ORDINANCE NO. 166-26

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A PRELIMINARY ENGINEERING AGREEMENT WITH THE WHEELING & LAKE ERIE RAILWAY AND REPEALING ORDINANCE NO. 72-26, PASSED APRIL 27, 2026 PERTAINING TO THE STATE ROAD RECONSTRUCTION PROJECT.

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

SEC. 1: That Ordinance No. 72-26, passed April 27, 2026 is hereby repealed.

SEC. 2: That the Mayor is hereby authorized to enter into a new Preliminary Engineering Agreement with the Wheeling & Lake Erie Railway.

SEC. 3: That a copy of the Preliminary Engineering Agreement is marked Exhibit A, attached hereto, and incorporated herein.

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

PASSED: October 26, 2026

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: October 26, 2026

SIGNED: James A. Shields
Mayor

* REVISED AGREEMENT

ORD. 166-26 Exh. A

Project: MED-CR22-0.12 (State Road Improvements)
ODOT PID: 122984

WLE AKRON Subdivision Mile Post 139.52

Agreement No. _____

PRELIMINARY ENGINEERING AGREEMENT

This Engineering Agreement ("**Agreement**") is made as of _____, 2026 by and between **Wheeling & Lake Erie Railway Company**, a Delaware corporation with its principal place of business in Ohio ("RAILROAD"), and the **City of Medina, Ohio**, ("CITY")

EXPLANATORY CITYMENT

1. The CITY wishes to facilitate the development of plans for State Road Improvements (MED-CR22-0.12) over the RAILROAD's Akron Subdivision tracks at Mile Post 139.52, in the City of Medina in Medina County, OH. (the "**Project**").

2. The project work will include the following: 1) Installation of a new sixteen (16) inch water line (bore and jack operation) beneath the RAILROAD's tracks; 2) Removal and replacement of the existing asphalt pavement and deteriorated concrete pavement with full a depth concrete pavement section up to and adjacent to the existing concrete grade crossing panels; and 3) Installation of new concrete curb within existing roadway right of way, transitioning from a 6-inch curb height to a 0-inch curb height within the RAILROAD right of way. The existing concrete grade crossing panels, RAILROAD signals, and RAILROAD facilities will not be impacted or altered by this project. Pedestrian improvements across the existing grade crossing are not included in this project. The CITY has requested that RAILROAD proceed with certain necessary engineering and/or design services for the Project to facilitate the parties' consideration of the Project.

   As coordinated by the Wheeling and Lake Erie Railway Company, the following items are included with this agreement:

   - The City is responsible for any required drainage improvements within and around the surface. [Note: The State Road Improvements will be replacing the existing catch basins within the existing roadway right of way and will improve existing drainage in the corridor. No site grading or installation of drainage appurtenances within the RAILROAD right of way is required for this project.
   - The City is responsible for any/all required signage for MUTCD/ADA compliance if required. This includes installation and future maintenance. [Note: This would apply to a future project with a formal sidewalk crossing. The proposed project referenced in this agreement will not impact MUTCD or ADA compliance.]
   - The City is responsible for any/all current and future sidewalk costs that fall within the RAILROAD right of way. [Note: The proposed project referenced in this agreement will not provide sidewalk or pedestrian crossing(s) through the existing grade crossing.]

3. Subject to the approval of RAILROAD, which approval may not be unreasonably withheld, the Project is to be constructed, if at all, at no cost to RAILROAD, under a separate construction agreement to be executed by the parties at a future date.

NOW, THEREFORE, for and in consideration of the foregoing Explanatory Statement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. Scope of Work

1.1 Generally. The work to be done by RAILROAD under this Agreement may consist of: (1) the preparation or review and approval of engineering and design plans, specifications, drawings and other documents pertaining to the Project, (2) the preparation of cost estimates for RAILROAD's work in connection with the Project, and (3) the review of construction cost estimates, site surveys, assessments, studies and related construction documents submitted to RAILROAD by the CITY for the Project ("**Engineering Work**"). Engineering Work may also include: (1) office reviews, (2) field reviews, (3) attendance at hearings and meetings, and (4) preparation of correspondence, reports, and other documentation in connection with the Project. Nothing contained in this Agreement shall oblige RAILROAD to perform work which, in RAILROAD's opinion, is not relevant to RAILROAD's participation in the Project.

1.2 Effect of RAILROAD Approval or Preparation of Documents. By its review, approval or preparation of plans, specifications, drawings or other documents pursuant to this Agreement (collectively, the "**Plans**"), RAILROAD signifies only that the Plans and improvements constructed in accordance with the Plans satisfy RAILROAD's requirements.

RAILROAD expressly disclaims all other representations and warranties in connection with the Plans, including, but not limited to, the integrity, suitability or fitness for the purposes of the CITY, or any other purpose of such Plans or improvements constructed in accordance with the Plans.

2. Reimbursement of RAILROAD Expenses.

2.1 Reimbursable Expenses. The CITY shall reimburse RAILROAD for all costs and expenses incurred by RAILROAD in connection with the Engineering Work, including, without limitation: (1) all out of pocket expenses, (2) travel and lodging expenses, (3) telephone, facsimile, and mailing expenses, (4) costs for equipment, tools, materials and supplies, (5) sums paid to consultants and subcontractors by RAILROAD and (6) RAILROAD labor, together with RAILROAD labor overhead percentages established by RAILROAD pursuant to applicable law, (collectively, "**Reimbursable Expenses**").

2.2 Estimate. RAILROAD has estimated the total Reimbursable Expenses for the Project to be approximately $15,000 (the "**Estimate**" as amended or revised). As per 23 CFR 646.216 (d) (vi), RAILROAD shall submit an itemized estimate for approval by the CITY prior to beginning work. In the event RAILROAD anticipates that actual Reimbursable Expenses may exceed such Estimate, it shall provide the CITY with the revised Estimate of total Reimbursable Expenses for the CITY's approval and confirmation that sufficient funds have been appropriated to cover the total Reimbursable Expenses as reflected in the revised Estimate. RAILROAD may elect, by delivery of notice to the CITY, to immediately cease all further Engineering Work, unless and until CITY provides such approval and confirmation.

2.3 Federal Reimbursement. Any federal reimbursement to the CITY for railroad work performed on projects undertaken pursuant to the provisions of 23 CFR part 646, subpart B, shall be made in accordance with 23 CFR part 140, subpart I, as applicable.

2.4 Payment Terms

2.4.1 The CITY shall pay RAILROAD for Reimbursable Expenses in the amounts and on the dates set forth in the Payment Schedule attached to this Agreement as Exhibit A (the "**Payment Schedule**," as revised from time to time pursuant to Section 2.2). RAILROAD agrees to submit invoices to the CITY for Reimbursable Expenses. The CITY shall remit payment to RAILROAD within thirty (30) days following delivery to the CITY of such proper invoice or, if later, the payment date (if any) set forth in the Payment Schedule.

2.4.2 Following completion of all Engineering Work, RAILROAD shall submit to the CITY a final invoice that reconciles the total Reimbursable Expenses incurred by RAILROAD against the total payments received from the CITY. The CITY shall pay to RAILROAD the amount by which actual Reimbursable Expenses exceed total payments, as shown by the final invoice, within thirty (30) days following delivery to CITY of the final invoice.

2.4.3 In the event that the CITY fails to pay RAILROAD any sums due RAILROAD under this Agreement: (i) the CITY shall pay RAILROAD interest as permitted by applicable law on the delinquent amount until paid in full; and (ii) RAILROAD may elect, by delivery of notice to CITY: (A) to immediately cease all further work on the Project, unless and until the CITY pays the entire delinquent sum, together with accrued interest; and/or (B) to terminate this Agreement.

2.4.4 All invoices from RAILROAD shall be delivered to the CITY in accordance with Section 6 of this Agreement. All payments by the CITY to RAILROAD shall be made by CITY issued warrant check and mailed to the following address or such other address as designated by RAILROAD's notice to CITY:

Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, Ohio 44613

3. Appropriations. The CITY represents to RAILROAD that: (i) the CITY has obtained appropriations sufficient to reimburse RAILROAD for the Reimbursable Expenses encompassed by the initial Estimate; (ii) the CITY shall use its best efforts to obtain appropriations necessary to cover Reimbursable Expenses encompassed by subsequent Estimates approved by the CITY; and (iii) the CITY shall promptly notify RAILROAD in the event that the CITY is unable to obtain such additional appropriations. It is agreed and understood by all parties that the obligations described in this agreement are subject to Section 126.07 of the Ohio Revised Code.

4. Termination.

4.1 By the CITY. The CITY may terminate this Agreement, for any reason, by delivery of notice to RAILROAD. Such termination shall become effective upon the expiration of fifteen (15) calendar days following delivery of notice to RAILROAD or such later date designated by the notice.

4.2 By RAILROAD. RAILROAD may terminate this Agreement as provided pursuant to Section 2.4.3.

4.3 Consequences of Termination. If the Agreement is terminated by either party pursuant to this Section or any other provision of this Agreement, the parties understand that it may be impractical for them to immediately stop the Engineering Work. Accordingly, they agree that, in such instance a party may continue to perform Engineering Work until it has reached a point where it may reasonably and safely suspend the Engineering Work. The CITY shall reimburse RAILROAD pursuant to this Agreement for the Engineering Work performed, plus all costs reasonably incurred by RAILROAD to discontinue the Engineering Work and all other costs of RAILROAD incurred as a result of the Project up to the time of full suspension of the Engineering Work. Termination of this Agreement or Engineering Work on the Project, for any reason, shall not diminish or reduce the CITY's obligation to pay RAILROAD for Reimbursable Expenses incurred in accordance with this Agreement. In the event of the termination of this Agreement or the Engineering Work for any reason, RAILROAD's only remaining obligation to the CITY shall be to refund to the CITY payments made to RAILROAD in excess of Reimbursable Expenses in accordance with Section 2.

5. Subcontracts. RAILROAD shall be permitted to engage consultants and subcontractors to perform all or any portion of the Engineering Work.

6. Notices. All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered upon personal delivery, upon the expiration of three (3) days following mailing by first class U.S. mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the parties at the addresses set forth below, or such other addresses as either party may designate by delivery of prior notice to the other party:

If to RAILROAD:	Wheeling & Lake Erie Railway Company 100 East First Street Brewster, OH. 44613 Attention: Jeffrey A. Davis, Jr. Manager of Real ECITY
If to the CITY:	City of Medina 132 N. Elmwood Avenue Medina, OH 44256 Attn: Patrick Patton City Engineer

7. Project Construction. Nothing contained in this Agreement shall be deemed to constitute RAILROAD's approval of or consent to the construction of the Project.

8. Entire Agreement. This Agreement embodies the entire understanding of the parties, may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter. In the event of any inconsistency between this Agreement and the Exhibits, the more specific terms of the Exhibits shall be deemed controlling.

9. Waiver. If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.

10. Assignment. RAILROAD may assign this Agreement and all rights and obligations herein to a successor in interest, parent company, affiliate, or future affiliate. RAILROAD shall consult with the CITY prior to assignment. Upon assignment of this Agreement by RAILROAD and the assumption by RAILROAD's assignee of RAILROAD's obligations under this Agreement, RAILROAD shall have no further obligations under this Agreement. The CITY shall not assign its rights or obligations under this Agreement without RAILROAD's prior written consent, which consent may be withheld for any reason.

11. Termination by Operation of Law. If engineering efforts covered under said agreement are not complete by June 30, 2028, it is the expressed intention of the parties to renew said obligations for one successive biennium period; with the renewal period beginning July 1, 2028, and ending no later than June 30, 2030 until such time as engineering efforts covered under said agreement are complete. Said renewal is conditioned upon the CITY determining future appropriations will permit the CITY to renew said obligations.

12. Record Keeping Requirements. The RAILROAD shall keep all financial records in a manner consistent with generally accepted accounting procedures. Documentation to support each action shall be filed in a manner allowing it to be readily located. During the period covered by this contract and until the expiration of three years after final payment under this contract, the RAILROAD agrees to provide CITY, its duly authorized representatives or any person, agency, or instrumentality providing financial support to the work undertaken hereunder, with access to and the right to examine any books, documents, papers, and records of the RAILROAD involving transactions related to this contract.

13. Conflicts of Interest

    13.1 No personnel of RAILROAD who exercises any functions or responsibilities in connection with the review or approval of the understanding or carrying out of any such work, shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work.

    13.2 Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of this contract, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to CITY in writing. Thereafter, he or she shall not participate in any action affecting the work under this contract, unless CITY shall determine that, in the light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

14. Equal Employment Opportunity

    14.1 In carrying out this contract, the RAILROAD shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, sexual orientation, gender identity, or age. The RAILROAD will ensure that applicants who are hired to perform the Engineering Work and that employees performing the Engineering Work are treated during employment without regard to their race, religion, color, sex, national origin, disability, sexual orientation, gender identity, or age. Such action shall include, but not be limited to, the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.

14.2 The RAILROAD agrees that while it is performing the Engineering Work it will post on the internet notices setting forth the provisions of this nondiscrimination clause. In all solicitations or advertisements for employees placed by or on behalf of the RAILROAD for the Engineering Work, the RAILROAD will CITY that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, disability, or age. 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 subcontracts for such work.

14.3 RAILROAD agrees to fully comply with Title VI of the Civil Rights Act of 1964, 42 USC Sec. 2000. RAILROAD shall not discriminate on the basis of race, color, or national origin in its programs or activities. The Director of Transportation may monitor the RAILROAD's compliance with Title VI.

15. Antitrust. CITY and the RAILROAD recognize that in actual economic practice, overcharges resulting from antitrust violations are usually borne by CITY. As consideration for the award of the contract, and intending to be legally bound, the RAILROAD assigns to CITY all right, title and interest, to all claims and causes of action the RAILROAD now has or may acquire under CITY or federal antitrust laws PROVIDED that the claims or causes of action relate to the goods or services that are acquired and used for purposes of the Engineering Work and are Reimbursable Expenses, and EXCEPT as to any claims or causes of action which result from antitrust violations that occur after the price is established under the Contract and that are not passed on to CITY. Additionally, RAILROAD warrants that any overcharges resulting from antitrust violations by RAILROAD's first tier suppliers and subcontractors shall not be knowingly passed on to CITY.

16. Compliance with Law. The RAILROAD agrees to comply with all applicable federal, CITY, and local laws in the conduct of the work hereunder. RAILROAD accepts full responsibility for payment of all taxes including without limitation, unemployment compensation insurance premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by RAILROAD in the performance of the work authorized by this contract. CITY is exempt from federal excise taxes and all CITY and local taxes, unless otherwise provided herein. CITY does not agree to pay any taxes on commodities, goods, or services acquired from any RAILROAD.

17. Certification of Funds. It is expressly understood by the parties that none of the rights, duties, and obligations described in this contract shall be binding on either party until all statutory provisions under the Ohio Revised Code, including but not limited to Section 126.07, have been complied with and until such time as all necessary funds are made available and forthcoming from the appropriate CITY agencies, and, when required, such expenditure of funds is approved by the General Assembly and by the Controlling Board of the CITY of Ohio or, in the event that federal funds are used, until such time that CITY gives the RAILROAD written notice that such funds have been made available to CITY, by CITY's funding source.

18. Change or Modifications. Either party may, at any time during the term of this contract, request amendments or modifications. Requests for amendments or modifications shall be in writing and shall specify the requested changes and the justifications of such changes. Should the parties consent to modification of the contract, then an amendment shall be drawn, approved, and executed in the same manner as the original contract.

19. Applicable Law. This Agreement shall be governed by the laws of the CITY of Ohio and any applicable federal law, specifically 23 CFR part 646, subpart B.

20. Governing Law/Severability.

    20.1 This Contract and any claims arising out of this Contract shall be governed by the laws of the CITY of Ohio. Any provision of this Contract prohibited by the law of Ohio shall be deemed void and of no effect.

    20.2 If any provision of the Contract or the application of any such provision shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of the Contract shall remain in full force and effect.

21. Drug-Free Workplace. RAILROAD agrees to comply with all applicable CITY and federal laws regarding drug-free workplace. RAILROAD shall make a good faith effort to ensure that all RAILROAD employees, while performing the Engineering Work on CITY property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

22. Ohio Ethics Law Requirements. In accordance with Executive Order 2007-01S, RAILROAD, by signing this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflict of interest laws, and (3) will take no action inconsistent with those laws and this order. RAILROAD understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this contract and may result in the loss of other contract with the CITY of Ohio.

23. Ohio Elections Law. RAILROAD certifies that all applicable parties listed in Division (I)(3) or (J)(3) of R.C. 3517.13 are in compliance with Divisions (I)(1) and (J)(1) of R.C. 3517.13.

24. Force Majeure. Except as otherwise provided herein, neither the RAILROAD nor CITY shall be liable to the other for any delay or failure of performance of any provisions contained herein, nor shall any such delay or failure or performance constitute default hereunder, to the extent that such delay or failure is caused by force majeure. The term force majeure, as used herein shall mean without limitation: acts of God, such as epidemics; lightning; earthquakes; fire, storms; hurricanes; tornadoes; floods; washouts; droughts, or other severe weather disturbances; explosions; arrests; restraint of government and people; and other such events or any other cause which could not be reasonably foreseen in the exercise of ordinary care, and which is beyond the reasonable control of the party affected and said party is unable to prevent.

25. CITY Audit Findings. RAILROAD affirmatively represents to CITY that it is not subject to a Finding for Recovery under R.C. 9.24, or that it has taken the appropriate remedial steps required under R.C. 9.24 or otherwise qualifies under that section. RAILROAD agrees that if this representation is deemed to be false, the contract shall be void *ab initio* as between the parties to this contract, and any funds paid by CITY hereunder shall be immediately repaid to CITY, or an action for recovery may be immediately commenced by CITY for recovery of said funds.

26. Debarment. RAILROAD represents that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either R.C. 5513.06 or R.C. 125.25. If this representation is found to be false, this Agreement is void *ab initio* and RAILROAD shall immediately repay to CITY any funds paid under this Agreement.

27. Signatures. Any person executing this Contract in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this Contract on such principal's behalf.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, each by its duly authorized officers, as of the date of this Agreement.

City of Medina, OH:

By: _____
James Shields
Mayor

Wheeling & Lake Erie Railway Company

By: _____

Print Name: _____

Title: _____

EXHIBIT A

PAYMENT SCHEDULE

Progress Payments

Notwithstanding anything to the contrary set forth in this Agreement, the CITY shall pay RAILROAD in arrears for its Reimbursable Expenses, rather than in advance, with only such exceptions, such as purchasing materials and equipment, as the parties mutually agree. Accordingly, the CITY shall remit full payment to RAILROAD, with no retainage, for its Reimbursable Expenses within thirty (30) days following delivery to the CITY of an invoice.