

FILE

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2016 MAR -1 PM 3: 56

PUCO

Public Utilities  
Commission of Ohio

27

# Memo

**To:** Docketing Division  
**From:** George Martin, Grade Crossing Planner, Rail Division  
**Re:** In the matter of the authorization of City of Medina to install an active grade crossing warning device at State Road, DOT # 141893W  
**Date:** March 1, 2016

The Ohio Rail Development Commission (ORDC) has authorized funding for the City of Medina (City) to install mast-mounted flashing lights and roadway gates at its crossing located in Medina County, City of Medina, State Rd, DOT# 141893W. The City owns a 3.7 mile long segment of track that includes seven at-grade crossings, 2 railroad bridges, and rail signal equipment. The Wheeling & Lake Erie Railway operates over the line.

On February 10, 2014, the City entered into an Agreement (attached) with ORDC and Commission staff for the grade crossing project.

The project will be paid for with federal funds, and is actual cost. As the plan and estimate in the amount of \$201,650.00 for the project has been submitted and approved, staff requests a Finding & Order with completion due in nine months. Construction may commence at once. Staff requests that the following language be incorporated in the Entry:

**It is expected that all work necessary for FHWA acceptance of the warning devices will be completed by the in-service due date and that the railroad will be responsible for this work. This work includes, but is not limited to:**  
**Any ancillary work to make the warning devices function as designed and visible to the roadway user, and**  
**MUTCD compliance, including minor roadway work if necessary.**

A suggested case coding and heading would be:

PUCO Case No. 16- 507 -RR-FED In the matter of the authorization of the City of Medina to install an active grade crossing warning device at State Road, DOT# 141893W

C: Legal Department

Please serve the following parties of record.

Ms Cathy Stout

Ohio Rail Development Commission

1980 West Broad St, Mailstop 3140

Columbus, Oh 43223

Mr Patrick Patton, PE

City Engineer

132 N Elmwood Ave

Medina, Oh 44256

Ohio Power Company

**OHIO RAIL DEVELOPMENT COMMISSION  
INTER-OFFICE COMMUNICATION**

**TO:** George Martin, Rail Division, PUCO  
**FROM:** Cathy Stout, Manager, Safety Section, ORDC  
**BY:** Joe Reinhardt, Project Manager, ORDC  
**SUBJECT:** Medina County, State Road, DOT 141893W  
City of Medina, PID 97297  
**DATE:** February 22, 2016

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The Public Utilities Commission of Ohio (PUCO) established a diagnostic survey at the subject location on State Road. The Ohio Rail Development Commission (ORDC) attended the review. The Diagnostic Team recommended the improvement of warning devices to flashing lights and roadway gates. Copies of the diagnostic review form and the plan and estimate are attached.

PE has already been provided by the railroad. ORDC approves the site plans and estimates as provided. Please issue a construction-only order for the project outlined above. This construction authorization is made with the stipulation and understanding that any field work needs prior approval before the work begins. This authorization is made with the stipulation and understanding that an approved estimate may contain entries for items or activities that may be cited and found to be ineligible for federal participation during the project audit.

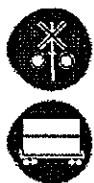
It is expected that all work necessary for FHWA acceptance of the warning devices will be completed by the in-service due date and that the railroad will be responsible for this work. This work includes, but is not limited to:

- any ancillary work to make warning devices function as designed and visible to the roadway user, and
- MUTCD compliance – including minor roadway work if necessary.

Thank you for your assistance with these matters.

Attachment: Diagnostic Review  
Plan & Estimate

c: George Martin, PUCO  
ORDC Project Manager (file)



# OHIO RAIL DEVELOPMENT COMMISSION

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

John R. Kasich, Governor • James G. Bradley, Chairman

February 22, 2016

Mr. Patrick Patton, PE  
City Engineer, City of Medina  
132 N. Elmwood Avenue  
Medina, Ohio 44256

RE: Medina County, State Road  
DOT 141893W, PID 97297

Dear Mr. Patton:

The bid process for the referenced project has been reviewed and is acceptable. CR Construction Company may proceed with the construction of the City of Medina Project Number 971.. This authorization is made with the stipulation and understanding that the approved estimate may contain entries for items or activities that may be cited and found to be ineligible for federal participation during the project audit. Reimbursement of eligible actual cost is limited to \$201,650.00. Additional costs must be approved in writing by the Ohio Rail Development Commission (ORDC) prior to being incurred. Emergency verbal authorizations by ORDC may be permitted but must be confirmed in writing within five (5) business days of the verbal approval.

This authorization is contingent upon CITY accepting the following instructions:

1. City's project foreman will furnish written notification five (5) working days prior to the date work will start at the project site to Joe Reinhardt, ORDC, email [Joe.Reinhardt@dot.state.oh.us](mailto:Joe.Reinhardt@dot.state.oh.us) and to the Public Utilities Commission of Ohio, email [George.martin@puc.state.oh.us](mailto:George.martin@puc.state.oh.us) project foreman will also notify the same of any stops and re-starts of the work activity and of the date work was completed for the project.
2. City will arrange for utilities to be located at the project site by the Ohio Utilities Protection Service (OUPS) prior to any construction activities at the site. Utilities that are not participating members of the service must be contacted directly by City.
3. City's project foremen will notify Joe Reinhardt at 614.580.7728 of any changes in the scope of work, cost overruns, material changes, etc. which are not included in the approved plan and estimate and secure approval of same before the work is performed.
4. City will furnish two (2) copies of each partial bill to ORDC. Please find the enclosed Purchase Order to reference when billing.



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

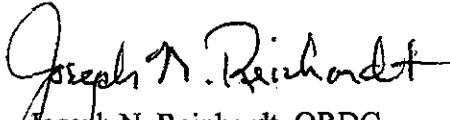
phone: 614.644.0306

IMPROVING RAIL TODAY FOR TOMORROW'S ECONOMY

5. City will furnish two (2) copies of the final all-inclusive bill to ORDC stating the exact dates of starting and completing work, the initial and final dates of construction and location where the accounts may be audited.

Thank you for your assistance with these matters.

Sincerely,

  
Joseph N. Reinhardt, ORDC  
Project Manager

C: George Martin, PUCO, Grade Crossing Planner  
ORDC (file)

440 FT  
30 SEC @ 10 MPH

FOR FOR

440 FT  
30 SEC @ 10 MPH

TO OSBORNE STONE

TO W LIBERTY

CASE 35 FT FROM ROAD  
25 FT FROM RAIL

AC POLE

CASE

S2

10 FT

24 FT

8 FT

40 FT

10 FT

10 FT

10 FT

10 FT

10 FT

10 FT

10 FT

10 FT

10 FT

10 FT

10 FT

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10 FT

10 FT

10 FT

10 FT

10 FT

10 FT

10 FT

10 FT

10 FT

10 FT

10 FT

10 FT

10 FT

REPLACE 200 TIES IN BURIED AREA  
TRACK NEEDS DUG OUT

100 FT

300 FT

3T

100 FT RR ROW

100 FT

100 FT

100 FT

100 FT

100 FT

100 FT

1T

TTN

TTB

2TN

2TB

2T

2T

2T

2T

2T

2T

2T

2T

2T

2T

2T

2T

2T

2T

MAKING FRENCH DRAIN  
DUG OUT BURIED TRACK 30 FT WIDE  
15 FT EACH SIDE OF CENTERLINE 18 IN DEEP  
FILL WITH BALLAST TO RAIL HEIGHT  
THIS IS FOR DRAINAGE AND FRONT LOADER TO  
BE ABLE MOVE RAIL CARS

STATE ST

8'-3" minimum

NOTE  
TIME OUT 3T DUE TO SPOTTING CARS ON CIRCUIT

15' MIN (50' PREPARED)  
LOCATED 10' MIN (25' 0' PREPARED)  
FROM 10' MIN (25' 0' PREPARED)  
PARC

MIN LITS TIME	20 SEC
EQUIP DELAY	1 SEC
BUFFER TIME	9 SEC
TOTAL TIME	30 SEC
10 MPH FT PER SEC	14.6 FT
APPROACH DIST	440 FT

APPROVED AS TO SIGNATURE  
LABOR WITH COMMENTS  
AS NOTED.

PRELIMINARY DRAWING

6/30/14

CITY OF MEDINA	DOT 141893W
MEDINA, OHIO	
STATE ST	
SITE PLAN	
REV 6/24/14	
DWG STATE ST	DATE 3/12/14 SHEET 1 OF 9



## Diagnostic Review Team Survey

**Reason for Survey:**

(e.g. formula, accident, constituent, etc.)

Formula Pick

Date:

11-14-2013

### Location Data

Street or Road Name:		State Road	
Route/Road Number (i.e. Twp., Co., SR or US)		US DOT No.: 141893W	
County: MED	Township:	City: (In or Near)	Medina
Railroad Name: Wheeling & Lake Erie RR	Railroad Division: AK	Branch/Line Name:	OLD B&O
Nearest RR Timetable Station: Medina		RR Milepost: 33.1	

### On-Site Review Team

(Include: Name - Organization - Phone Number - Email)

1. Joe Barbers, ORDC, 614-644-0291
2. George Martin, 614-752-9107
3. Tim Allen, 330-417-5541
4. Joe Dunn, 440-213-5316
5. [Signature], 330-721-4721
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_

### Existing Traffic Control Devices

Type of Warning Devices	Installed?		Quantity/Comments
Advance Warning Signs (condition?)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	2
'Stop' Signs	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
'Stop Ahead' Signs	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Pavement Markings (condition?)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Crossbucks	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	2 w/ YIELD
Number of Tracks Signs	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Inventory Tags	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	2 Emergency
Interconnected Highway Traffic Signal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Mast-Mounted Flashing Lights	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Cantilever Flashing Lights	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Number: Length:
Side Lights	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Automatic Gates	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Number: Length:
Bells	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Number:
Sidewalk Gate Arms	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
'No Turn' Signs	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Illumination	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	ONE
Is crossing flagged by train crew?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Other	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	

Safety Data (Obtain crash reports, if possible, prior to review)		
	Initial Information (from database)	Revised
Number & dates of crashes in previous 5 years	0	
Hazard Ranking	648	Date Run: 10/23/2013

Railroad Data		
Railroad Characteristics	Initial Information (from database)	Revised
Total trains per day	8	
< 1 per day		
Day thru trains	0	
Night thru trains	0	
Daytime switching movements	8	
Nighttime switching movements	0	
Total number of tracks	1	
Number of main tracks	1	
Number of other tracks	0	
Maximum train speed	10	
Typical train speed	10	
Amtrak		

If non-gated crossing, is clearing sight distance adequate in all quadrants? (See Table 1) ☒ Yes ☐ No

If multiple tracks, can two trains occupy crossing at the same time? ☐ Yes ☒ No

Can one train block the motorists' view of another train at crossing? ☐ Yes (Explain below) ☒ No

Can one or more tracks be eliminated through the crossing? ☐ Yes ☒ No

Are there other track(s) crossing this same roadway within 100 ft of this crossing? ☒ Yes ☐ No

If yes, Crossing DOT # (if different) \_\_\_\_\_

If yes, distance \_\_\_\_\_ (take measurement between track centerlines at closest point along roadway)

Roadway Data		
Local Highway Authority: City of Medina		
Roadway Characteristics	Initial Information (from database)	Revised
Average daily traffic	9967 (2010)	
Highway paved	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Roadway Surface: <input checked="" type="checkbox"/> Blacktop <input type="checkbox"/> Gravel <input type="checkbox"/> Concrete <input type="checkbox"/> Other _____		
Roadway width: <u>18</u> ft.		
Number of highway lanes	2	
Urban or Rural	Rural	
Vehicle Speed: <u>25</u> MPH		
School Bus Operation: <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Amount _____		
Hazardous Materials Trucks: <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Amount _____		
Shoulders: <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		
Is the shoulder surfaced? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		
Is there existing guardrail along roadway in crossing vicinity? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		
Is stopping site distance adequate? (See Table 2) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If no, deficient approach(es) _____		



Quadrant <u>SE</u> Curb and Gutter: <input checked="" type="checkbox"/> Functional (Curb height = 4" or more) <input type="checkbox"/> Non-functional (Curb height = Less than 4") <input type="checkbox"/> None	Quadrant <u>NW</u> Curb and Gutter: <input checked="" type="checkbox"/> Functional (Curb height = 4" or more) <input type="checkbox"/> Non-functional (Curb height = Less than 4") <input type="checkbox"/> None
Pedestrians: <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	
Is sidewalk present? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	
Is there a nearby intersection that could cause queuing over the crossing? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes If yes, Distance _____	
Is this intersection signalized? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	
Are the signals currently interconnected with the existing crossing warning devices? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	
Is there a 'Do not Stop on Track' sign? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	
Is a roadway improvement project (e.g. widening, turn lanes, nearby new or upgraded traffic signal, sidewalk) planned at or near this location in the foreseeable future? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes If yes, Improvement type _____ Lead Agency _____ Timeline/completion _____	
Is it the consensus of the Diagnostic Review Team that this is a potential closure project? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Explain reasons: _____	
<b>Type of Development</b>	
<input checked="" type="checkbox"/> Open Space <input checked="" type="checkbox"/> Industrial <input type="checkbox"/> Residential	<input type="checkbox"/> Institutional <input type="checkbox"/> Commercial Location of nearby schools: _____
<b>Utility Information</b>	
Is commercial power available? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	
Utility Provider (Company Name) _____ Phone Number _____	
Nearest Available Power Source _____	
What other utilities are present? (add locations to sketch) <input checked="" type="checkbox"/> Gas <input checked="" type="checkbox"/> Cable <input checked="" type="checkbox"/> Telephone <input checked="" type="checkbox"/> Fiber Optic Cable <input type="checkbox"/> Petroleum <input checked="" type="checkbox"/> Water <input checked="" type="checkbox"/> Sanitary Sewer <input type="checkbox"/> Other _____	
Is(are) there potential utility conflict(s) <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unknown	
Comments: _____	

## Potential Red Flags / Project Challenges

Traffic Signal Preemption (include traffic signal intersection name and LHA with jurisdiction over traffic signal, if known):

Crossing Consolidation or Closure:

Real Estate or ROW:

Culverts / Drainage / Ballast Conditions:

Roadway and/or Sidewalks:

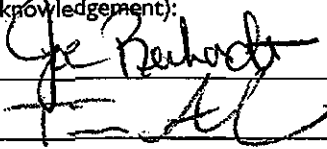
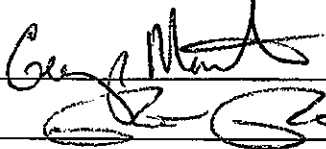
Circuitry (e.g. reaches out to other crossings, specific needs, etc.):

Environmental:

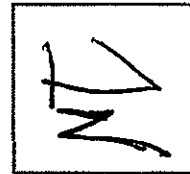
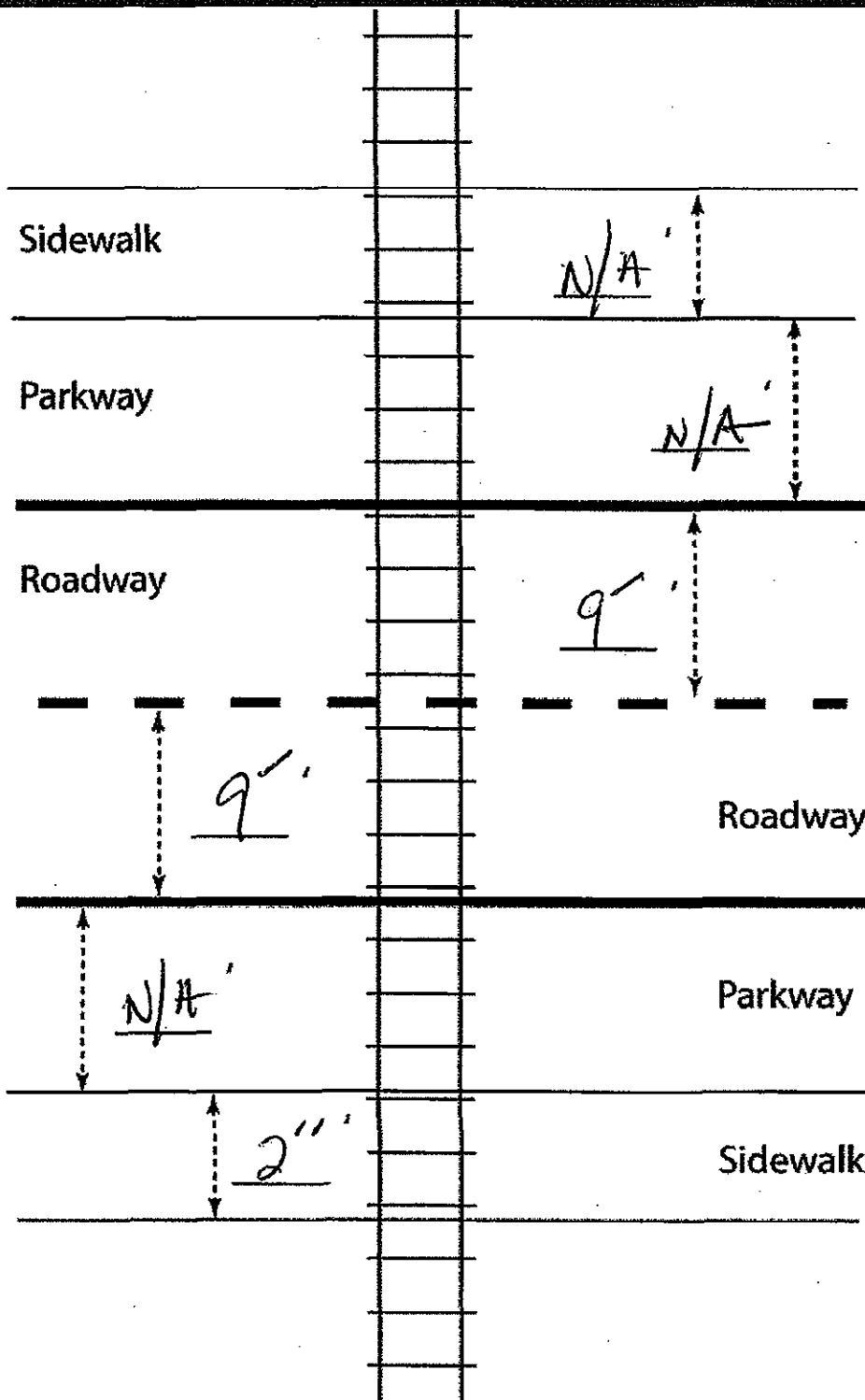
Other:

*JMR*  
*11-14-2013*

## Diagnostic Team Recommendations

	Quadrants Needed
<input checked="" type="checkbox"/> Install/upgrade active devices	
<input type="checkbox"/> Automatic Flashing Lights (AFLS)	
<input type="checkbox"/> AFLS / Cants	
<input checked="" type="checkbox"/> AFLS / Gates	
<input type="checkbox"/> AFLS / Gates / Cants	
<input checked="" type="checkbox"/> Bells / number	ONE — SE Quad
<input type="checkbox"/> Upgrade circuitry / type	
<input type="checkbox"/> Sidelights	
<input type="checkbox"/> Guardrail Needed	
<input type="checkbox"/> Install/Replace curb	
<input type="checkbox"/> Bungalow placement & offset from rail & highway	
<input type="checkbox"/> Other (define)	
Comments: The City of Medina owns this track & crossing. Design for Type C, Low Tram & Speed King.	
<input type="checkbox"/> Install/upgrade traffic signal preemption	
<input type="checkbox"/> No improvements needed	
<input type="checkbox"/> Other (define)	
Acknowledgement of Recommendations (each entity represented at the diagnostic must have at least one signature acknowledgement):  	

# Field Dimensions



Show North  
Direction

Crossing Angle ☐ 0-29° ☐ 30-59° ☒ 60-90° Measured in \_\_\_\_\_ Quadrant?

Measurements by: *[Signature]*

## Field Sketch

Include utilities as marked by OUPS and LHA; include ROW boundaries as indicated by railroad and LHA.

Crossing Angle ☐ 0-29° ☐ 30-59° ☐ 60-90° Measured in \_\_\_\_\_ Quadrant?

Sketch by: \_\_\_\_\_

TABLE 1

## Clearing Sight Distances

Maximum Authorized Train Speed	Distance (dT) Along Railroad from Crossing (ft)
1 - 10	240
15	360
20	480
25	600
30	720
35	840
40	960
45	1080
50	1200
55	1320
60	1440
65	1560
70	1680
75	1800
80	1920
85	2040
90	2160

Source: R-H Grade Crossing Handbook Table 36 (pp. 132-133)

## Notes:

All calculated distances are rounded up to the next higher 5-foot increment.

Distances indicated are for 65-ft double bottom semi-tractor trailers and level single track 90 degree crossings; and may need to be adjusted for multiple tracks, skewed crossings or approaches on grades.

Clearing Sight Distance is to be measured in each vehicle travel direction at non-gated crossings as viewed from a point 25 feet from centerline of nearest track in the center of whichever travel lane is nearest the direction along track being measured.

Table 2

## Stopping Sight Distances

Highway Vehicle Speed	Distance (dH) Along Roadway from Crossing (ft)
0	n/a
5	50
10	70
15	105
20	135
25	180
30	225
35	280
40	340
45	410
50	490
55	570
60	660
65	760
70	865

Source: R-H Grade Crossing Handbook Table 36 (pp. 132-133)

## Notes:

All calculated distances are rounded up to the next higher 5-foot increment.

Distances indicated are for 65-ft double bottom semi-tractor trailers on dry level pavements.

Stopping Sight Distance is to be measured on each roadway approach to crossing from stop bar.

*JKL*  
12-14-13

*Pat***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:** February 10, 2014

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

**ATTEST:** Kathy Patton  
Clerk of Council

**APPROVED:** February 11, 2014

**SIGNED:** Dennis Hanwell  
Mayor

IN THE MATTER OF THE REQUEST FOR  
AN 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 26 day of FEBRUARY, 2014 by and among the Ohio Rail Development Commission and the Public Utilities Commission of Ohio (hereinafter collectively referred to as the "STATE"), and 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, 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 purpose of this AGREEMENT is the following grade crossing warning device upgrade ("PROJECT"):

<u>Grade Crossing #</u>	<u>Location</u>	<u>Nature of Upgrade</u>
141893W	State Road City of Medina	Installation of Flashing Lights and Roadway Gates.

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.

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 agreed to with the ORDC or PUCO in the Preliminary engineering ("PE") authorization, and the installation of the PROJECT shall be completed within nine (9) months or other time frame agreed to with 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, the PROJECT 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 PROJECT 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 or any other federal or state statute or regulation.

## II. COST ALLOCATION AND BILLING

PE and construction costs shall be borne one hundred percent (100%) by ORDC. Reimbursable costs will be limited by the ORDC based on approved estimates and bid tabulations, if applicable. These limits will be quantified by the ORDC in its construction authorization to RAILROAD and may be amended by the ORDC based on revised estimates and bid tabulations. The total costs for the modifications borne by the ORDC shall not exceed two hundred thousand dollars and no cents (\$200,000.00).

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 electronic mail 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, Mail Stop 3140  
                         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. This requirement may be waived if agreed upon by both parties.

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. This requirement may be waived if agreed upon by both parties.

## V. TERMINATION

Said AGREEMENT shall terminate upon the expiration of MAP-21, 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. Furthermore, the parties expressly agree that the terms and conditions of this AGREEMENT shall continue to be controlling following the expiration of the then current U.S. Transportation Bill. 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.

## VI. 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.

## VII. 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.

## VIII. 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.

#### IX. OHIO ELECTIONS LAW

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

#### X. 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.

#### XI. 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.

#### XII. 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.

### XIII. 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.

### XIV. 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.

### XV. 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.

### XVI. 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.



## XVII. 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.

## XVIII. 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 §§ 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.

## XIX. 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.

## XX. 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.

## XXI. 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.

## XXII. 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.

## XXIII. 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.

## XXIV. 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.

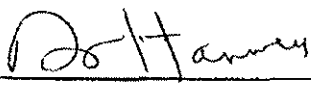
Any revisions to this AGREEMENT shall be made in writing and agreed upon by all parties.

## XXV. 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

By   
Print Name Dennis Hammer  
Title Mayor  
Date 2-26-14


PUBLIC UTILITIES COMMISSION OF OHIO

By   
Print Name Milan Cernich  
Title Transparency Director  
Date 1/10/14

OHIO RAIL DEVELOPMENT COMMISSION

By   
Matthew R. Dietrich, Executive Director  
Date 1-7-14

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

  
Assistant Attorney General Alan H. Klodell  
Date 1/8/14

MBD City of Medina, State Road, DOT# 141893W