44258-0703  
                                  330-725-8861  
                                  330-722-9045 (fax)  
                                  [ppatton@medinaoh.org](mailto:ppatton@medinaoh.org)

## Article VI. TERMINATION

This Subsidy Stipulation shall terminate at the end of the present biennium, June 30, 2015. If construction covered under this Subsidy Stipulation is not completed by that date, it is the expressed intention of the parties to renew this Subsidy Stipulation on each successive biennium period until such time as all work contemplated under this Subsidy Stipulation has been satisfactorily completed. If it appears to the PUCO that the Railroad, or the LHA have failed to perform satisfactorily any requirements of this Subsidy Stipulation, or if the Railroad, or the LHA are in violation of any provision of this Subsidy Stipulation, or upon just cause, the PUCO may:

- A. Terminate the Subsidy Stipulation after providing the Railroad or the LHA with written notice, in accordance with the notice provisions of this Subsidy Stipulation, of its failure to perform satisfactorily any requirement of this Subsidy Stipulation (the "Notice"), which shall provide the Railroad, or the LHA with a thirty (30) day period to cure any and all defaults under this Subsidy Stipulation; or
- B. Immediately terminate the Subsidy Stipulation. During the thirty (30) day cure period, the PUCO, the Railroad, or the LHA shall incur only those obligations or expenditures that are necessary to enable the Railroad or the LHA to achieve compliance as, set forth in the Notice. If it is determined that the Railroad or the LHA cannot cure its default, the Railroad shall immediately cease work under this Subsidy Stipulation, take all necessary or appropriate steps to limit disbursements and minimize cost, and the Railroad shall provide a report, as of the date of receipt of the Notice, setting forth the status of the work completed, the cost of the work completed and such other information as the PUCO shall deem pertinent.

## Article VII. REPRESENTATIONS AND WARRANTIES

- A. RAILROAD: The Railroad represents and warrants the following:
  - (1) The Railroad has the power and authority to enter into this Subsidy Stipulation; and
  - (2) The Railroad has the authority to carry out its obligations under this Subsidy Stipulation; and
  - (3) No personnel of the Railroad, any subcontractor of the Railroad, public official, employee or member of the governing body of the particular locality where this Subsidy Stipulation shall be completed, who exercises any functions or responsibilities in connection with the review or approval of the work completed under this Subsidy Stipulation, shall prior to the completion of said work, voluntarily or involuntarily acquire any personal monetary interest, direct or indirect, which is incompatible or in conflict

with the discharge or fulfillment of his functions or responsibilities with respect to the completion of the work contemplated under this Subsidy Stipulation. Any person, who, prior to or after the execution of this Subsidy Stipulation, acquires any personal monetary interest, involuntarily or voluntarily, shall immediately disclose his interest to the PUCO in writing. Thereafter, such person shall not participate in any action affecting the work contemplated under this Subsidy Stipulation unless the PUCO determines that, in light of the personal monetary interest disclosed his participation in any such action would not be contrary to the public interest.

- B. PUCO: PUCO represents and warrants that they have the power and authority to enter into this Subsidy Stipulation and to carry out their obligations pursuant to the terms of this Subsidy Stipulation.
- C. LHA represents and warrants that it is authorized to enter into this Stipulation and to carry out its obligations as delineated herein.

### **Article VIII. RECORD KEEPING**

During performance of this Subsidy Stipulation and for a period of three years after its completion, the Railroad shall maintain auditable records of all work performed under and charges pertaining to this Stipulation and shall make such records available to the PUCO as the PUCO may reasonably require.

### **Article IX. RIGHTS TO DATA**

The PUCO shall have unrestricted authority to reproduce, distribute and use (in whole or in part) any reports, data or materials prepared by the Railroad pursuant to this Stipulation.

### **Article X. FALSIFICATION OF INFORMATION**

The Railroad and the LHA affirmatively covenant that neither has made any false statements to the PUCO in the process of obtaining this grant of funds. If the Railroad and/or the LHA has/have knowingly made a false statement, the Railroad and the LHA shall be required to return all funds immediately pursuant to ORC§ 9.66(C) (2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to ORC§ 9.66(C) (1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to ORC§2921.13(D)(1), which is punishable by a fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

## **Article XI. EQUAL EMPLOYMENT OPPORTUNITY**

In performing this Subsidy Stipulation, the Railroad shall not discriminate against any employee, applicant for employment, or other person because of race, color, religion, gender, national origin (ancestry), military status (past, present or future), disability, age (40 years of age or older), genetic information, or sexual orientation. The Railroad will ensure that applicants are hired and that employees are treated during employment without regard to their race, color, religion, gender, national origin (ancestry), military status (past, present or future), disability, age (40 years of age or older), genetic information, or sexual orientation. The Railroad shall incorporate the foregoing requirements of this paragraph in all of its contracts for any of the work prescribed herein (other than subcontracts for standard commercial supplies or raw materials) and will require all of its subcontractors for any part of such work to incorporate such requirements in all such subcontracts.

## **Article XII. DRUG FREE WORKPLACE**

For any work under this Subsidy Stipulation that is performed on government property, the Railroad shall enforce its policy that its employees, while engaged in such work, shall not purchase, transfer, and use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

## **Article XIII. HOLD HARMLESS PROVISION**

The Railroad covenants and agrees to indemnify and hold the LHA, the PUCO and their agents and employees harmless from and against any loss, claim, cause of action, damages, liability (including, without limitation, strict or absolute liability in tort or by statute imposed), charge, cost or expense (including, without limitation, counsel fees to the extent permitted by law), predicated on personal injury or death, or loss of or damage to property, and arising from any work performed pursuant to this Subsidy Stipulation and caused by the Railroad's negligent, intentional, willful or wanton actions or inactions, or such actions or omissions by any subcontractors that may be hired by the Railroad under this Subsidy Stipulation. In case any action involving any work covered by this Subsidy Stipulation is brought by or against any party or parties, said party or parties shall promptly notify the other party or parties of such action.

## **Article XIV. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS**

The signatory parties agree to comply with all federal, state and local laws, rules, regulations, and auditing standards, which are applicable to their performance under this Stipulation.

**Article XV. BUY OHIO/BUY AMERICAN PROVISIONS; OFFSHORE  
OUTSOURCING PROVISION:**

The Railroad shall use its best efforts to purchase goods from other companies doing business in the State of Ohio, for the purpose of performing work under this Subsidy Stipulation. Further, in the performance of the work contemplated under this Subsidy Stipulation, the Railroad and all contractors, subcontractors, material men, or suppliers, shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States. The Railroad affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Subsidy Stipulation. Notwithstanding any other terms of this Subsidy Stipulation, the PUCO reserve the right to recover any funds paid for services the Railroad performs outside the United States for which it did not receive a waiver from the Director of the Ohio Department of Administrative Services.

**Article XVI. ENTIRETY OF AGREEMENT**

This Subsidy Stipulation and its exhibits and any documents referred to herein constitute the entire agreement of the parties and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof. This Subsidy Stipulation shall not be modified, amended, or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties. A waiver by any party of any breach or default by the other party shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

**Article XVII. CAMPAIGN CONTRIBUTIONS**

The Railroad hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of ORC§ 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of ORC§ 3517.13.

**Article XVIII. AMENDMENTS OR MODIFICATIONS**

Neither this Subsidy Stipulation, nor any rights, duties, nor obligations hereunder, may be assigned or transferred, in whole or in part, by any signatory party, without the written consent of the PUCO.

## Article XIX. DEBARMENT

The Railroad represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either ORC§'s 153.02 or 125.25. If this representation and warranty is found to be false, this Subsidy Stipulation is void *ab initio* and the Railroad shall immediately repay to the PUCO any funds paid under this Subsidy Stipulation.

## Article XX. HEADINGS

Section headings contained in this Subsidy Stipulation are inserted for convenience only and shall not be deemed a part of this Subsidy Stipulation.

## Article XXI. GOVERNING LAW

This Subsidy Stipulation shall be governed by the laws of the state of Ohio as to all matters, including but not limited to matters of validity, construction, effect and performance.

## Article XXII. PARTIAL INVALIDITY

A judicial or administrative finding, order, or decision that any part of this Subsidy Stipulation is illegal or invalid shall not invalidate the remainder of the Subsidy Stipulation.

**Article XXIII. DUPLICATE COUNTERPARTS**

This Subsidy Stipulation may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which taken together shall be deemed to constitute a single agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Subsidy Stipulation to be executed as of the date and year set forth below.

**On behalf of the City of Medina, Medina  
County, Ohio:**

By: \_\_\_\_\_

\_\_\_\_\_  
[Print Name]

Title: \_\_\_\_\_

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

**On behalf of the Public Utilities  
Commission of Ohio :**

By: \_\_\_\_\_

\_\_\_\_\_  
Milan Orbovich

Title: Director of Transportation

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

**On behalf of Wheeling & Lake Erie  
Railroad:**

By: \_\_\_\_\_

\_\_\_\_\_  
[Print Name]

Title: \_\_\_\_\_

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

**ORDINANCE NO. 21-14**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE PUBLIC UTILITIES COMMISSION OF OHIO (PUCO) FOR THE INSTALLATION OF GATES AND FLASHERS AT THE CITY'S STATE ROAD RAILROAD CROSSING.**

**WHEREAS:** In November, 2013 the PUCO completed a diagnostic review of the City owned rail crossing on State Road. In December, 2013 the PUCO notified the City that their review was complete and it was determined that flashing lights and gates were warranted at this crossing.

**NOW, THEREFORE 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 the Public Utilities Commission of Ohio (PUCO) for the installation of gates and flashers at the City's State Road railroad crossing.

**SEC. 2:** That a copy of the Agreement is marked Exhibit A, attached hereto, and incorporated herein.

**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 in full force and effect at the earliest period allowed by law.

**PASSED:** \_\_\_\_\_

**SIGNED:** \_\_\_\_\_  
President of Council

**ATTEST:** \_\_\_\_\_  
Clerk of Council

**APPROVED:** \_\_\_\_\_

**SIGNED:** \_\_\_\_\_  
Mayor

971  
Ord. 2-14  
Exh. A.

IN THE MATTER OF THE REQUEST FOR  
A MASTER AGREEMENT FOR MODIFICATION  
OF WARNING DEVICES WITH THE CITY OF MEDINA  
(RAILROAD) IN THE STATE OF OHIO

AGREEMENT NO. 251

### AGREEMENT

THIS AGREEMENT is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by and among the Ohio Rail Development Commission and the Public Utilities Commission of Ohio (hereinafter collectively referred to as the "STATE"), and the City of Medina ("RAILROAD"),

#### WITNESSETH:

WHEREAS, the Public Utilities Commission of Ohio (PUCO) has statutory authority to regulate and promote the welfare and safety of railroad employees and the traveling public pursuant to Ohio Revised Code ("ORC") §4905.04; and

WHEREAS, the Ohio Rail Development Commission (ORDC) is charged with the statutory authority under ORC §4981.03 to develop, promote, and support safe, adequate, and efficient rail service throughout the State of Ohio; and

WHEREAS, ORC §4907.471 requires the PUCO to survey all public highway-railroad grade crossings in the State of Ohio to determine the probability of crashes at each grade crossing, and to systematically provide for the modification of railroad warning devices (hereinafter referred to as "PROJECTS"); and

WHEREAS, the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) and subsequent amendments thereto provide funding for the cost of installing warning devices to eliminate hazards at public grade crossings, which funding is administered jointly by the PUCO and ORDC pursuant to ORC §4907.476; and

WHEREAS, the parties hereto propose to facilitate the modifications identified in this AGREEMENT in accordance with the Title 23 Code of Federal Regulations ("CFR") and applicable provisions of Title 23 of the United States Code pursuant to the terms hereof; and

WHEREAS, this agreement and any information or documentation relating thereto is for the purpose of identifying, evaluating, and/or planning the safety enhancement of railway-highway crossings which may be implemented utilizing Federal-aid highway funds; and

WHEREAS, the RAILROAD agrees to cooperate with the STATE in the implementation of PROJECTS in furtherance of the public safety; and

WHEREAS the STATE and RAILROAD will execute this AGREEMENT to specify details for the modification of warning devices at each designated grade crossing; and

WHEREAS, it is desired by the parties hereto to accomplish PROJECTS at highway-railroad grade crossing(s) and to determine and agree upon the manner of performing all such work necessary and incidental thereto, the respective responsibilities of said parties, and the proportion of the costs and expenses to be paid by each of the parties and the mode and time of payment.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

I. GENERAL REQUIREMENTS

The work and the construction to be performed under this AGREEMENT, including the preparation of plans, specifications and estimates and the purchase of materials shall be undertaken by the RAILROAD in accordance with plans and specifications which meet 23 CFR, the standards approved by the American Railway Engineering and Maintenance of Way and RAILROAD standards.

Identification of highway-rail grade crossings to be modified under this AGREEMENT, type of modification to be performed, and the proportion of the costs and expenses to be paid by each of the parties will be accomplished by means of a Letter Agreement ("LA") (sample form which is attached hereto as EXHIBIT A as if fully rewritten herein).

The LA and the approved plans shall constitute the scope of the project.

The RAILROAD shall be responsible for general engineering supervision of the PROJECT under the terms of this AGREEMENT, and shall prepare or cause to be prepared and submit to the STATE, for STATE and/or federal approval, complete plans, specifications and estimates for said PROJECT. Plans shall clearly show the existing facilities as well as the existing right of way, proposed right of way and centerline. The RAILROAD shall furnish such engineering services as may be necessary to install the PROJECT, subject to review and approval by the STATE.

The RAILROAD shall complete the preparation of plans within ninety (90) days or other time frame directed by the ORDC or PUCO in the PE authorization, and the installation of the PROJECT shall be completed within nine (9) months or other time frame specified by the ORDC or PUCO in the construction authorization. The RAILROAD shall be responsible for payment

in a timely manner of all bills for supplies, materials, equipment, labor and other costs incurred to complete the PROJECT, and shall not permit liens or any other type of encumbrance to be placed upon all or any portion of the PROJECT installed pursuant to this AGREEMENT. The STATE, through its authorized agents, shall have the right to inspect the crossing site prior to performance of any PROJECT work and at any stage during the installation of PROJECT at grade crossing(s).

In the event conditions or circumstances require a change in scope of the RAILROAD's work on the PROJECT as set forth in the approved plan(s) and estimate(s) the changes must be made in writing and approved by ORDC or PUCO. Should the RAILROAD request a change in the scope of work, the RAILROAD's work shall accommodate the time necessary for STATE to process the change request.

After completion of the PROJECT, the RAILROAD shall operate, maintain and renew, at its sole expense, all PROJECTS and other of its facilities constructed or changed under the terms of this AGREEMENT in good operating order. Nothing stated herein shall deny the RAILROAD the right to seek reimbursement of the costs for the maintenance and renewal of the PROJECTS and other of its facilities constructed or changed under the terms of this AGREEMENT, if such reimbursement is then provided for by Federal Highway Administration ("FHWA") regulations and/or the ORC.

## II. COST ALLOCATION AND BILLING

The allocation of costs will be determined in the LA. The total costs for the modifications borne by the STATE shall not exceed actual cost of the modifications, approved estimate and the STATE share outlined in the LA.

RAILROAD shall notify ORDC or PUCO in writing of any changes in the scope of work which are not in the approved plans and estimates and secure approval in writing of same before the work is performed.

The costs assigned to ORDC shall be satisfied through the expenditure of Federal funds administered by ORDC and subject to approval by the FHWA. In the event that delays or difficulties arise in securing necessary Federal approvals which, in the opinion of ORDC, render it impracticable to utilize Federal funds for the construction of this PROJECT, then at any time before RAILROAD is authorized to purchase or furnish the items included under this AGREEMENT, ORDC may serve formal notice of cancellation upon RAILROAD, and this AGREEMENT shall become null and void. ORDC shall reimburse RAILROAD for all eligible costs incurred on account of the modifications prior to such cancellation, including costs associated with authorized preliminary engineering for the PROJECT.

All plans, specifications, estimates of costs, acceptance of work, and procedures in general, to facilitate the construction of the safety modifications described above, shall conform in all

respects to applicable Federal laws, rules, regulations, orders, and approvals applicable to Federal-Aid PROJECTs. ORDC shall reimburse RAILROAD in accordance with 23 CFR 140, Subpart I. and 23 CFR, Part 646, Subpart B or any subsequent amendments thereto, in such amounts and form as are proper and eligible for payment from Federal-Aid highway funds. RAILROAD shall render its billings to ORDC in accordance with said rules and regulations, and RAILROAD shall also provide and furnish such itemized records of and substantiating data for such costs as may be required.

RAILROAD shall be responsible for initially paying all of ITS actual costs to install the modifications. RAILROAD may bill STATE no more frequently than monthly for its costs when PROJECT costs incurred during the billing period exceed \$1,000.00. RAILROAD shall submit two (2) copies of its bill and in accordance with said rules and regulations as they have been issued or as thereafter may be supplemented or revised. A final bill covering actual cost and showing details shall be submitted to ORDC within one hundred and eighty (180) days after completion of the modifications. STATE shall pay all bills within sixty (60) days after receipt thereof, except that STATE may hold a retainer on all bills not to exceed eight percent (8%) until final payment. Final payment for all amounts due RAILROAD shall be made by STATE within sixty (60) days after a final audit has been performed and approved by ORDC. The audit shall occur within 180 days of submission of RAILROAD's final bill. RAILROAD agrees to cooperate and assist, as requested, in any such audit.

### III. RECORDS RETENTION AND AUDIT

RAILROAD agrees that STATE, or its duly authorized representatives, shall, during STATE normal business hours, upon reasonable notice, in accordance with RAILROAD safety rules and regulations, and accompanied by RAILROAD personnel, be permitted to examine the records and data maintained by RAILROAD related to this AGREEMENT as may be necessary to monitor RAILROAD's compliance with this AGREEMENT.

RAILROAD shall maintain all books, documents, papers, program agreements, accounting records, and other evidence pertaining to this AGREEMENT, its revenues and expenditures, and shall provide such information upon request of STATE or its designee and shall permit STATE to examine and audit those books, records, and the accounting procedures and practices of the RAILROAD relevant to this AGREEMENT. All documents and information shall be made available for review and audit at a mutually-agreeable location within the state of Ohio. The records shall be retained for three years after receipt of final payment to the RAILROAD from the STATE.

To the extent possible under applicable law, all aspects of STATES's exercise of audit rights and the results thereof, and any and all information disclosed by RAILROAD to the STATE under this AGREEMENT, shall be held confidential, and shall not be disclosed without RAILROAD's prior written consent. Nothing in this AGREEMENT shall be construed to restrict the STATE 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.

RAILROAD will comply with the requirements of the ODOT Railroad Audit Circulars, available at:

<http://www.dot.state.oh.us/Divisions/Finance/Auditing/Pages/RailUtilities.aspx.aspx>

#### IV. NOTIFICATION

All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by facsimile and confirmed by telephone or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

If to RAILROAD: City of Medina  
Patrick Patton, Engineer  
132 N Elmwood  
Medina, Oh 44256

If to PUCO: Public Utilities Commission of Ohio  
Railroad Division  
180 East Broad Street, 4<sup>th</sup> Floor  
Columbus, Ohio 43215-3793

If to ORDC: Ohio Rail Development Commission  
1980 West Broad Street, 2<sup>nd</sup> Floor  
Columbus, Ohio 43223

RAILROAD shall furnish notification to STATE at least five (5) working days prior to the date work is scheduled to start at the PROJECT site of the modifications so arrangements can be made for inspection. RAILROAD shall also notify STATE of any stoppage and resumption of the work activity, and the reasons therefore, and the date the PROJECT work on the modifications was completed.

RAILROAD shall furnish written notification to the Local Highway Authority at least fourteen (14) working days prior to starting any work requiring the establishment of a detour for highway traffic.

## V. TERMINATION

Said AGREEMENT shall terminate at the end of the present US Transportation Bill. If construction under this AGREEMENT is not completed by that date, it is the express intention of the parties to renew this AGREEMENT on each successive biennium period until such time as all work contemplated under this AGREEMENT has been satisfactorily completed. If it appears to ORDC or PUCO that RAILROAD has failed to perform satisfactorily any requirements of this AGREEMENT, or if RAILROAD is in violation of any provision of this AGREEMENT, or upon just cause, ORDC or PUCO may terminate the AGREEMENT after providing RAILROAD with written notice, in accordance with the notice provisions of this AGREEMENT, of its failure to perform satisfactorily any requirement of this AGREEMENT (the "Notice"), which shall provide RAILROAD with a thirty (30) day period to cure any and all defaults under this AGREEMENT.

During the thirty (30) day cure period, RAILROAD shall incur only those obligations or expenditures which are necessary to enable RAILROAD to achieve compliance as set forth in the Notice. If it is determined that RAILROAD cannot cure its default, RAILROAD shall immediately cease work under this AGREEMENT, take all necessary or appropriate steps to limit disbursements and minimize costs, and provide a report, as of the date of receipt of the Notice, setting forth the status of the work completed, the cost of the work completed and such other information as STATE shall deem pertinent.

If this AGREEMENT is terminated for breach or failure to satisfactorily perform, the breaching party shall reimburse the non-breaching party any of its costs not reimbursed by the STATE.

It is expressly understood by the parties that none of the rights, duties, and obligations described in this AGREEMENT shall be binding on any party until all statutory provisions of the ORC, including but not limited to ORC § 126.07 and 126.08 have been complied with, and until such time that all necessary funds are made available and forthcoming from the appropriate state agency and such expenditure of funds is approved, if necessary, by the Controlling Board of the State of Ohio pursuant to ORC §127.16, or in the event that federal funds are used, until such time that the ORDC gives RAILROAD written notice that such funds have been made available to the ORDC by the ORDC's funding source.

## VI. REPRESENTATIONS AND WARRANTIES

A. RAILROAD: RAILROAD for itself, represents and warrants the following:

- (1) RAILROAD has the power and authority to enter into this AGREEMENT;
- (2) RAILROAD has the authority to carry out its obligations under this AGREEMENT; and

(3) No personnel of RAILROAD, any subcontractor of RAILROAD, public official, employee or member of the governing body of the particular locality where this AGREEMENT shall be completed, who exercises any functions or responsibilities in connection with the review or approval of the work completed under this AGREEMENT, shall prior to the completion of said work, voluntarily or involuntarily acquire any personal monetary interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his functions or responsibilities with respect to the completion of the work contemplated under this AGREEMENT. Any person who, prior to or after the execution of this AGREEMENT, acquires any personal monetary interest, involuntarily or voluntarily, shall immediately disclose his interest to STATE in writing. Thereafter, such person shall not participate in any action affecting the work under this AGREEMENT unless the STATE determines that, in light of the personal monetary interest disclosed, his participation in any such action would not be contrary to the public interest.

B. ORDC/PUCO: ORDC and the PUCO represent and warrant that they have the power and authority to enter into this AGREEMENT and to carry out their obligations under this AGREEMENT.

#### VII. OHIO ETHICS LAW REQUIREMENTS

RAILROAD affirms that it is not in violation of ORC §102.04, as that section is applicable to this AGREEMENT and RAILROAD.

#### VIII. FALSIFICATION OF INFORMATION

RAILROAD affirmatively covenants that it has not made any false statements to STATE in the process of obtaining this grant of funds. If RAILROAD has knowingly made a false statement to STATE to obtain this grant of funds, the RAILROAD shall be required to return all funds immediately pursuant to ORC §9.66(C) (2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to ORC §9.66(C) (1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to ORC §2921.13(D)(1), which is punishable by a fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

#### IX. EQUAL EMPLOYMENT OPPORTUNITY

In performing this AGREEMENT, the RAILROAD shall not discriminate against any employee, applicant for employment, or other person because of race, color, religion, gender, national origin (ancestry), military status (past, present or future), disability, age (forty (40) years of age or older), genetic information, or sexual orientation. The RAILROAD will ensure that applicants are hired and that employees are treated during employment without regard to their

race, color, religion, gender, national origin (ancestry), military status (past, present or future), disability, age (forty (40) years of age or older), genetic information, or sexual orientation. The RAILROAD shall incorporate the foregoing requirements of this paragraph in all of its contracts for any of the work prescribed herein (other than subcontracts for standard commercial supplies or raw materials) and will require all of its subcontractors for any part of such work to incorporate such requirements in all such subcontracts.

X. OHIO ELECTIONS LAW

RAILROAD represents that its participation in this AGREEMENT does not violate ORC §3517.13.

XI. DRUG FREE WORKPLACE

In the event that work performed pursuant to the terms of this AGREEMENT will be done while on state property, RAILROAD hereby certifies that its rules require all of its employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

XII. HOLD HARMLESS PROVISION

RAILROAD covenants and agrees to indemnify and hold the STATE and its agents and employees harmless from and against any loss, claim, cause of action, damages, liability (including, without limitation, strict or absolute liability in tort or by statute imposed), charge, cost or expense (including, without limitation, counsel fees to the extent permitted by law), predicated on personal injury or death, or loss of or damage to property, and arising from any work performed pursuant to this AGREEMENT and caused by RAILROAD's negligent, intentional, willful or wanton actions or inactions, or such actions or omissions by any subcontractors that may be hired by RAILROAD under this AGREEMENT.

In case any action involving any work covered by this AGREEMENT is brought by or against any party or parties, said party or parties shall promptly notify the other party or parties of such action.

XIII. UNUSUAL CIRCUMSTANCES AFFECTING PERFORMANCE

In the event that RAILROAD cannot meet any or all of the obligations placed upon it by the terms of this AGREEMENT, (1) RAILROAD shall immediately notify STATE in writing, and (2) STATE may, at its sole discretion, make reasonable efforts to assist RAILROAD in meeting its obligations under the AGREEMENT.

If RAILROAD is unable to complete the PROJECT within the time period set forth in the Order issued by the PUCO, RAILROAD must request an extension of time to complete the PROJECT. All such requests must be submitted to the PUCO in accordance with PUCO guidelines.

#### XIV. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS

RAILROAD agrees to comply with all applicable federal, state, and local laws in the conduct of the work hereunder. To the extent applicable, RAILROAD accepts full responsibility for payments of all unemployment compensation, insurance premiums, workers' compensation premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by RAILROAD on the performance of the work authorized by this AGREEMENT.

#### XV. DISPUTE RESOLUTION

In the event the RAILROAD desires clarification or explanation of, or disagrees with, any matter concerning the AGREEMENT, or the interpretation or application of any and all federal or state statutes, rules, regulations, laws or ordinances, the matter must be submitted in writing to the STATE. If the dispute cannot be resolved, and the RAILROAD has failed to comply materially with the terms and conditions of this AGREEMENT, then procedures for suspension and/or termination may be instituted as provided for under this AGREEMENT, or this matter may be submitted to a court of competent jurisdiction for final determination.

#### XVI. NO WAIVER

No delay or omission to exercise any right or option accruing to the STATE upon any breach by RAILROAD shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed necessary by STATE. Further, if any term, provision, covenant or condition contained in this AGREEMENT is breached by either party and thereafter such breach is waived in writing by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

#### XVII. CONSTRUCTION

This AGREEMENT shall be governed by the laws of the State of Ohio as to all matters, including but not limited to, matters of validity, construction, effect and performance.

#### XVIII. PRIMARY ROLES AND RESPONSIBILITIES

The document, "Railroad Construction Contract Administration for Federally Funded Projects, Primary Roles and Responsibilities" is incorporated by reference as if included in this AGREEMENT in its entirety.

XIX. BUY AMERICA

RAILROAD shall furnish steel and iron products that are made in the United States according to the applicable provisions of Federal regulations stated in 23 CFR 635.410 and State of Ohio laws, and ORC §s 153.011 and 5525.21, and State of Ohio Department of Transportation Construction and Material Specifications, 109.09.

The RAILROAD affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this AGREEMENT. Notwithstanding any other terms of this AGREEMENT, the STATE reserves the right to recover any funds paid for services the RAILROAD performs outside the United States for which it did not receive a waiver from the Director of the Ohio Department of Administrative Services.

XX. FORUM AND VENUE

All actions brought against the STATE regarding this AGREEMENT shall be forumed and venued in a court of competent subject matter jurisdiction in Franklin County, Ohio.

XXI. SEVERABILITY

Whenever possible, each provision of this AGREEMENT shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this AGREEMENT is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this AGREEMENT.

XXII. ENTIRE AGREEMENT

This AGREEMENT and its exhibits and any documents referred to herein constitute the complete understanding of the parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.

XXIII. DUPLICATE COUNTERPARTS

This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which taken together shall be deemed to constitute a single AGREEMENT.

XXIV. CAPTIONS

The captions in this AGREEMENT are for the convenience of reference only and in no way define, limit or describe the scope or intent of this AGREEMENT or any part hereof and shall not be considered in any construction hereof.

XXV. AMENDMENTS OR MODIFICATIONS

Any party may at any time during the term of this AGREEMENT request amendment or modification. Requests for amendment or modification of this AGREEMENT shall be in writing to the other parties and shall specify the requested changes and the justification for such changes. All parties shall then review the request for modification. Should the parties all agree to modification of the AGREEMENT, then an amendment shall be drawn, approved, and executed in the same manner as this AGREEMENT.

Any revisions to this AGREEMENT shall be made in writing and agreed upon by all parties.

XXIV. SUCCESSORS OR ASSIGNS

This AGREEMENT shall be binding upon the successors and assigns of the RAILROAD. It is understood that this AGREEMENT, and any subsequent amendments thereto, shall apply to crossings owned by the RAILROAD that may, in the future, become subject to the PROJECT and therefore qualify for modifications as described above.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed as of the date and year set forth below.

CITY OF MEDINA

PUBLIC UTILITIES COMMISSION OF OHIO

By \_\_\_\_\_

By \_\_\_\_\_

Print Name \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

OHIO RAIL DEVELOPMENT COMMISSION

By \_\_\_\_\_  
Matthew R. Dietrich, Executive Director

Date \_\_\_\_\_

APPROVED AS TO FORM WITH REGARD  
TO OHIO RAIL DEVELOPMENT  
COMMISSION ONLY:

\_\_\_\_\_  
Assistant Attorney General Alan H. Klodell

Date \_\_\_\_\_

Master Agreement State of Ohio and City of Medina