

ORDINANCE NO. 97-22

AN ORDINANCE AUTHORIZING THE MAYOR TO ACCEPT A TEMPORARY EASEMENT AND RIGHT OF ENTRY CONTRACT NECESSARY FOR THE WEST SMITH RECONSTRUCTION PROJECT, AND DECLARING AN EMERGENCY.

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

SEC. 1: That the Mayor is hereby authorized to accept a Temporary Easement and Contract for Right of Entry necessary for the West Smith Reconstruction Project.

SEC. 2: That the Easement and Contract for Right of Entry are marked Exhibit A, attached hereto and incorporated herein, and are located on Permanent Parcel No. 028-19A-21-246, owned by the Kotecki Family Memorials, LLC.

SEC. 3: That the funds to cover the easements, in the amount of \$300.00 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 considered an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason failure to meet the deadline can delay the project; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and signature by the Mayor.

PASSED: May 9, 2022

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: May 10, 2022

SIGNED: Dennis Hanwell
Mayor

ORD. 97-22
EXH. A

LPA RE 807
Rev. 10/2017

TE
LPA

TEMPORARY EASEMENT

Kotecki Family Memorials, LLC, an Ohio limited liability corporation, the Grantor(s), in consideration of the sum of \$300.00, to be paid by City of Medina, Ohio, the Grantee, does grant to Grantee the temporary easement(s) to exclusively occupy and use for the purposes mentioned in Exhibit A the following described real estate:

PARCEL(S): 82-T

MED-CR 0004-15,47

SEE EXHIBIT A ATTACHED

Medina County Current Tax Parcel No. 028-19A-21-246

Prior Instrument Reference: Instrument No. 2008OR023124, Medina County Recorder's Office.

To have and to hold the temporary easement(s), 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(s) granted to the Grantee is 24 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.

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

IN WITNESS WHEREOF Kotecki Family Memorials, LLC, an Ohio limited liability corporation has caused its name to be subscribed by Edward E. Kotecki, IV, its duly authorized President and its duly authorized agent on the 12th day of April, 2022.

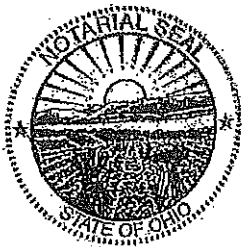
Kotecki Family Memorials, LLC, an Ohio limited liability corporation

By: [Signature]
Edward E. Kotecki, President

STATE OF OHIO, COUNTY OF CUYAHOGA ss:

BE IT REMEMBERED, that on the 12th day of April, 2022, before me the subscriber, a Notary Public in and for said state and county, personally came the above named Edward E. Kotecki, IV, who acknowledged being the President and duly authorized agent of Kotecki Family Memorials, LLC, an Ohio limited liability corporation and who acknowledged the foregoing instrument to be the voluntary act and deed of said entity. No oath or affirmation was administered to Edward E. Kotecki, IV with regard to the notarial act.

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



JOSEPH E ALMADY
Notary Public
In and for the State of Ohio
My Commission Expires
August 22, 2023

[Signature]
NOTARY PUBLIC
My Commission expires: 8/22/2023

This document was prepared by or for the City of Medina on forms approved by the Ohio Attorney General's Office.

EXHIBIT A

Page 1 of 2

Rev. 07/09

LPA RX 887 T

QUS

Ver. Date 06/22/2021

PID 112540

**PARCEL 82-T
MED-CR 0004-15.47
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
RECONNECT DRAIN
FOR 24 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, being in Original Lot 81 of Medina Township, Township 3 North, Range 14 West of the Connecticut Western Reserve, and being a tract of land lying in Medina City Lot 363 as shown in M. H. Peak's Plat Part of Medina Town as recorded in Deed Book K, page 271 (all document references are to the records of Medina County, Ohio Recorder's office, unless otherwise stated), as conveyed to Kotecki Family Memorials, LLC, an Ohio limited liability company by the instrument filed as Document Numbers 2008OR023124.

Being a parcel of land lying on the left side of the centerline of right-of-way of Smith Road (60' R/W - Public) and being more particularly described as follows:

BEGINNING FOR REFERENCE at a point on the existing northerly right-of-way line of Smith Road, on the southerly line of the said Medina City Lot 363, being the southwest corner of the said Kotecki Family Memorials, LLC, an Ohio limited liability company tract, and being the southeast corner of that tract conveyed to Christopher A. Talbert and Barbara A. Talbert by the instruments filed as Document Numbers 2019OR002510 and 2005OR031228, said point being 30.00 feet left of the centerline of right-of-way of Smith Road station 101+52.00 and being the **TRUE POINT OF BEGINNING** of the parcel herein described;

Thence along the westerly line of the said Kotecki Family Memorials, LLC, an Ohio limited liability company tract and the easterly line of the said Christopher A. Talbert and Barbara A. Talbert tract, and crossing through the said Medina City Lot 363, **North 00 degrees 18 minutes 26 seconds West for a distance of 15.00 feet** to a point being 45 feet left of the centerline of right-of-way of Smith Road station 101+52.01;

Thence crossing through the said Kotecki Family Memorials, LLC, an Ohio limited liability company tract and continuing through the said Medina City Lot 363, **North 89 degrees 38 minutes 34 seconds East for a distance of 6.25 feet** to a point being 45.00 feet left of the centerline of right-of-way of Smith Road station 101+58.27;

EXHIBIT A

LPA RX 887 T

Thence continuing through the said Kotecki Family Memorials, LLC, an Ohio limited liability company tract and the said Medina City Lot 363, South 00 degrees 21 minutes 29 seconds East for a distance of 15.00 feet to a point on the said existing northerly right-of-way line of Smith Road, the said southerly line of Medina City Lot 363, and on the southerly line of the said Kotecki Family Memorials, LLC, an Ohio limited liability company tract, said point being 30.00 feet left of the centerline of right-of-way of Smith Road station 101+58.27;

Thence along the said existing northerly right-of-way line of Smith Road, the southerly line of the said Medina City Lot 363, and the southerly line of the said Kotecki Family Memorials, LLC, an Ohio limited liability company tract, South 89 degrees 38 minutes 34 seconds West for a distance 6.27 feet to the TRUE POINT OF BEGINNING of the parcel herein described.

The above description contains a total area of 0.0022 acres, (0.0000 acres are located within the Present Road Occupied resulting in a net take of 0.0022 acres), all of which are located within Medina County Auditor's Parcel number 028-19A-21-246.

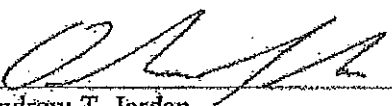
The current source of title to the boundary herein described as of this writing recorded in Document Number 2008OR023124 in the records of Medina County.

This description was prepared by Andrew T. Jordan, Ohio Registered Professional Surveyor number 8759, and is based on an actual field survey conducted by American Structurepoint Inc. in October of 2020, and is true and correct to the best of my knowledge and belief.

The bearings for this description are based on Grid North, reference North 89 degrees 12 minutes 02 seconds East for the existing centerline of right-of-way for W. Smith Road, as referenced to The Ohio State Plane Coordinate system (North Zone) and the North American Datum of 1983 (2011 Adjustment) as established utilizing a GPS survey and NGS OPUS solution.

The stations referenced herein are from the plans known as MED - CR 0004 - 15.47 (W SMITH ROAD) on file with the City of Medina, Ohio.

American Structurepoint, Inc.


Andrew T. Jordan
Registered Professional Surveyor No. 8759



6-22-2021
Date

CONTRACT FOR RIGHT OF ENTRY

PARCEL(S): 82-T
MED-CR 0004-15.47/112540

The purpose of this Agreement is to allow the City of Medina, Ohio to enter upon, occupy and have exclusive possession of the real property described in Exhibit A for the purposes of constructing a highway or facility incidental to the highway while the Parties attempt to negotiate further the sale and purchase of the property described in Exhibit A.

This Agreement is by and between the City of Medina, Ohio ["LPA"] and Kotecki Family Memorials, LLC, an Ohio limited liability corporation ["Owner"]; "Owner" includes all of the foregoing named persons or entities]. LPA and Owner are referred to collectively in this Agreement as "Parties."

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

1. LPA shall pay to Owner the sum of \$300.00, which sum shall constitute the entire amount of consideration due to the Owner for granting to LPA the rights, interests and privileges described immediately below in Section 2.

Except as specified in this Agreement, in no event shall Owner be entitled to receive from LPA any interest, rent or other consideration of any kind for the period of time during which LPA occupies, possesses and uses the real property described in Exhibit A attached to this Agreement.

2. On and after _____, LPA, its employees, agents, consulting engineers, contractors, subcontractors, utility companies and any other representatives of LPA shall have the irrevocable right to enter upon, occupy and have exclusive possession of the real property

described in Exhibit A for the purposes of constructing a highway or a facility incidental to the highway.

For consideration of the aforementioned sum to Owner, LPA shall have the right to physical possession of any land, and all buildings, houses, garages, sheds or any other types of structures, fixtures and other property, if any, located within or upon the real property described in Exhibit A.

If structures are within this described area, the terms and conditions of occupancy or non-occupancy and access are set forth in the attached Exhibit B.

3. Owner affirms that Owner is the true and lawful owner of the fee simple of the real property described in Exhibit A and/or Owner has the right and full power to grant to LPA the rights, interests and privileges described in Exhibit A.

4. Owner shall notify LPA of any prospective transfer of any of Owner's rights, titles or interests in the property. This notification shall be in writing not less than 14 days prior to the date on which the transfer is to be closed or otherwise consummated. If the transfer will be closed or otherwise consummated less than 14 days after Owner agrees to such transfer, then Owner shall provide to LPA such notification in writing immediately.

5. Owner acknowledges that LPA has the right to commence an action to appropriate the property described in Exhibit A and Exhibit B (if used) at any time it appears to the LPA that further negotiations with Owner are not warranted.

State agrees to commence promptly an action to appropriate the property described in Exhibit A and Exhibit B (if used) upon LPA's receipt from Owner of a written notice to commence an action to appropriate.

6. The Parties agree that the above mentioned \$300.00 shall be credited to and applied against the total purchase price the Parties may negotiate for the sale and purchase of the property described in Exhibit A, and the conveyance and transfer by the Owner to LPA.

7. The Parties agree that if LPA acquires the property described in Exhibit A and Exhibit B (if used) by way of an action to appropriate, then the abovementioned \$300.00 shall be credited to and applied against any amount awarded to the Owner in such appropriation action. If the \$300.00 is greater than the amount awarded to Owner in such appropriation action, then Owner expressly agrees to refund promptly the difference to LPA.

8. Owner acknowledges that LPA has explained to Owner that no owner of property can be required to surrender possession of the same to LPA prior to:

- (i) the payment of the total, agreed upon purchase price by LPA; or
- (ii) in the case of an appropriation, the deposit by LPA with the court, for the benefit of the owner, an amount not less than LPA's approved appraisal of the fair market value of the property; or
- (iii) the court award of compensation in the appropriation proceeding for the property.

Notwithstanding the rights described above, Owner in executing this Agreement waives such rights and permits LPA to occupy, possess and use the property described in Exhibit A and Exhibit B (if used).

9. Except and unless otherwise specifically modified by the terms and conditions of this Agreement, any and all rights, privileges, titles and interests in or to the property described in Exhibit A are preserved and retained by Owner.

10. Any and all of the terms, conditions and provisions of this Agreement shall be binding upon and shall pass to the benefit of LPA and Owner and their respective heirs, executors, administrators, successors and assigns.

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

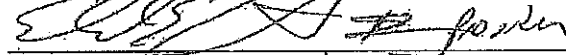
12. This instrument contains the entire agreement between the Parties, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions or obligations whatever, express or implied, other than herein set forth, shall be binding upon either State or Owner.

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

REST OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the City of Medina, Ohio, and Kotecki Family Memorials, LLC, an Ohio limited liability corporation have executed this Agreement on the date(s) indicated immediately below their respective signatures.

KOTECKI FAMILY MEMORIALS, LLC, AN OHIO LIMITED LIABILITY CORPORATION



By Edward E. Kotecki, Jr. President

Date: Apr. 12, 2022

CITY OF MEDINA, OHIO



Dennis Hanwell
Mayor

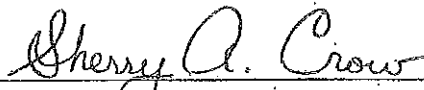
Date:

May 10, 2022

STATE OF OHIO, COUNTY OF Medina ss:

BE IT REMEMBERED, that on the 10th day of May, 2022, before me the subscriber, a Notary Public in and for said state and county, personally came the above named Dennis Hanwell, Mayor, the duly authorized representative of the City of Medina, Ohio, who acknowledged the foregoing instrument to be the voluntary act and deed of the City of Medina, Ohio.

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



NOTARY PUBLIC

My Commission expires:

5-27-24

SHERRY A. CROW
Notary Public
State of Ohio, Medina County
My Commission Expires 5-27-24

This document was prepared by or for the City of Medina, Ohio on forms approved by the Ohio Attorney General's Office.

EXHIBIT A

Page 1 of 2

LPA RX 887 T

Rev. 07/09

QWS

Ver. Date 06/22/2021

PID 112540

**PARCEL 82-T
MED-CR 0004-15.47
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
RECONNECT DRAIN
FOR 24 MONTHS FROM DATE OF ENTRY BY THE
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EXHIBIT A

LPA RX 887 T

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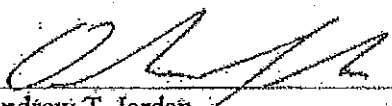
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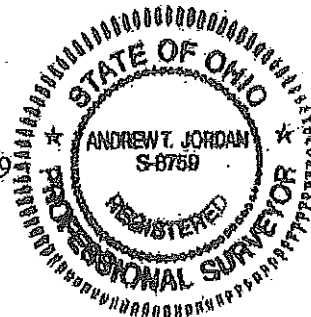
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American Structurepoint, Inc.


Andrew T. Jordan
Registered Professional Surveyor No. 8759



6-22-2021
Date

EXHIBIT B
to
CONTRACT FOR RIGHT OF ENTRY

PARCEL(S): 82-T
MED-CR 0004-15.47 / 112540

If structures are within the area described in Exhibit A, the terms and conditions of occupancy or non-occupancy and access are set forth in this Exhibit.

N/A