

ORDINANCE NO. 122-22

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MEDINA, KOKOSING MATERIALS INC., OSBORNE-MEDINA AND 1000 LAKE HOLDINGS LLC, RELATIVE TO THE MAINTENANCE, REPAIR AND OPERATION OF THE MEDINA RAIL LINE, AND DECLARING AN EMERGENCY.

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

SEC. 1: That the Mayor is hereby authorized and directed to execute a Memorandum of Understanding (MOU) between the City of Medina, Kokosing Materials, Inc., Osborne-Medina and 1000 Lake Holdings LLC, relative to the maintenance, repair and operation of the Medina Rail Line.

SEC. 2: That a copy of the Memorandum of Understanding 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 considered an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason the Railroad Commission approved the new fees on April 20, 2022 and would like to implement the new fee structure for the July bill; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and signature by the Mayor.

PASSED: June 8, 2022

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: June 9, 2022

SIGNED: Dennis Hanwell
Mayor

THE UNDERSIGNED, CLERK OF THE COUNCIL OF THE CITY OF MEDINA, OHIO, HEREBY CERTIFIES THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE-RESOLUTION NO. 122-22 ADOPTED BY THE COUNCIL ON 6-8-22
Kathy Patton
CLERK OF COUNCIL

CITY OF MEDINA RAIL LINE
MEMORANDUM OF UNDERSTANDING

Terms to be contained in a Memorandum of Understanding ("MOU") between KOKOSING MATERIALS, INC. (Kokosing), OSBORNE MEDINA, INC. (Osborne), 1000 LAKE HOLDINGS LLC (Spray Products), and the CITY OF MEDINA (City of Medina).

1. A reserve account shall be established and funded out of the fees generated from Kokosing, Osborne, Spray Products and the City of Medina. The parties acknowledge and agree that most, if not all, of the fees generated in the initial years will go towards the yearly maintenance of the rail line. The parties shall agree on an annual amount to be included in the budget that will be allocated from the fees generated and deposited in the reserve account. The reserve account shall not exceed \$200,000, unless otherwise agreed to be reduced or increased among the parties. Once the reserve account reaches a balance of \$200,000 the annual access fee shall be reduced equally between Kokosing, Osborne, Spray Products and the City of Medina; provided, the reserve account maintains a balance of \$200,000. Notwithstanding the above, the parties may agree to increase the reserve account for unanticipated capital repairs and replacements.
2. Kokosing, Osborne and Spray Products shall be liable for any shortfalls contained in the annual budget and not covered by the reserve account. The parties further agree that the level of maintenance on the rail assets serving the Kokosing, Osborne and Spray Products shall be that as is required by the ORDC grant-Federal Railroad Administration Class I standards.
3. The City of Medina shall prepare a proposed budget, as generated by the City of Medina Rail Commission, prior to November 1 of each year, which budget shall be within the projected revenues for each year. The proposed budget shall be available to all parties upon request. Kokosing, Osborne and Spray Products shall have the right to comment on the proposed budget prior to December 15 of each year. If a budget cannot be agreed upon among the parties, the previous year's budget shall be the budget for the succeeding year until a new budget is agreed upon among the parties.
4. The City of Medina, as part of the budget referenced in Section 4 above, shall obtain and maintain a commercial general liability insurance policy in an amount equal to \$5,000,000 combined single limit, which amount may be increased upon agreement of the parties. The City of Medina shall also obtain and maintain casualty insurance on the rail line in an amount acceptable to all the parties.
5. The City of Medina shall contribute fifty percent (50%) of the cost of maintenance and replacement of the existing crossings along the rail line; provided, no new rail crossing shall be added without the consent of the City of Medina. The City of Medina shall have the right to require a crossing to be renovated or replaced; provided that the City of Medina contributes fifty percent (50%) of the cost of said repair or renovation.

6. The City of Medina agrees that all funds collected from Kokosing, Osborne and Spray Products or other grants obtained by any party related to the rail assets shall only be used for the maintenance, repair and operation of the rail line and no other City of Medina purposes.
7. Kokosing, Osborne, Spray Products or the City of Medina, shall have the right to terminate the Memorandum of Understanding upon at least six (6) months' notice to the other parties. Upon termination, all funds held by the City of Medina shall continue to be used to maintain the rail line until exhausted.
8. The City of Medina shall coordinate all repairs, maintenance and replacement on the rail line during the term of the Memorandum of Understanding. The Medina Rail Line shall be defined as beginning at a point 150 feet northwest of the centerline of North Progress Drive. The endpoint of the approximately 3.76 mile rail line shall be defined as the terminal endpoint of the existing track at its most southerly point.

Included as part of the Medina Rail line are the following structures:

- Separated grade crossings (bridges):
 - o Bridge over the Wheeling and Lake Erie rail line (south of SR 18)
 - o Bridge over West Smith Road (known as AAR DOT #141-895-K)
- At grade crossings (includes crossing surfaces and all warning devices (crossbucks, lights, gates, etc.) :
 - o North Progress Drive (known as AAR DOT #141-892-P)
 - o State Road, including gates and flashers (knows as AAR DOT #141-893-W)
 - o West Liberty Street (SR 18 & SR 57) (known as AAR DOT #141-894-D)
 - o Lafayette Road, including gates and flashers (known as AAR DOT #141-896-S)
 - o Ryan Road, including gates and flashers (known as AAR DOT #141-897-Y)
 - o Imagine Lane (known as AAR DOT #919-860-N)

Osborne shall be solely responsible for the maintenance, repair, replacement and/or upgrade of the existing rail line beyond 150 feet northwest of the centerline of North Progress Drive.

Kokosing shall be solely responsible for the maintenance, repair, replacement and/or upgrade of their rail unloading structure (the hopper) located adjacent to the Medina Rail line.

Spray Products shall be solely responsible for maintenance, repair, replacement and/or upgrade of the spur serving their facility. The spur shall be defined as all rail, ties, switches and any other structure necessary to provide service to their facility with the sole exception of those common rail ties supporting both the Medina Rail line and the Spray Products spur. These common rail ties shall be considered as part of the Medina Rail line. Spray Products shall be responsible for the ties supporting their spur beginning with the first tie on their spur beyond the common ties.

9. The parties agree to reinstate the annual access fees. The annual access fees for each party shall be as follows: Kokosing - \$10,000; Osborne - \$10,000; Spray Products - \$10,000; and the City of Medina, Ohio - \$10,000. The annual fee shall be billed by the City each January and due to be paid on or before February 1st of each calendar year except for the first year (2022), which shall be payable upon execution of this agreement. Upon written request, all parties shall have the option of paying the annual

access fees monthly on a pro rata basis in lieu of a lump sum payment.

10. The annual user fee per car shall be as follows: Kokosing-\$9.25, Osborne-\$8.00 and Spray Products-\$20.00. User fees per car shall be invoiced to Kokosing, Osborne and Spray Products quarterly. Per car user fees will be effective from the date of execution of this contract. The annual user fee per car may be changed upon agreement of the parties.
11. The parties agree that Osborne's current balance due of \$28,096 for usage fees incurred but not paid since January, 2021 shall be waived in full. Going forward, Osborne shall be responsible for paying both the annual access fee and the per car fee beginning in May, 2022.
12. The parties agree to credit Spray Products a total of \$13,600 for overpayment for rail car fees paid between January, 2021 and May, 2022.
13. The parties agree to provide the City of Medina with monthly billing reports showing the number of cars per month.
14. The City of Medina shall establish a Rail Commission to oversee the City of Medina rail assets. The Rail Commission shall be made up of at least five (5) members, initially one from Kokosing, one from Osborne, one from Spray Products and two from the City of Medina.
15. The Rail Commission referenced in Section 12 above shall meet as necessary as determined by the members. It is understood that all members have the right to call for a meeting at any time.

IN WITNESS WHEREOF, the parties have duly executed this Memorandum of Understanding as of the last date set forth below:

KOKOSING MATERIALS, INC.

1000 LAKE HOLDINGS, LLC

By (signature): 

By (signature): _____

Printed Name: Raymond Schloss

Printed Name: _____

Title: President

Title: _____

Date: August 5th, 2022

Date: _____

OSBORNE MEDINA CO.

CITY OF MEDINA, OHIO

By (signature): _____

By (signature): 

Printed Name: _____

Printed Name: Dennis Hanwell

Title: _____

Title: Mayor

Date: _____

Date: June 9, 2022

access fees monthly on a pro rata basis in lieu of a lump sum payment.

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15. The Rail Commission referenced in Section 12 above shall meet as necessary as determined by the members. It is understood that all members have the right to call for a meeting at any time.

IN WITNESS WHEREOF, the parties have duly executed this Memorandum of Understanding as of the last date set forth below:

KOKOSING MATERIALS, INC.

1000 LAKE HOLDINGS, LLC

By (signature): _____

By (signature): C. Bastian

Printed Name: _____

Printed Name: A. Bart Bastian

Title: _____

Title: Member

Date: _____

Date: 7/13/22

OSBORNE MEDINA CO.

CITY OF MEDINA, OHIO

By (signature): _____

By (signature): D. Hanwell

Printed Name: _____

Printed Name: Dennis Hanwell

Title: _____

Title: Mayor

Date: _____

Date: June 9, 2022

access fees monthly on a pro rata basis in lieu of a lump sum payment.

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13. The parties agree to provide the City of Medina with monthly billing reports showing the number of cars per month.
14. The City of Medina shall establish a Rail Commission to oversee the City of Medina rail assets. The Rail Commission shall be made up of at least five (5) members, initially one from Kokosing, one from Osborne, one from Spray Products and two from the City of Medina.
15. The Rail Commission referenced in Section 12 above shall meet as necessary as determined by the members. It is understood that all members have the right to call for a meeting at any time.

IN WITNESS WHEREOF, the parties have duly executed this Memorandum of Understanding as of the last date set forth below:

KOKOSING MATERIALS, INC.

1000 LAKE HOLDINGS, LLC

By (signature): _____

By (signature): _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

OSBORNE MEDINA CO.

CITY OF MEDINA, OHIO

By (signature): Richard Buccini

By (signature): Dennis Hanwell

Printed Name: Richard Buccini

Printed Name: Dennis Hanwell

Title: President

Title: Mayor

Date: 8-10-2022

Date: June 9, 2022