

REQUESTS FOR COUNCIL ACTION/DISCUSSION

Finance Committee

- 22-242-11/14 – Electric Aggregation Program Agreement
- 22-243-11/14 – Expenditure – Absolute Construction – 2020 CHIP
- 22-244-11/14 – Amend S&B Code, MCRC Facility Supervisor & Program Specialist
- 22-245-11/14 – Budget Amendments
- 22-246-11/14 – Authorize Rollover of Advances
- 22-247-11/14 – Fitness Center Design Services Agreement & Repeal Ord. 47-19 – MCRC
- 22-248-11/14 – Agreement w/ Health Department for Storm water Runoff Testing
- 22-249-11/14 – Amend Ch. 909 Re: Small Cell Wireless Facilities
- 22-250-11/14 – Amend S&B Salary Range for Parks Director/Superintendent of Parks
- 22-251-11/14 – Amend S&B 31.02(B)(13) & 31.05, City Council Office
- 22-252-11/14 – 2023 Health Insurance Renewal – Medical Mutual of Ohio

11/14/22

OK
P. Hamell
10/31/22

REQUEST FOR COUNCIL ACTION

No. RCA 22-242-11/14
Committee: Finance

FROM: Nino Piccoli, Service Director
DATE: October 30, 2022
SUBJECT: **Electric Aggregation Program**

SUMMARY AND BACKGROUND:

I hereby respectfully request Council's consideration and authorization to enter into an agreement Energy Harbor LLC for the purpose of providing Services with respect to the City of Medina Electric Aggregation Program.

Estimated Cost:
Suggested Funding:
• Sufficient funds in Account No.
• Transfer needed from Account No. _____ to Account No. _____
• NEW APPROPRIATION needed in Account No. _____
Emergency Clause Requested: ~~No~~ Yes
Reason:

COUNCIL USE ONLY:
Committee Action/Recommendation:

Council Action Taken: _____ Ord./Res. _____
Date: _____



**MASTER AGREEMENT TO PROVIDE SERVICES TO AN
AGGREGATED GROUP
BETWEEN
CITY OF MEDINA, OHIO
AND
ENERGY HARBOR LLC**

This Master Agreement (“Agreement”), is entered into as of this ____ day of _____, 2022 (“Effective Date”) by and between **Energy Harbor LLC** (“Supplier”), a Delaware Limited Liability Company with its principal place of business at 168 East Market Street, Akron, Ohio 44308 and **City of Medina**, Medina County, Ohio (“Community” or “Governmental Aggregator”), an Ohio governmental aggregator (each a “Party” and collectively, “Parties”).

RECITALS

A. Supplier is certified by the Public Utilities Commission of Ohio (“PUCO”) as a Competitive Retail Electric Service (“CRES”) Provider to sell competitive retail electric service to customers in the State of Ohio utilizing the existing transmission and distribution systems.

B. Supplier (directly or through its affiliates) is an energy services provider with extensive experience in the provision of a broad range of energy related services.

C. Supplier sells competitive retail electric service and related services to inhabitants of municipal corporations, boards of township trustees, or boards of county commissioners acting as governmental aggregators for the provision of competitive retail electric service under authority conferred under Section 4928.20 of the Ohio Revised Code.

D. Both Parties have the corporate, governmental and/or other legal capacity, authority and power to execute and deliver this Agreement and related agreements and to perform its obligations hereunder.

E. The Governmental Aggregator has been certified by the PUCO as a governmental electricity aggregator pursuant to Chapter 4901: 1-24-01, *et. seq.* OAC. Supplier is under no obligation to provide Full Requirements Retail Electric Supply hereunder until Governmental Aggregator has been certified by the PUCO.

F. Governmental Aggregator may arrange for the provision of competitive retail electric service to its residential and commercial inhabitants that do not opt-out of or are otherwise ineligible to participate in the program (“Aggregation Program”). Governmental Aggregator desires that Supplier supply the total electric generation needs to all participants in the Aggregation Program located within the service territory of FirstEnergy – Ohio.

G. By this Agreement, Community and Supplier desire to enter into a mutually beneficial energy and services provisions relationship whereby Supplier shall provide Full Requirements Retail Electric Supply and related administrative services (“Administrative Services”) necessary to fulfill the obligations of this Agreement.

H. Community desires to enter into this Agreement with Supplier to provide energy and energy-related services to Eligible Customers through the Aggregation Program.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 **GENERAL REQUIREMENTS**

1.1 Governmental Aggregator Obligations and Authority.

1.1.1 The Governmental Aggregator: (1) shall take all necessary action to remain certified by the PUCO as a “governmental aggregator”; (2) shall establish and maintain an Aggregation Program for those residential and commercial inhabitants, within the boundaries of Community, that the Governmental Aggregator, together with Supplier, has determined will be provided the opportunity to participate in the Aggregation Program (“Eligible Customers”); (3) shall mail out the required enrollment and opt-out notices, which responsibility may be delegated by contract to Supplier; and (4) hereby authorize Supplier to contract for Full Requirements Retail Electric Supply with those Eligible Customers that do not opt-out of the Aggregation Program, rescind their switch to Supplier as part of their enrollment in the Aggregation Program, otherwise terminate their participation in the Aggregation Program or Full Requirements Retail Electric Supply from Supplier, or have their participation terminated by the Governmental Aggregator, or their Full Requirements Retail Electric Supply lawfully terminated by Supplier or the Electric Distribution Utility (“EDU”) (“Aggregation Program Customer” or “Participating Customer”).

1.1.2 The Governmental Aggregator shall, on a best efforts basis and in a timely manner, forward to Supplier all notices from the EDU concerning Participating Customers’ accounts served pursuant to this Agreement, including but not limited to verbal or written notices regarding transition costs, changes in the terms and conditions of tariffs, rates or riders, and notices concerning the operation and reliability of the EDU’s system.

1.1.3 Governmental Aggregator has the authority to designate, and has designated, Supplier as its Full Requirements Retail Electric Supply provider for the Eligible Customers for the Term of this Agreement.

1.1.4 During the Term of this Agreement, the Governmental Aggregator hereby grants Supplier the exclusive rights to provide Full Requirements Retail Electric Supply to the Eligible Customers.

1.1.5 Customer Data and Load Forecast Information. Supplier and Governmental Aggregator shall cooperate to obtain the consent of Participating Customers to obtain all available Eligible Customers’ data and historical load and load forecast information, related to the Participating Customer’s load and consumption, from any entity in possession of such data.

1.1.6 Service Inquiries and Service Notices to Customer. Participating Customers may direct inquiries regarding this Agreement, and Full Requirements Retail Electric Supply provided hereunder, and any electric generation supply or billing questions, to Supplier at the address and phone number provided in Section 11.1, which address and phone number shall be provided in communications with Participating Customers regarding the Aggregation Program. Participating

Customers should direct inquiries concerning EDU related emergency, power outage, wire or service maintenance, metering, EDU service billing or other similar EDU related concerns to the EDU.

1.1.7 Point of Sale. Governmental Aggregator and Participating Customers acknowledge and agree that Supplier shall have no responsibility for damage to any property, or to any equipment or devices connected to the Participating Customers' electrical system.

ARTICLE 2 **SUPPLIER OBLIGATIONS**

2.1 Supplier Obligations.

2.1.1 Commencing on the Effective Date and during the Term, subject to the terms of this Agreement, Supplier shall provide Full Requirements Retail Electric Supply (subject to the terms of the appropriate transmission and/or distribution tariffs) sufficient to serve the total electric generation needs of the commercial and residential Aggregation Program Customers. Supplier shall arrange for the delivery of Full Requirements Retail Electric Supply in accordance with the requirements of the Participating Customers' respective EDU and Independent System Operator ("ISO") or Regional Transmission Organization ("RTO") according to the rules, regulations, and tariffs governing Full Requirements Retail Electric Supply from an alternative supplier to the Point of Delivery, recognizing that the EDU provides utility distribution service from the Point of Delivery to the Point of Sale. To the extent that any services or requirements are provided by the EDU, Supplier shall not be responsible for the provision of such services. Notwithstanding the foregoing, Supplier is not responsible for the performance or failure to perform of the provider of such transmission, distribution, or ancillary services, or the consequences of such performance or failure to perform.

2.1.2 Supplier shall be responsible for all acts necessary for Supplier to perform its obligations hereunder, including but not limited to the scheduling of delivery of Full Requirements Retail Electric Supply hereunder.

2.1.3 Supplier shall provide Aggregation Program Customers with the environmental disclosure data and other data it is required to provide, if any, to comply with the rules of the PUCO.

2.2 Subcontracting. Supplier may subcontract the performance of its obligations under this Agreement. However, no subcontract shall relieve Supplier of any of its obligations and/or liabilities under this Agreement. Supplier shall be responsible for all payments and obligations as between Supplier and subcontractors, and Governmental Aggregator shall not be responsible for payments to any such subcontractor.

2.3 Communications and Press Releases. Community hereby agrees to allow Supplier to use Community's name and logo (if any) in any and all enrollment materials (including electronic media and Internet) and press releases for publicity and/or marketing purposes. Community will have the right to review and approve all such materials that utilize the Community's name and/or logo prior to distribution. Additionally, Community authorizes Supplier to represent that Supplier is the Community's exclusive provider of Full Requirements Retail Electric Supply for the Term of this Agreement. Community shall not release any promotional material referencing Supplier, including press releases, without Supplier's prior approval.

ARTICLE 3 **TERM AND TERMINATION**

3.1 Term of Agreement and Termination.

3.1.1 This Agreement may be terminated prior to the expiration of the Term, in compliance with this Agreement's provisions, if: (1) the Governmental Aggregator does not receive or fails to obtain or maintain PUCO Certification; (2) a Party exercises its right under Article 6 to terminate this Agreement; (3) Supplier fails to obtain or maintain its PUCO Certification; (4) an illegality occurs under Section 3.3; or (5) any of the situations in Sections 3.4 or 5.1 occurs. This Agreement shall terminate upon the expiration of this Agreement's Term, but this Agreement may also be renewed by mutual agreement for a term agreed upon by the Parties.

3.1.2 Term of Enrollment. Participating Customers shall remain enrolled in the Aggregation Program until the Participating Customer exercises the right to opt-out, or they otherwise terminate their participation in the Aggregation Program, their participation in the Aggregation Program is terminated by the Governmental Aggregator, their Full Requirements Retail Electric Supply is lawfully terminated by Supplier or the EDU, or their electric service is terminated by the EDU or until this Aggregation Program is terminated, whichever occurs first.

3.2 Interaction Between Termination Dates of this Agreement and Contracts with the Participating Customer. Participating Customers initially enrolled in the Aggregation Program shall receive Full Requirements Retail Electric Supply at the rate(s) set forth in this Agreement. If this Agreement is terminated prior to the end of the Term due to a Regulatory Event or pursuant to the terms of Article 6, the Full Requirements Retail Electric Supply will terminate early and the Participating Customers may choose another CRES Provider or will be switched to EDU SSO Service in accord with the standard switching rules and applicable notices. The Participating Customers are responsible for arranging for their supply of Energy upon expiration or termination of this Agreement. If this Agreement is terminated prior to the end of the Term and a Participating Customer has not selected another supplier, such Participating Customer will be switched to SSO Service from the EDU.

3.3 Illegality. If, due to the issuance of an order, or adoption of, or change in, any applicable law, rule, or regulation, or in the interpretation of any applicable law, rule, or regulation, by any judicial, regulatory, administrative or government authority with competent jurisdiction, it

becomes unlawful for a Party to perform any obligation under this Agreement, this Agreement may be terminated.

3.4 Termination Events. In the event any of the following conditions occur during the Term, Supplier shall have the right to terminate this Agreement without liability and close out its obligations hereunder:

(i) The Electric Security Plan (ESP), Market Rate Offer (MRO) and/or Competitive Bid Process (CBP), or other generation procurement process results in a PTC, as discounted hereunder in accordance with Section 4.2, that is equal to or less than the comparable annualized generation and transmission rates and riders as of the Effective Date of this Agreement.

(ii) The PUCO approves or implements a phase-in credit for generation charges of the EDU which affects the PTC or otherwise does not allow the EDU to reflect the full cost to procure generation in the PTC and Supplier, in its discretion, chooses to not finance the impact of that effect or if commercially reasonable rates and terms are not available for such financing.

(iii) The EDU will not provide consolidated billing consistent with previous practice.

3.5 Termination Obligations. Termination of this Agreement shall not relieve either Party of the obligation(s) to pay amounts owed for actual performance of obligations rendered prior to the termination of this Agreement.

3.6 Termination Notices. In the event of termination hereunder, the terminating Party shall exercise its best efforts to communicate to the non-terminating Party the upcoming possibility of termination. In the event that this Agreement is terminated prior to the end of the Term, each individual Participating Customer of the Aggregation Program will be provided written notification from the terminating Party of the termination of the Agreement at least thirty (30) days prior to termination, and in compliance with other regulatory or legal requirements and Participating Customers will also be notified of their right to return to the EDU or to select an alternate generation supplier. All other notification(s) shall be in accordance with PUCO requirements.

ARTICLE 4 **ENERGY SCHEDULING, TRANSMISSION, PRICING AND DELIVERY**

4.1 Scheduling, Transmission and Delivery. During the Delivery Term, Supplier shall schedule Energy as required by the RTO or other transmission provider and the EDU, and shall arrange for transmission and distribution service to the Participating Customers. Supplier will arrange for necessary electric distribution and transmission rights for delivery of such Energy to provide the Full Requirements Retail Electric Supply hereunder and subject to the understanding that Supplier has an obligation to make deliveries to Participating Customer as set forth in Section 2.1 except pursuant to Sections 3.3, 3.4, 5.1 or Article 7 of this Agreement. Supplier does not take responsibility for any delivery of services supplied by the EDU or RTO, or for the consequences of the failure to provide such services. Supplier shall not be responsible to

Participating Customer in the event the EDU or RTO disconnects, suspends, curtails or reduces service to Participating Customer (notwithstanding whether such disconnection is directed by the ISO) in order to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the EDU's facilities, or to maintain the safety and reliability of the EDU's electrical system, or due to emergencies, forced outages, potential overloading of the EDU's transmission and/or distribution circuits, or Force Majeure or for any other reason permitted by the EDU's tariff or any other acts or omissions of the EDU.

4.2 Pricing. During the Delivery Period, Supplier shall provide Energy to all Participating Customers at the price set forth on Attachment A. Any bypassable riders approved by the PUCO and not included in the Price to Compare will be billed at their full rate. There will be no discount given on such charges as transmission and ancillary services if they are identified in a separate tariff or rider approved by the PUCO and not included in the Price to Compare.

4.3 Failure of Delivery. In the event that Supplier fails to schedule all or part of the Full Requirements Retail Electric Supply as set forth herein and Supplier's failure is not due to a Force Majeure Event, and a Participating Customer is required to obtain and pays for SSO Service or other Energy supply arrangement necessary to cure such Energy deficiency, Supplier shall reimburse Participating Customer, on the later of ten (10) days after receipt of invoice or the date payment would otherwise be due to Supplier, an amount determined by multiplying (a) the aggregate deficiency in the Full Requirements Retail Electric Supply by (b) the full replacement cost. IN THE EVENT OF SUPPLIER'S FAILURE TO PERFORM DUE TO A NON-FORCE MAJEURE EVENT, SUPPLIER'S OBLIGATION TO PAY SUCH AMOUNT DURING THE PERIODS OF NON-DELIVERY SHALL BE THE GOVERNMENT AGGREGATOR'S AND THE PARTICIPATING CUSTOMERS' SOLE REMEDY FOR SUPPLIER'S FAILURE TO DELIVER ENERGY PURSUANT TO THE TERMS OF THIS AGREEMENT.

ARTICLE 5 **BILLING AND PAYMENTS**

5.1 Additional Costs. After the notice of this Aggregation Program is sent to Eligible Customers, in the event that there is a Change in Law (defined below), Participating Customers may receive a notification from Supplier, which shall include a description of one or more of the situations described below as may be applicable. If there is a Change in Law, Supplier may offer Participating Customers new Terms and Conditions. Participating Customers must indicate affirmative consent to the new Terms and Conditions as specified in the notices. If Participating Customers do not contact Supplier to accept the new terms, the Participating Customer(s) individual terms and conditions with Supplier will terminate on the date specified in the notices, and Participating Customer(s) may be returned to the EDU for retail electric service. Alternatively, Supplier may decide to terminate this Agreement pursuant to a Change in Law described above and below, and Participating Customers will receive at least 30 days' prior written notice of the termination, after which Participating Customers may be returned to the EDU for retail electric service. Whether Supplier offers Participating Customers new terms or terminates this Agreement under this provision, Participating Customers will not be responsible for the cancellation/termination fee (if any) set forth in the Pricing Attachment. Participating

Customers must still pay all Supplier charges through the date they are returned to their EDU or switched to another CRES provider for service.

Change in Law shall be defined as: (1) any change in any statute, rule, regulation, order, law, or tariff promulgated by any court, governmental authority, utility, Independent System Operator (“ISO”), Regional Transmission Organization (“RTO”), or other service provider, or any change in operating procedure which alters to the detriment of Supplier its costs to perform under this Agreement; or (2) for “Percent off the Price to Compare (“PTC”) rate” products only, the PUCO approves or implements a phase-in credit for generation and/or transmission charges of the EDU or takes any other action which affects the PTC or otherwise does not allow the EDU to reflect the full cost to procure generation and transmission in the PTC.

5.2 Billing. Billing shall be provided by the EDU under a consolidated billing format pursuant to the EDU’s tariff provisions and PUCO rules applicable to Participating Customer(s). If a Participating Customer fails to pay amounts due within the specified time period for said payments in accord with the EDU’s tariff and PUCO regulations, Supplier retains the right to assess late payment fees, or deem such non-payment a default of Participating Customer for purposes of Section 6.1.1 of this Agreement. Supplier reserves the right to convert Participating Customer from Consolidated Billing to dual billing, or from dual billing to consolidated billing if such a conversion will facilitate more timely billing, collections, and/or payment.

ARTICLE 6 **DEFAULT AND REMEDIES**

6.1 Event of Default.

6.1.1 A “Community Event of Default” shall mean the occurrence of any of the following and the passage of any cure period set forth therein:

(i) Any representation or warranty made by Community in Article 9 hereunder is false or misleading in any material respect when made;

(ii) The non-excused failure to perform any material covenant or obligation set forth in this Agreement (other than that set forth in (i) above) and such failure is not remedied within thirty (30) days after written notice thereof unless the cure requires longer than the thirty (30) days to effect and Community is diligently working towards such cure; and

6.1.2 A “Supplier Event of Default” shall mean the occurrence of any of the following and the passage of any cure period set forth therein:

(i) the failure to make, when due, any undisputed payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice;

(ii) any representation or warranty made by Supplier in Article 9 hereunder is false or misleading in any material respect when made or when deemed made;

(iii) the non-excused failure to perform any material covenant or obligation set forth in this Agreement (other than that set forth in (i) above and as set forth in Section 4.3) if such failure is not remedied within thirty (30) days after written notice thereof, unless the cure period reasonably requires more than thirty (30) days to effect and Supplier is diligently working towards such cure; and

6.2 Rights and Remedies.

6.2.1 Rights and Remedies for a Community Event of Default. Subject to other provisions of this Agreement, if Community is the defaulting Party hereunder, so long as such Community Event of Default shall have occurred and be continuing, Supplier shall have the right to (i) designate a date (“Early Termination Date”), no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, on which this Agreement shall terminate and to terminate this Agreement on the Early Termination Date, (ii) suspend performance under this Agreement, and/or (iii) have all rights available at law and in equity. In addition to the foregoing remedies, Supplier shall have the right to seek the remedies of specific performance of Community’s and Participating Customers’ obligations hereunder and/or injunctive relief to continue to provide Full Requirements Retail Electric Supply hereunder.

In the case of a Community Event of Default, the Parties recognize that damages or other amounts to be received by Supplier hereunder may be inadequate because this Agreement is unique and the actual damages of Supplier may exceed any amounts to be received by Supplier hereunder. Therefore, Community waives all of its rights to assert as a defense to an action for specific performance and injunctive relief that the amounts payable to Supplier hereunder are adequate to cover the actual damages of Supplier.

6.2.2 Rights and Remedies for a Supplier Event of Default. Subject to other provisions of this Agreement, if Supplier is the defaulting Party hereunder, so long as such Supplier Event of Default shall have occurred and be continuing, Community shall have the right to (i) designate an Early Termination Date, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, and to terminate this Agreement on the Early Termination Date, (ii) suspend performance under this Agreement, and/or (iii) have all rights available at law and in equity. In addition to the foregoing remedies, Community shall have the right to seek the remedies of specific performance and/or injunctive relief, *inter alia*, to ensure the continuations of Full Requirements Retail Electric Supply hereunder or to ensure the payment of grants required by this Agreement.

Notwithstanding any other provision of this Agreement, the remedies set forth in Section 4.3 shall be the sole and exclusive remedies for any failure of Supplier to deliver Full Requirements Retail Electric Supply. As long as Supplier is supplying Full Requirements Retail Electric Supply to the Participating Customers at the price and upon the terms and conditions of this

Agreement, Community shall not have the right to terminate this Agreement or suspend performance.

6.2.3 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize damages it may incur as a result of the other Party's failure to perform pursuant to this Agreement.

ARTICLE 7 **FORCE MAJEURE**

7.1 Excused Failure to Comply. Neither Party shall be considered to be in default in the performance of its obligations under this Agreement, if its failure to perform results directly or indirectly from a Force Majeure Event. If despite its commercially reasonable efforts, either Party is unable, wholly or in part, to meet its obligations under this Agreement due to a Force Majeure Event, the obligations of each Party, other than the obligation to make payments due for performance rendered hereunder, so far as they are affected by such Force Majeure Event, shall be suspended during such period of the Force Majeure Event. The Party claiming excuse due to a Force Majeure Event shall exercise commercially reasonable efforts and due diligence to remove the inability to perform as soon as reasonably possible so that the affected period shall be no longer than that necessarily affected by the Force Majeure Event and shall exercise commercially reasonable efforts and due diligence to mitigate the effects of the Force Majeure Event. Nothing contained in this Section 7.1 shall be construed as requiring a Party to settle any strike or labor dispute in which it may be involved.

7.2 Force Majeure Event. For purposes of this Agreement, a "Force Majeure Event" shall mean any non-economic cause beyond the reasonable control of the Party affected and shall include, but not be limited to, Acts of God, winds, floods, earthquakes, storms, droughts, fires, pestilence, destructive lightning, hurricanes, washouts, landslides, tornadoes and other natural catastrophes; strikes, lockouts, labor or material shortage, or other industrial disturbances; acts of the public enemies, epidemics, riots, civil disturbances or disobedience, sabotage, wars or blockades; the failure of facilities, governmental actions such as necessity to comply with any court order, law, statute, ordinance or regulation promulgated by a governmental authority, a change in law or court order; provided, however, that any such discretionary acts, failure to act or orders of any kind by Government Aggregator may not be asserted as a Force Majeure Event by Government Aggregator. A change in economic electric power market conditions shall not constitute a Force Majeure Event. Failure or interruptions, including without limitation, government ordered interruptions, on the systems of generation, transmission or distribution relied upon for supplying Energy under this Agreement shall not constitute a Force Majeure Event unless Supplier has arranged for service on these systems at a level of firmness as required to provide the Full Requirements Retail Electric Supply agreed upon herein.

7.3 Notification. If either Party is unable to perform any of its obligations under this Agreement due to a Force Majeure Event, then said Party shall notify the other Party in writing as soon as possible, but no later than seventy-two (72) hours after the start of the Force Majeure Event. The written notice shall include a specific description of the cause and expected duration of the Force Majeure Event.

ARTICLE 8
LIMITATION OF LIABILITY

8.1 LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER, TO A PARTICIPATING CUSTOMER OR TO A THIRD PARTY FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER SUCH CLAIMS ARE BASED UPON A STATUTE, BREACH OF WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE OF ANY DEGREE), STRICT LIABILITY, CONTRACT, OPERATION OF LAW OR OTHERWISE.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN SECTION 4.3 AND ARTICLE 6 OF THE AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH SECTION 4.3 OR ARTICLE 6 PROVIDES THE EXPRESS REMEDY OR MEASURE OF DAMAGES, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISIONS AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. FOR ALL OTHER PROVISIONS OF THIS AGREEMENT FOR WHICH NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PART, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

8.2 DISCLAIMER. SUPPLIER DOES NOT WARRANT OR GUARANTEE THE UNINTERRUPTED DELIVERY OF FULL REQUIREMENTS RETAIL ELECTRIC SUPPLY TO AGGREGATION PROGRAM CUSTOMERS DURING FORCE MAJEURE EVENTS. SUPPLIER WILL HAVE NO LIABILITY OR RESPONSIBILITY FOR THE OPERATIONS OF THE EDU, INCLUDING BUT NOT LIMITED TO, THE INTERRUPTION, TERMINATION, FAILURE TO DELIVER, OR DETERIORATION OF EDU'S TRANSMISSION OR DISTRIBUTION SERVICE. EXCEPT AS MAY BE SPECIFICALLY PROVIDED HEREIN, NO IMPLIED WARRANTIES OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE SHALL BE APPLICABLE TO THIS AGREEMENT.

ARTICLE 9
REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties by Supplier. Supplier hereby represents and warrants to Community as of the Effective Date as follows:

(i) Supplier is a company, duly formed, validly existing and in good standing under the laws of the State of Delaware;

(ii) Supplier has all authorizations from any governmental authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;

(iii) The execution and delivery of, and performance under, this Agreement are within Supplier's powers, have been duly authorized by all necessary action and do not violate, conflict with or breach any of the terms or conditions in its governing documents or any contract to which it is a party or any governmental rule applicable to it;

(iv) This Agreement has been duly executed and delivered by Supplier, and this Agreement (assuming due authorization, execution and delivery of all Parties) constitutes legal, valid and binding obligations of Supplier enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law; and

(v) None of the documents or other written information furnished by or on behalf of Supplier to Community or Eligible Customers pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading;

(vi) No Bankruptcy is pending against it or to its knowledge threatened against it.

9.2 Representations and Warranties by Community. Community hereby represents and warrants to Supplier as of the Effective Date as follows:

(i) Community is duly authorized as the agent for the Participating Customers, as a duly authorized governmental aggregator;

(ii) Community has all authorizations from any governmental authority necessary for it to legally perform its obligations under this Agreement;

(iii) The execution and delivery of, and performance under, this Agreement are within Community's powers, have been duly authorized by all necessary action and do not violate, conflict with or breach any of the terms or conditions in its governing documents or any contract to which it is a party or any governmental rule applicable to it. Neither the execution nor delivery by Community of this Agreement nor the consummation by Community of the transactions contemplated hereby or thereby does or will result a breach or violation of the Agreement establishing Community's Aggregation Group, or its bylaws, or any material provision of the governance document related thereto;

(iv) This Agreement has been duly executed and delivered by Community, and this Agreement (assuming due authorization, execution and delivery of all Parties) constitutes legal, valid and binding obligations of Community, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization and similar laws affecting creditors' rights and remedies generally, to general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law;

(v) Community is entering into this Agreement with a full understanding of all of the risks disclosed in this Agreement (economic and otherwise), and it is capable of assuming and willing to assume those risks;

(vi) None of the documents or other written information furnished by or on behalf of Community to Supplier pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading;

(vii) Community has the contractual right to enter into this Agreement, to contract with Supplier to supply Full Requirements Retail Electric Supply and Administrative Services to meet the obligations of its Aggregation Program Customers, and shall enforce its contractual agreements and rights.

ARTICLE 10 **CONFIDENTIAL INFORMATION**

10.1 Confidential Information. Any Confidential Information, as defined in Section 10.2 herein, made available pursuant to this Agreement and conspicuously marked or stamped as "Confidential" shall, to the extent permitted by Ohio law, be held in confidence by each of the Parties to protect the legitimate business needs and/or privacy interests of the Parties. With respect to multi-page documents that contain Confidential Information, the Parties may make such a designation by marking or stamping only the first page thereof. The Parties shall identify

any matter deemed to be Confidential Information at the time the information is provided. Any information not designated, as Confidential Information shall not be covered by the protection contemplated herein, provided, however, that the inadvertent provision of information without a confidential designation shall not itself be deemed a waiver of the Party's claim of confidentiality as to such information, and the Party may thereafter designate the same as confidential, if the information is deemed confidential as set forth herein.

10.2 Confidential Information Defined. "Confidential Information" means any and all data and information of whatever kind or nature (whether written, electronic or oral) which is disclosed by one Party (the "Disclosing Party") to the other Party (the "Recipient") regarding itself, its business, the business of its affiliates, and/or the Aggregation Program. Confidential Information does not include information that: (a) is in the public domain at the time of disclosure; (b) passes into the public domain after disclosure, except by a wrongful act of the Recipient; (c) is disclosed to the Recipient by another not under an obligation of confidentiality; or (d) is already in the Recipient's possession prior to disclosure by the Disclosing Party.

10.3 Obligation of Confidentiality. Each Party agrees, for itself and its authorized representatives, to keep confidential all Confidential Information provided hereunder and to use the Confidential Information solely for purposes in connection with this Agreement, except to the extent that the Recipient determines that release of Confidential Information is required by law or regulation. The Recipient shall make commercially reasonable efforts to notify the Disclosing Party if it intends to release any Confidential Information to afford the Disclosing Party an opportunity to seek a protective order prior to disclosure. The obligations for Confidentiality set forth in this Agreement, including but not limited to the non-disclosure obligations and the duty to return Confidential Information upon written request, shall survive the termination of this Agreement for a period of one (1) year thereafter.

ARTICLE 11 **MISCELLANEOUS**

11.1 Notices. Any notices, requests or demands regarding the services provided under this Agreement and Attachment A shall be deemed to be properly given or made (i) if by hand delivery, on the day and at the time on which delivered to the intended recipient at its address set forth in this Agreement; (ii) if sent by U.S. Postal Service mail certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address shown below; or (iii) if by Federal Express or other reputable express mail service, on the next Business Day after delivery to such express service, addressed to the intended recipient at its address set forth in this Agreement. The address of a Party to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other Party.

Energy Harbor LLC

City of Medina

For Notices or Inquiries Regarding
this Agreement:

For Notices or Inquiries Regarding
this Agreement:

Director, Government Aggregation
Energy Harbor LLC
168 East Market Street
Akron, Ohio 44308

Phone:

11.2 Entire Agreement. This Agreement, including Attachment A hereto, contains all of the terms and conditions of this Agreement reached by the Parties, and supersedes all prior oral or written agreements with respect to this Agreement. This Agreement may not be modified, amended, altered or supplemented, except by written agreement signed by all Parties hereto. No waiver of any term, provision, or conditions of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the Party making the waiver.

11.3 Waivers. Any request for a waiver of the requirements and provisions of this Agreement shall be in writing and must be approved in writing by the non-waiving Party. The failure of either Party to insist upon strict performance of such requirements or provisions or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment of such requirements, provisions or rights.

11.4 Applicable Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio.

11.5 Controlling Provisions. In the event of any inconsistency between the terms herein and the terms of Attachment A hereto, the provisions of Attachment A shall control.

11.6 Severability. Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction.

11.7 Assignment. This Agreement shall not be transferred or assigned by either Party without the express written authorization of the non-assigning Party, which authorization shall not be unreasonably withheld; provided, however, that such authorization may be withheld upon a reasonable determination that the proposed assignee does not have at least the same financial and technical abilities. Notwithstanding the foregoing, Supplier may, without the consent of Community or the Participating Customers, (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangement; (b) transfer or assign this Agreement to an affiliate of Supplier; or (c)

transfer or assign this Agreement to any person or entity succeeding to all or a substantial portion of the assets of Supplier. Upon an assignment pursuant to (b) or (c), Community and the Participating Customers agree that Supplier shall have no further obligations regarding future performance hereunder. Either Party's assignee shall agree in writing to be bound by the terms and conditions of this Agreement, including the Attachments. Subject to the foregoing, this Agreement and its Attachments shall be binding upon and inure to the benefit of any permitted successors and assigns, to the extent permitted by law.

11.8 Recitals. The Parties agree and acknowledge that the prefatory statements and recitals in this Agreement are intended to be and shall be a part of the provisions of this Agreement.

11.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one instrument.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement to be effective on the date first written above.

Energy Harbor LLC

City of Medina

Signed: _____

Signed: _____

Printed
Typed Name: _____

Printed
Typed Name: _____

Title: _____

Title:

Date: _____

Date: _____

ATTACHMENT A:
**Pricing and Other Conditions
to Retail Generation Service Offer**

Attachment A to Master Agreement

Between

City of Medina, Medina County, Ohio and Energy Harbor LLC

Term:

Beginning with June 2023 meter read dates through June 2026 meter read dates

Pricing:

x.xx¢ per kWh

EDU:

Ohio Edison (OE)

Eligible Rate Codes:

Residential, Commercial (below either 700,000 kWh annually or 100 kW peak monthly demand)

Mercantile Accounts: Mercantile Customers (defined below) must “opt-in” to the Aggregation Program by notifying Supplier that they are a Mercantile Customer who seeks to join the Aggregation Program. Supplier will provide pricing and terms to each Mercantile Customer at the time the Mercantile Customer requests to opt-in. The Mercantile Customer can accept or reject the pricing and terms after it has been provided by Supplier, provided however, that if Mercantile Customer rejects the pricing or the terms offered by Supplier, the Mercantile Customer shall not be eligible to join or participate in the Aggregation Program. “Mercantile Customer” as used herein shall meet the definition of “Mercantile customer” set forth in R.C. 4928.01(19) or any successor definition codified in the Ohio Revised Code.

Termination Fee:

None

Administrative Services:

- Design, print and mail the Opt-out letter to all Eligible Customers including a sheet of Frequently Asked Questions to provide assistance.
- Administer the Opt-out process including database preparation, handling of opt-out form information, and final enrollment list compilation.
- Provide a call center to handle information calls, in a timely and agreed upon fashion.
- File the required information for PUCO reports on behalf of the Community.
- Conduct supplemental opt-out mailings on a periodic basis.

RCA 22-243-11/14
Finance Only

City of Medina
Board of Control/Finance Committee Approval
Administrative Code: 141

- Department Heads can authorize expenditures up to \$1,500.00 (requisition)
- Board of Control authorizes expenditures from \$1,500.01 to \$15,000.00 (BOC form).
- Finance Committee authorizes expenditures from \$15,000.01 to \$25,000.00 (BOC form).
- Council authorizes expenditures/bids over \$25,000.00 (RCA form). Board of Control awards all bids, unless otherwise specified in authorizing ordinance. (Ord. 101-05)

Date: 11/2/2022

Department: Grants

Amount: \$18,000.00

B.O.C. Approval Date: _____
(Finance Use Only)

Account Number: 138-0460-52215

Vendor: Absolute Construction Services

Department Head/Authorized Signature: 

Item/Description:

Request for a Purchase Order in the amount of \$18,000.00 for a 2020 CHIP Home Repair Project at 236 West Homestead Street. We are in the process of working on the final projects for this grant.

FINANCE COMMITTEE APPROVAL: (expenditures from \$15,000.01 to \$25,000.00)

Date Approved/Denied by Finance Committee: _____

Clerk of council

Date to Finance: _____

- Please have all BOC items for the agenda to the Mayor's Office before 5 p.m. on Friday before the scheduled BOC meeting.
- Please have all Finance Committee items for the agenda to the Clerk of Council's Office before 5 p.m. on Tuesday before the scheduled Finance Committee meeting.

Thank you.

Revised: 6/1/2018

OK
D. Howell
11-2-2022

REQUEST FOR COUNCIL ACTION

No. RCA 22-244-11/14

FROM: Medina Recreation Center *Bea*
DATE: November 7, 2022
SUBJECT: MCRC Job Description and Pay Rate Amendments

Committee: Finance

SUMMARY AND BACKGROUND:

The MCRC is respectfully requesting Council authorization to revise the classification/job description and pay rate of the Facility Supervisor. Currently the Rec Center has a full time vacancy in the programming department but is reluctant to fill that position until membership numbers have recovered to pre-COVID status. The proposed job description change adds language that enables the Facility Supervisor to assist with planning, coordinating and implementing rec center programs and events along with supervising those employees as needed. Language regarding reviewing rental requests has been removed.

We also propose amending the associated pay grade from the current 8 A-F (\$22.71 – \$28.98) to 9 A-F (\$23.85 - \$30.43). This is a classified, full-time position, with benefits. We additionally propose moving the pay rate of the person in this position from 8A to 9B, since they have been doing additional programming duties on a trial basis since September 19th with great results and profits.

We are also proposing changing the vacant Program Specialist position's pay rate from 7A-F (\$21.63 - \$27.60) to 6A-F (\$20.60 – 26.29).

**Pending Law Director approval of the job description.

Estimated Cost:

Suggested Funding:

- sufficient funds in Account No.
- transfer needed from Account No.
to Account No.
- NEW APPROPRIATION needed in Account No.

Emergency Clause Requested:

Reason:

COUNCIL USE ONLY:

Committee Action/Recommendation:

Council Action Taken:

Ord./Res.
Date:

**THE CITY OF MEDINA
JOB DESCRIPTION**

TITLE: Facility Supervisor

REPORTS TO: Recreation Center Director

DEPARTMENT/DIVISION: Recreation

CIVIL SERVICES STATUS: Classified

JOB STATUS: Full-time

EXEMPT STATUS: Non-exempt

CLASSIFICATION FEATURES: As part of an evolving, fast-paced organization, the individual in this classification will be responsible for a multitude of tasks within the Medina Community Recreation Center (MCRC). This individual is primarily responsible for the overall supervision of the specific facility area, personnel and daily operations during various facility hours. The individual in this position is under the general supervision of the Recreation Center Director.

ESSENTIAL JOB FUNCTIONS:

Manages part-time facility staffing including hiring, training, scheduling and supervising of employees in the Fitness Room, Facility Attendants, Facility Monitors **and programming staff as needed.**

Assists in planning, directing and coordinating MCRC programming for participants of all ages and interests.

Oversees specific program operations, including but not limited to planning, space arrangement, enrollment, problem solving, facility management and program evaluation.

Conducts part-time staff meetings, as required, to provide appropriate training and development.

Maintains proper operation of Fitness Room equipment including cleaning and maintenance.

~~Reviews facility rental requests including appropriate facility use and staffing coverage.~~

Oversees the facility set-up required for MCRC sponsored rentals, programs and special events and assists with staffing and coordination.

Coordinates all part-time and full-time staffing certifications in Cardiopulmonary Resuscitation/AED and First Aid, excluding lifeguard certifications.

Researches new equipment purchases for facility and maintains facility equipment inventory.

Maintains Emergency Action Plan and Procedures and Facility Area Staff Manuals.

Assists Center Director with developing and maintaining standard operating procedures policy and operational manual and employee handbook.

Interprets and enforces City and Department policies, procedures, rules and regulations.

Reports details of day-to-day operations of MCRC to Center Director on a regular basis.

Oversees daily operations of the vending facilities.

Maintains regular and consistent attendance.

Prepares monthly reports and statistics regarding facility usage and participant counts.

Assists Center Director in preparing facility budget and bi-weekly staffing payroll.

Assists Center Director in coordinating custodial and maintenance responsibilities and concerns with the Medina City School staff.

Oversees patron safety, security, and disciplinary issues.

Serves as full-time Manager on Duty as assigned.

Serves as the person in charge in the absence of the Center Director.

Attends seminars, conferences and workshops to gain knowledge to further upgrade Department programs and day-to-day operations.

Attends Recreation Board meetings, when required.

Assists fellow employees as required and works closely with fellow staff members and community in carrying out department goals.

Able to perform the physical demands that include but are not limited to having the strength and endurance to walk during long periods of time, along with the ability to spend time standing, bending, stooping, crawling, squatting, lifting, kneeling, reaching throughout the day.

EDUCATION, TRAINING AND EXPERIENCE:

Bachelor's Degree in Sports Management, Public Leisure or Recreation preferred.

Increasing responsibility in professional recreation including work in a private, public or military recreation delivery system. Advanced degree may be applied toward experience requirement.

License:

Valid driver's license issued by the State of Ohio and must remain insurable under the City of Medina's vehicle insurance plan.

Certification:

Cardiopulmonary Resuscitation/ AED
First Aid

QUALIFICATIONS:**Knowledge of:**

- Comprehensive recreation programs; and
- Principles of public recreation and its application at a local level.
- Computers, programs and membership software, including but not limited to Microsoft Office, Excel, and Word.

Skilled in:

- Overseeing various Department functions such as program development, marketing and budgeting; and
- Customer service.

Ability to:

- Supervise part-time employees;
- Communicate effectively in writing or orally with co-workers, supervisors and the general public in person or over a telephone or radio;
- Read and write reports, correspondence and instructions;
- Operate motor vehicles safely;
- Understand and follow complex oral and written instructions;
- Operate standard office equipment including but not limited to, personal computer, fax and copy machines, telephone and printers; and
- Provide administrative and professional leadership and direction to Department personnel.

ENVIRONMENTAL ELEMENTS:

This position requires the employee to spend part of each working day in the office and throughout the Recreation Center and City of Medina's Parks. The position includes a high incidence of interaction with fellow employees and patrons.

WORKING CONDITIONS:

Will be required to work outside normal business hours including weekends, evenings and holidays.

EQUIPMENT USED:

ADDITIONAL REQUIREMENTS: The above information on this description has been designed to indicate the general nature and level of work performed by employees within this classification. It is not designed to contain or be interpreted as a comprehensive inventory of all duties, responsibilities and qualifications required of employees assigned to this job. Employee understands that conditions may require the City to modify this Job Description and that the City reserves the right to exercise its discretion to make such changes.

EMPLOYEE ACKNOWLEDGMENT: _____

DATE: _____

RCA 22-245-11/14

RCA Number
(Council use only) Finance

NO. 2022-037

(Finance use only)

REQUEST FOR APPROPRIATION ADJUSTMENT

TYPE OF ADJUSTMENT
(CHECK ONE)

ADMINISTRATIVE
FINANCE COMMITTEE
COUNCIL


X

FROM ACCOUNT NUMBER	ACCOUNT DESCRIPTION	TO ACCOUNT NUMBER	ACCOUNT DESCRIPTION	AMOUNT	TRANSFER OF EXISTING APPROPRIATION	UNAPPROPRIATED FUNDS
		104-0301-53315	Parks - Tools & Minor	\$350.00		X

EXPLANATION:

Accept check number 2992 from the American Legion Post 202 towards the historic sign for the cannon in the Uptown Park

DEPARTMENT HEAD:  DATE: 10/24/22

MAYOR'S APPROVAL (WHEN NECESSARY): Dr. Harold 10/24/2022 

COUNCIL/COMMITTEE ACTION:

APPROVED: _____
DENIED: _____
RETURNED FOR EXPLANATION: _____
RETURNED TO USE EXISTING ACCOUNT FUNDS: _____

ORD. NO. 209-22

CLERK OF COUNCIL/DATE: _____

ROUTING: ORIGINAL TO FINANCE
COPY TO DEPT. HEAD
COPY TO COUNCIL

RCA 22-245-11/14

RCA Number (Council use only) Finance

(Finance use only)

REQUEST FOR APPROPRIATION ADJUSTMENT

NO. 2022-0388

TYPE OF ADJUSTMENT (CHECK ONE)

ADMINISTRATIVE FINANCE COMMITTEE COUNCIL

X

FROM ACCOUNT NUMBER	ACCOUNT DESCRIPTION	TO ACCOUNT NUMBER	ACCOUNT DESCRIPTION	AMOUNT	TRANSFER OF EXISTING APPROPRIATION	UNAPPROPRIATED FUNDS
		001-0420-54411	Forestry - Land Improvements	\$447.00		X

EXPLANATION:

Accept check number 1026 from Rudolph K. Schmeller and Rebecca Schmeller for 3 trees the 250 Roshon tree lawn

DEPARTMENT HEAD:

[Signature]

DATE: 11/2/22

MAYOR'S APPROVAL: (WHEN NECESSARY)

[Signature: Dr. Hamwell] 11/2/22

✓

COUNCIL/COMMITTEE ACTION:

APPROVED: _____

DENIED: _____

RETURNED FOR EXPLANATION: _____

RETURNED TO USE EXISTING ACCOUNT FUNDS: _____

ORD. NO. 209-22

CLERK OF COUNCIL/DATE

ROUTING: ORIGINAL TO FINANCE. COPY TO DEPT. HEAD COPY TO COUNCIL

Batch Number
(Finance use only)
Batch Posted?

RCA Number
(Council use only)

*RCA 22-245-11/14
Finance*

REQUEST FOR APPROPRIATION ADJUSTMENT

TYPE OF ADJUSTMENT
(CHECK ONE)

ADMINISTRATIVE
FINANCE COMMITTEE
COUNCIL

NO. 2022-039
(Finance use only)

FROM ACCOUNT NUMBER	ACCOUNT DESCRIPTION	TO ACCOUNT NUMBER	ACCOUNT DESCRIPTION	AMOUNT	TRANSFER OF EXISTING APPROPRIATION	UNAPPROPRIATED FUNDS	REASON
		001-0707-56615	General Fund - Adv Out	3,235,929.00		x	Rollovers - Re_advance from General Fund 001
		110-0313-56615	ODNR Grant Fund - Adv Out	122,000.00		x	Repay advance
		676-0746-56615	Mechanics Adv Out	50,000.00		x	Repay advance
		723-0983-56615	Deposits - Adv Out	60,000.00		x	Repay advance
		821-0230-56615	Cem - Adv Out	30,000.00		x	Repay advance
		138-0460-56615	CDBG-CHIP - Adv Out	245,280.00		x	Rollovers - Repay General Fund
		139-0460-56615	HOME_CHIP - Adv Out	454,720.00		x	Rollovers - Repay General Fund
		125-0451-56615	CDBG-AV- Adv Out	391,000.00		x	Rollovers - Repay General Fund
		125-0453-56615	CDBG-Allocation- Adv Out	150,000.00		x	Rollovers - Repay General Fund
		109-0659-56615	Grants Fund - Adv Out	95,950.00		x	Rollovers - Repay General Fund
		110-0314-56615	ODNR Grant Fund - Adv Out	35,000.00		x	Rollovers - Repay General Fund
		110-0315-56615	ODNR Grant Fund - Adv Out	71,000.00		x	Rollovers - Repay General Fund
		147-0659-56615	Fed Airport Grant Fd - Adv Out	150,000.00		x	Rollovers - Repay General Fund
		380-0688-56615	Issue 2 Project Fund - Adv Out	477,979.00		x	Rollovers - Repay General Fund
		428-0201-56615	Special Assessments - Adv Out	30,000.00		x	Rollovers - Repay General Fund
		547-0650-56615	Airport - Adv Out	935,000.00		x	Rollovers - Repay General Fund
		637-0920-56615	Agency - Adv Out	145,000.00		x	Rollovers - Repay General Fund
		819-0220-56615	Cem Endowment - Adv Out	5,000.00		x	Rollovers - Repay General Fund
		924-0930-56615	Law Library - Adv Out	30,000.00		x	Rollovers - Repay General Fund
		939-0430-56615	Bd / Bldg Standards - Adv Out	20,000.00		x	Rollovers - Repay General Fund
		135-0130-52215	EMS - Contractual	25,000.00		X	to cover LST costs
		201-0645-56612	TIF - Refund of TIF Revenue to Schools	21,000.00		x	TIF payments to schools
		547-0650-50111	Airport - Wages	10,000.00		X	to cover wages
		547-0650-54411	Airport - Wages	25,000.00		X	to cover lighting repairs
171-0110-53315		171-0743-52214		1,579.00	x		ARPA - excess from fire ac
171-0743-52214		171-0410-53315		50,000.00	x		Mult-use path plan - arpa
171-0743-52214		171-0743-52215		70,000.00	x		mnha donation- arpa
171-0743-52214		171-0610-54411		2,700.00	X		Parking lot project - arpa
			Total increases to fund:	6,814,858.00			
			Total reductions to fund:				
			Total transfers within fund:	124,279.00			

EXPLANATION:

DEPARTMENT HEAD: Keith Dirham / Lori Bowers

DATE: 11/8/2022

MAYOR'S APPROVAL:
(WHEN NECESSARY) _____

DATE: _____

COUNCIL/COMMITTEE ACTION:

APPROVED: _____
DENIED: _____
RETURNED FOR EXPLANATION: _____
RETURNED TO USE EXISTING ACCOUNT FUNDS: _____

ORD. NO. 209-22

CLERK OF COUNCIL/DATE

ROUTING: ORIGINAL TO FINANCE
COPY TO DEPT. HEAD
COPY TO COUNCIL

REQUEST FOR COUNCIL ACTION

NO. ROA 22-246-11/14

Committee: FINANCE

FROM: Keith Dirham, Finance Director
Lori Bowers, Deputy Finance Director
DATE: November 8, 2022
SUBJECT: Rollover of Outstanding Advances

SUMMARY AND BACKGROUND:

The Finance Department respectfully requests Council to authorize the Finance Director to **rollover** the following advances:

Advance From;	Advance To:	Amount	Purpose
General Fund (#001)	138-CDBG-CHIP Fund	\$245,280.00	To rollover the advance initially authorized in 2021 for the PY 20 CDBG-CHIP grant (138-0460)
General Fund (#001)	139-HOME-CHIP Fund	\$454,720.00	To rollover the advance initially authorized in 2021 for the PY 20 HOME-CHIP grant (139-0460)
General Fund (#001)	125-CDBG Allocation Fund	\$391,000.00	To rollover the advance initially authorized in 2021 for the PY 20 CDBG-CV Grant (125-0451)
General Fund (#001)	125-CDBG Allocation Fund	\$150,000.00	To rollover the advance initially authorized in 2021 for the PY 20 CDBG-Allocation Grant (125-0453)
General Fund (#001)	Grants Fund (#109)	\$95,950	To rollover the advance initially authorized in 2020 for the Airport Remarking project
General Fund (#001)	ODNR - State Grant Fund (#110)	\$106,000	To rollover the advance initially authorized in 2021 for the Ray Mellert projects
General Fund (#001)	Fed Airport Grant Fund(#147)	\$150,000	To rollover the advance initially authorized in 2020 for the Airport Obstruction Removal Study project
General Fund (#001)	Grant Fund - (#380)	\$477,979	To rollover the advance initially authorized in 2021 for the Spring Grove / N Broadway Bridget project
General Fund (#001)	Special Assessment Project (#428)	\$20,000	To rollover the advance initial authorized in 2020 for the Special Assessments fund.
General Fund (#001)	Special Assessment Project (#428)	\$10,000	To rollover the advance initial authorized in 2021 for the Special Assessments fund.
General Fund (#001)	Airport Fund (#547)	\$235,000.00	To rollover the advance initially authorized in 2012 to cover negatives in the Airport Fund
General Fund (#001)	Airport Fund (#547)	\$300,000.00	To rollover the advance initially authorized in 2012 to help pay for a jet fuel tank and dispensing system.
General Fund (#001)	Airport Fund (#547)	\$400,000.00	To rollover the advance initially authorized in 2019.
General Fund (#001)	Agency (#637)	\$145,000.00	To rollover the advance initially authorized in 2020.
General Fund (#001)	Cemetery Endowment (#819)	\$5,000.00	To rollover the advance initially authorized in 2020.
General Fund (#001)	Law Library (#924)	\$30,000.00	To rollover the advance initially authorized in 2020.
General Fund (#001)	Bd / Bldg Standars (#939)	\$20,000.00	To rollover the advance initially authorized in 2020.

These advances (for the grant funds) are necessary to cover expenditures until the City recives reimbursement from the grantor agency.

Estimated Cost: \$3,235,929 from General Fund

Suggested Funding: See above.

Sufficient Funds in Account

Transfer needed: From Account No.:
To Account No.:

NEW APPROPRIATION needed in Account No.: refer to appropriation #2022-039

Emergency Clause Requested: No

Reason:

COUNCIL USE ONLY:
Committee Action/Recommendation:

Council Action Taken:

Ord/Res.
Date:

*Ord. 210-22
11-14-22*

OK
D. Hammond
11-8-2023

REQUEST FOR COUNCIL ACTION

No. RCA 22-247-11/14

FROM: Medina Rec Center *SW*

Committee: Finance

DATE: November 7, 2022

SUBJECT: MCRC Fitness Room Addition Design Services Project #1055

SUMMARY AND BACKGROUND:

Respectfully requesting Council's authorization to accept a proposal from Fanning and Howey for Professional Design Services for the expansion of the Fitness Room at the Rec Center and authorizing the Mayor to sign the agreement on the City's behalf.

The project consists of a building addition of approximately 1,800 SF with a construction budget of \$700,000 and an additional owners' reserve contingency of \$70,000. The work is expected to be bid as a single prime contract and will require use of prevailing wage as a provision of the grant funding program. The proposal's scope of services includes preparing design and construction documents as well as bidding assistance as outlined in the responsibility matrix attached.

This City has received Capital Improvement funding through House Bill 687 in the amount of \$350,000 for this project. All remaining costs are the responsibility of the City and will be paid for from the Medina Rec Center carryforward funds.

Additionally, requesting to Repeal Ordinance 47-19, Letter of Intent with Medina City Schools, regarding the 2019 fitness room addition specifications. A Joint Development Agreement and Concept Design has been drafted and presented to the Medina City School Board for approval of the project as authorized in the grant request.

Please See Attached Proposal for details.
*Pending Law Director approval.

Estimated Cost: \$48,000
Suggested Funding: 574-0350-52226
sufficient funds in Account No.

- transfer needed from Account No. to Account No.
- NEW APPROPRIATION needed in Account No.

Emergency Clause Requested: No
Reason:

COUNCIL USE ONLY:
Committee Action/Recommendation:

Council Action Taken:

Ord./Res.
Date:



4930 Bradenton Ave
Suite 200
Dublin, OH 43017
614.764.4661
fhai.com

October 31, 2022

Christy Moats
Recreation Center Superintendent
Medina Community Recreation Center
855 Weymouth Road
Medina, Ohio

Re: Recreation Center Expansion
Medina Community Recreation Center
Medina High School
Medina, OH

Dear Ms. Moats:

Fanning Howey is pleased to submit a Proposal for Professional Services for Design for the expansion of the existing Medina Community Recreation Center located within the Medina High School Facility. The Project consists of a building addition of approximately 1,800 SF with a construction budget of \$700,000 and an additional Owner's reserve contingency of \$70,000. The work is expected to be bid as a single prime contract and will require the use of prevailing wages as a provision of the grant funding program.

The Project Schedule will be developed, but is assumed to begin construction in the Spring of 2023 with all work completed by the Fall of 2023.

The Scope of Basic Services would include preparing Design and Construction Documents in a single phase, submitting Construction Documents for plan approval, Refer to the attached Responsibility Matrix (Non-CM) Exhibit for further breakdown and description of services.

Design services will be based upon use of existing building documents to determine existing layout and site conditions. Foundation conditions will be based upon assumed geotechnical soil conditions and bearing pressures (unless the Owner provides a Geotechnical Subsurface Investigation report).

Excluded from the proposed Architect/Engineer (A/E) services are topographical or boundary surveys, geotechnical or environmental design and testing services, third party Bid Document printing, or Project bidding website setup costs (assumed electronic bidding process), special construction inspections and testing requirements as required by the Ohio Building Code (OBC), permit costs, Loose Furnishings and Equipment Design as well as Technology Design services, and Construction Administration services. A detailed Construction Cost Estimate may be provided as an additional service and reimbursable cost.

Fanning Howey understands the City will provide a copy of the previously performed Land Survey and Geotechnical Investigation Report for reference and use in designing the proposed addition.

Proposal for Professional Services
Medina Community Recreation Center
Medina High School
Medina, OH
October 31, 2022
Page 2



Fanning Howey also understands the City will perform all necessary services to advertise for bidding, release documents for bidding, and receive, review and award bids.

Fanning Howey proposes to provide the above design services for a lump sum fee of Forty Eight Thousand Dollars and no cents (\$48,000.00). Invoices would be submitted monthly as services are provided.

If the provisions of this proposal are agreeable, please sign the acceptance form below and return by email to our office. A formal AIA Services Agreement would be prepared for execution between the City of Medina and Fanning Howey for the services outlined herein.

Sincerely,
FANNING HOWEY

Michael Myers, CPTED
Project Manager

msm/maa

attachment: Design & Bidding/Award Responsibility Matrix (Non-CM)

CITY OF MEDINA ACCEPTANCE

Accepted by; _____
Signature

Name and Title _____

Date: _____

RESPONSIBILITY MATRIX
Non-CM Version

This Matrix highlights and summarizes some of the responsibilities of the Owner and the Architect as denoted in the Owner Architect Agreement. This Matrix is not comprehensive, and not intended to supersede the Owner-Architect Agreement. If there is a discrepancy between this Exhibit and the Owner-Architect Agreement, the Agreement shall prevail.

DESIGN AND DOCUMENT PHASES

Activity	Owner	Architect
Design Schedule	Review and Approve	Develop and Present
Building Program	Develop and Approve	Consult and Assist
Project Budget	Develop and Update	Review and Comment (<i>Additional Service</i>)
Construction Estimates	Review and Approve	Develop and Present (<i>Additional Service</i>)
Value Engineering	Review and Approve	Develop and Present
Environmental Design Alternatives	Review and Approve	Develop and Present
Design Phase Approvals	Review and Approve	Develop and Present
Land Surveys	Furnish and pay for	Excluded
Geotechnical Services	Furnish and pay for	Excluded
Environmental Testing (if necessary)	Furnish and pay for	Excluded
Design Review Meetings	Attend	Present and prepare minutes
Technical Specifications	Review and Approve	Develop and Present
Bidding Alternates	Review and Approve	Develop and Present
Authorization to Bid	Approve	None

BIDDING AND AWARD PHASE

Activity	Owner	Architect
Builders Risk Insurance	Obtain and pay for	None
Insurance required of the Contractor	Identify requirements	None
Temporary Utilities	Review and Approve	Develop and Present
General Conditions for Construction	Review and Approve	Develop and Present
Instructions to Bidders	Assist, Review, and Approve	Prepare
Bidding Forms	Review and Approve	Develop and Present
Form of the Contract for Construction	Prepare	Consult and Assist
Bond Forms	Prepare	Consult and Assist
Affidavits	Prepare	Consult and Assist
Advertisement for Bids	Arrange for publication and pay for	None
Document Printing and Distribution	Pay for	None
Pre-Bid Meeting	Attend	Schedule and Conduct, if necessary
Addenda	Review and Approve	Prepare and Distribute
Receive Bids	Receive and time stamp	None
Bid Opening(s)	Conduct, open, and read	None
Post Bid Interviews	Attend	Consult and Assist
Recommendation to Award	Review and Approve	None
Owner-Contractor Agreement	Authorize and execute	None
Notice to Proceed	Authorize and execute	Develop and Present
State Approvals	Authorize, execute, and pay for	Develop and Present
Other Permits (if necessary)	Authorize, execute, and pay for	Determine need and Advise
Building Permits	Paid by the Owner	Assist if requested

ORDINANCE NO. 47-19

AN ORDINANCE AUTHORIZING THE MAYOR TO SIGN THE LETTER OF INTENT TO THE BOARD OF EDUCATION OF THE MEDINA CITY SCHOOL DISTRICT FOR THE NEW FITNESS ROOM ADDITION AT THE MEDINA COMMUNITY RECREATION CENTER, AND DECLARING AN EMERGENCY.

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

- SEC. 1:** That Council hereby authorizes the Mayor sign the Letter of Intent to the Board of Education of the Medina City School District for the new Fitness Room Addition at the Medina Community Recreation Center.
- SEC. 2:** That a copy of the Letter of Intent 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 project is planned to be bid in the next few weeks; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and signature by the Mayor.

PASSED: March 25, 2019

SIGNED: James A. Shields
President of Council Pro-Tem

ATTEST: Kathy Patton
Clerk of Council

APPROVED: March 26, 2019

SIGNED: Dennis Hanwell
Mayor



132 North Elmwood Ave
P.O. Box 703
Medina, Ohio 44258-0703
Phone: 330-725-8864
Fax: 330-722-9045
www.medmach.org

ORD. 47-19
EXH. A

March 11, 2019

Board of Education
Medina City School District
739 Weymouth Road
Medina, OH 44256

Re: Medina Community Recreation Center
New Fitness Room Addition

Letter of Intent

General Items:

It is the City of Medina's intention:

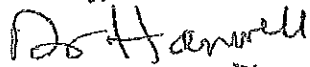
1. To pay for all of the associated design and construction costs for a new expansion of the space at the Medina Community Recreation Center ("MCRC").
 - a. Including associated/related costs for reworked utilities, i.e., underground lines (sewer, storm, etc.), connection/extension costs for electrical, gas, and plumbing within the existing building to feed the new addition's needs.
2. To pay for estimated additional utility expenses for use of the new expanded space.
3. To pay for any expenses for additional insurance (facility, liability, etc), if needed.
4. To not increase custodial costs or staff.
 - a. Medina Community Recreation Center staff will provide general cleaning of the new area.
5. We also intend to make and install a project sign that includes information that the funding for the proposed project is fully from the City of Medina ("City") & that no Medina City School District ("MCSD") funding is being used for this project.
6. To relocate all of the current exercise and weight equipment located on the balcony to the new space.
 - a. Use of and programming for the existing balcony's future is not directly a part of the Fitness Center's project, however, the MCRC intends to work directly with the MCSD about usage of this area.

Preserving the Past. Forging the Future.

7. The plan for the project is intended to provide the least disruption to current activities/programs at the MCRC as the project moves forward.
8. The design for the facility will keep the new Fitness Room as a separate entity from the rest of the existing Fitness Area it is attached to.
9. The new space is to have its own mechanical and electrical systems, with gas, electric, sewer, and water tapped into at the existing building systems.
10. Professional services to be provided will include the design development of the current preliminary design, preparation of the construction documents and specifications, bidding process, bid review/recommendations, construction oversight and end of project closeout.
11. The specifications for the project are intended to include a 10-15 year warranty on the HVAC system. The roof system will, most likely, include a 20-30 year warranty. All warranties will run to the benefit of MCSD and the City.
12. A copy of the proposed time line and estimate of cost is attached hereto and incorporated herein. The intention is to follow the attached time line for the new Fitness Center; however, it is understood that delays may occur due to unanticipated detailing issues, securing the necessary approvals to move forward with any phase of the project, or overall construction issues.
13. When the construction drawings have been prepared, there will be a public bidding process, with the award intended to go to the lowest and best bid received. As this process proceeds the Architect will make the recommendation to the City of Medina, which will advise the MCSD Board of Education of the recommendation and seek any input from the Board of Education prior to final approval by the Medina City Council.
14. The project is anticipated to be ready for occupancy and programs by the spring of 2020.
15. The Ground Lease Agreement and the Joint Operating Agreement will be revised to adjust the square footage included under the lease due to the added square footage from this project. All other provisions of the Ground Lease and Joint Operating Agreement remain viable and intact, unless contrary to the above provisions in the letter of intent which shall be incorporated into the Joint Operating Agreement and Lease.

The parties agree that the foregoing list contains the basic framework for the project and may be modified as the project proceeds. It is the intention of the City to keep the MCSD informed of the progress of the project and work with the MCSD in addressing any concerns regarding the project.

Sincerely,


Dennis Hanwell 3/26/19
Mayor

DH/ss

Attachment: Anticipated Time Line, dated 1/3/2019
Estimate of Cost, dated 1/3/2019

REQUEST FOR COUNCIL ACTION

*OK
attached
11-8-2022*

NO. RCA 22-248-11/14

FROM: Patrick Patton 

DATE: November 8, 2022

COMMITTEE REFERRAL: Finance

SUBJECT: Agreement between the City and the Medina County Health Department for sampling and testing of storm water runoff

This request asks for Council's authorization to enter into an agreement between the City and the the Medina County Health Department (Health Department). This agreement is necessary in order for the City meet the federally required guidelines of our NPDES permit granted to the City by the Ohio EPA.

The City and the Health Department first entered into this agreement in 2009 (Ord 164-09). The agreement was renewed in 2012 and 2017 (Ord 2-18), each for a 5 year term. This new agreement will also be for a 5 year term, running from 2023 to 2027.

The Health Department provides storm water runoff testing services for the City as required by the permit. The annual cost for this service will vary depending upon the number of test samples obtained and analyzed; I have estimated the annual cost to be \$5,300.

ESTIMATED COST: \$5,300 (estimated) annually for the Medina County Health Department)

SUGGESTED FUNDING: Street & Storm Water Special

Sufficient Funds in Account Number: 108 0668 54411

Transfer Needed from: To:

New Appropriation Account Number:

Emergency Clause Requested: NO
Reason:

COUNCIL USE ONLY:

COMMITTEE RECOMMENDATION:

Council Action Taken:

Ord./Res. Number:

Date:

**AGREEMENT BETWEEN
THE MEDINA COUNTY COMBINED GENERAL HEALTH DISTRICT
AND
THE CITY OF MEDINA, OHIO**

THIS AGREEMENT, made this ____ day of _____, 20____, (Effective Date”), by and between the Medina County Combined General Health District (hereinafter “MCHD”) and the City of Medina Ohio (hereinafter “City”) for the provision by MCHD for services to perform sampling of storm sewers located within the City and provide other services in order to facilitate the city’s compliance with its Ohio EPA NPDES Permit for Storm Water management.

A. DUTIES AND RESPONSIBILITIES

By this Agreement, and upon request from the City, MCHD will test selected locations within the City’s storm sewer system for fecal coliform bacteria beginning in 2013. The City’s Engineer will provide a list of outfalls where sampling is warranted, as determined by their prior inspection, and in accordance with the following:

- (1) MCHD will sample outfall locations during a dry weather period (minimum 72 hours no rain event) over the contract reporting period.
- (2) MCHD will provide the sample results to the City Engineer to be included in the City’s Storm Water Annual Report to the Ohio EPA.
- (3) The CITY will provide aid in opening storm sewer manholes where and when needed for the purpose of sample collections.

B. TERM

The term of this Agreement shall be on the Effective Date stated above and shall end on December 31, 2027. Either party may cancel this Agreement, for cause, with sixty (60) days written notice to the other party of such intent, when either the progress or results achieved under this Agreement are unacceptable to either party. Prior to cancellation of this Agreement, a meeting will be held by the parties to discuss issues of concern and to seek resolution. If this Agreement is canceled by the parties prior to completion, MCHD, within twenty (20) days, shall submit a certified final progress report if a percentage of work is completed by the date of cancellation. The City will pay MCHD for the work completed as certified in this statement, subject to the provisions of this Agreement.

C. COMPENSATION

The City shall pay the MCHD for its sampling services an amount of one hundred twenty-five dollars (\$125.00) per sample. The City shall pay MCHD an amount of one hundred twenty-five dollars (\$125.00) for each outfall the City has requested a sample, but MCHD was unable to obtain a sample due to no flow at the time of its visit to the outfall. Upon request from the City, the City shall pay MCHD an amount of one hundred twenty-five dollars (\$125.00) per hour for the time spent by MCHD assisting with the investigation and/or resolution of confirmed illicit discharges.

D. PAYMENT

MCHD shall submit an invoice to the City for the payments due hereunder.

E. INDEPENDENT CONTRACTORS

MCHD is performing its duties and obligations under this Agreement as an independent contractor and is not an agent or employee of the City. MCHD shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, or directors, to the extent allowable by law.

IN WITNESS WHEREOF, authorized representatives of the parties to this contract, indicating their party's approval of the terms herein, have signed as of the dates set forth below.

WITNESSES:

- 1. _____
- 2. _____

**MEDINA COUNTY COMBINED
GENERAL HEALTH DISTRICT**

By: _____

Print Name: _____

Title: _____

Date: _____

WITNESSES:

- 1. _____
- 2. _____

CITY OF MEDINA, OHIO

By: _____

Print Name: _____

Title: _____

Date: _____

REQUEST FOR COUNCIL ACTION

*OK
25/11/22
11-8-2022*

NO. RCA 22-249-11/14

FROM: Patrick Patton 

DATE: November 8, 2022

COMMITTEE REFERRAL: Finance

SUBJECT: Revise Chapter 909 of the City's Codified Ordinance regarding Use of Public Ways for Small Cell Wireless Facilities

This request asks Council to revise Chapter 909 of the City's Codified Ordinance regarding Use of Public Ways for Small Cell Wireless Facilities. This Chapter was first established by Ordinance 111-18 passed July 9, 2018.

The proposed revisions are attached.

Thank you for your consideration.

ESTIMATED COST: No cost

SUGGESTED FUNDING:

Sufficient Funds in Account Number:

Transfer Needed from: To:

New Appropriation Account Number:

Emergency Clause Requested: NO
Reason:

COUNCIL USE ONLY:

COMMITTEE RECOMMENDATION:

Council Action Taken:

Ord./Res. Number:

Date:

OK
T. Thomas
11/8/22

REQUEST FOR COUNCIL ACTION

No. RCA 22-250-11/14

FROM: Mayor Hanwell

Committee: Finance

DATE: 11/3/2022

SUBJECT: Salary Range Change Request for Parks Director/Superintendent of Parks, Cemetery & Forestry from 112 to 114

SUMMARY AND BACKGROUND:

The Parks Director/ Superintendent of Parks, Cemetery & Forestry classification is currently set at Salary Range 112 (\$74,396.35-\$89,275.62/annually). Jansen Wehrley was appointed to this position 1/16/2014 and his current annual salary at this time is \$89,275.62.

During COVID, November 6, 2020, the MCRC Director resigned. Mr. Wehrley agreed to act as the Medina Community Recreation Center Director in addition to continuing his Parks Director responsibilities and he has been compensated approximately \$12,000 additional annual compensation since then by being paid an additional \$461.54 with his bi-weekly payroll check.

This was to have been an interim assignment staying in effect until the COVID restrictions were lifted and the MCRC operations returned to normal. Mr. Wehrley has been handling the responsibilities of both positions effectively and efficiently. He brought new ideas and listened to other's ideas and this arrangement has been working out well with Mr. Wehrley working tirelessly.

Though memberships are still down, the MCRC is up to 98% of pre-COVID revenue so far this year with a month to go having the programs and daily passes helping bring the numbers up. Mr. Wehrley is not entitled to earn overtime and he has been juggling two time consuming positions and keeping a tight watch over both. Mr. Wehrley is open to continuing serving as both directors, but is requesting additional compensation since it will take additional time away from his family and it would be saving the city funds by having only one director covering two positions.

As the appointing authority for both positions, I am respectfully requesting Council to:

- change the the Parks Director/ Superintendent of Parks, Cemetery and Forestry to Salary Range 114 (\$107,130.74-\$128,556.89/annually) to allow Mr. Wehrley to have the additional stipend removed and replaced with an annual salary of \$115,000 with the understanding a new job description (Director of Recreation, Parks, Cemetery and Forestry) is being prepared and will replace the current Parks Director job description and Mr. Wehrley will continue covering both positions as they are combined into one.

Thank you.

Estimated Cost: \$30,000 (\$25,725 regular, \$3601 retirement & \$385 Medicare)

Suggested Funding:

- sufficient funds in Account No. 574-0350-50111
- transfer needed from Account No. _____ to Account No. _____
- NEW APPROPRIATION needed in Account No. _____

Emergency Clause Requested: YES

Reason: Asking to have this portion approved to allow proper compensation to begin as soon as possible for Mr. Wehrley for the outstanding job he has been doing.

COUNCIL USE ONLY:

Committee Action/Recommendation:

Council Action Taken:

Ord./Res.

Date:

REQUEST FOR COUNCIL ACTION

No. RCA 22-251-11/14
Committee: Finance

FROM: John Coyne/Jim Shields, Councilmembers

DATE: 11/2/22

SUBJECT: Amend S & B Code, 31.02 (B)(13) and 31.05 pertaining to the Clerk of Council and Deputy Clerk of Council Positions in the City Council Office.

SUMMARY AND BACKGROUND:

Amend Sections 31.02 (B)(13) and 31.05 of the Salaries and Benefits Code pertaining to the Office of Council, Clerk of Council, making the Clerk of Council position part-time and adjusting pay from salary to Level 15A hourly, effective January 1, 2023.

Amend Sections 31.02 (B)(13) and 31.05 of the Salaries and Benefits Code amending the Deputy Clerk of Council/Legislative Assistant Position to Deputy Clerk of Council, and pay grade from a 14F to a 7A.

Estimated Cost:

Suggested Funding:

- sufficient funds in Account No.
- transfer needed from Account No. _____ to Account No. _____
- NEW APPROPRIATION needed in Account No. _____

Emergency Clause Requested: No

Reason:

COUNCIL USE ONLY:

Committee Action/Recommendation:

Council Action Taken:

Ord./Res.

1 Clerical Help Pay Grade 5A

*The part-time position of Code Enforcement Inspector may not be filled if there is a person filling the full-time position (see Section 31.05).

(Ord. 2-04, 22-11, 25-11, 134-11, 151-11, 130-13, 70-14, 114-15, 41-17, 158-18, 79-21)

(12) LAW DEPARTMENT

2 Clerical Help Pay Grade 5A
(Ord. 2-04, 7-19)

Hourly Rate

(13) COUNCIL OFFICE

1 Deputy Clerk of Council/
Legislative Assistant Pay Grade 14F
(Ord. 2-04, 17-10, 206-10, 134-11)

Hourly Rate

(14) CITY HALL

5 Substitute Clerical Help* Pay Grade 5A
(Ord. 17-10, 118-11, 134-11, 142-13)

Hourly Rate

(15) STREET DEPARTMENT

1 Sign Technician (part-time) per contract
1 Laborer (part-time) per contract
(Ord. 119-20)

Hourly Rate

* If a department has unused budgeted hours and funding, a request for clerical assistance shall be made through the Mayor's Office and time will be allocated to departments on a needs basis as determined by the Mayor.

(C) GENERAL PROVISIONS.

(1) All new unclassified employees shall start at the hourly rate set forth above which is appropriate to the position.

(2) Employees new to the City but having outside experience may at the time of employment be paid at a higher rate than the entry level rate for their position provided the pay is recommended by the Administration and approved by City Council.

(3) Seasonal and part-time employees who return to work for the City in subsequent years shall receive the same hourly rate they received the previous year unless Council has increased the rate of pay. The rates for unclassified employees shall be considered by City Council annually during the budget process if such consideration is requested by the

1 Clerical Help Pay Grade 5A

*The part-time position of Code Enforcement Inspector may not be filled if there is a person filling the full-time position (see Section 31.05).

(Ord. 2-04, 22-11, 25-11, 134-11, 151-11, 130-13, 70-14, 114-15, 41-17, 158-18, 79-21)

(12) LAW DEPARTMENT

2 Clerical Help Hourly Rate Pay Grade 5A
(Ord. 2-04, 7-19)

(13) COUNCIL OFFICE

1 Deputy Clerk of Council/ Legislative Assistant Hourly Rate Pay Grade 14F
1 Clerk of Council/Legislative Asst. Pay Grade 15A
1 Deputy Clerk of Council Pay Grade 7A

(Ord. 2-04, 17-10, 206-10, 134-11)

(14) CITY HALL

5 Substitute Clerical Help* Hourly Rate Pay Grade 5A
(Ord. 17-10, 118-11, 134-11, 142-13)

(15) STREET DEPARTMENT

1 Sign Technician (part-time) Hourly Rate per contract
1 Laborer (part-time) Hourly Rate per contract
(Ord. 119-20)

* If a department has unused budgeted hours and funding, a request for clerical assistance shall be made through the Mayor's Office and time will be allocated to departments on a needs basis as determined by the Mayor.

(C) GENERAL PROVISIONS.

(1) All new unclassified employees shall start at the hourly rate set forth above which is appropriate to the position.

(2) Employees new to the City but having outside experience may at the time of employment be paid at a higher rate than the entry level rate for their position provided the pay is recommended by the Administration and approved by City Council.

CURRENT

SECTION 31.05 DEPARTMENTAL ASSIGNMENTS

There shall be the following number of positions, officers, and employees of the various departments hereinafter set forth and they shall receive compensation within the respective classification and pay grades established in Section 31.03; and the salaries and compensation shall be paid to such officers and the employees of the City from the various funds for which the services are performed, unless otherwise hereinafter designated, as follows:

CABLE TV

<u>Number</u>	<u>Classification</u>	<u>Steps Authorized</u>	<u>Classified Service</u>
1	Cable TV Executive Director/General Manager	16 A-F	Classified
1	Cable TV Operations Director	12 A-F	Classified
2	Cable TV Production Assistant (part-time)**	Sec. 31.02(B)(9)	Part-time
1	Technical Operations Director *	14 A-F***	Classified

Note: All Cable TV positions are appointed by and under the direction of the ACCESS Commission.

*Jointly funded position with Medina City Schools. See agreement authorized by Ord. 246-06, 101-17

**The position of Production Assistant may be filled by more than one person not to exceed twenty-nine (29) hours per week combined.

*** Technical Operations Director Position to be paid at pay grade 14 A-F - effective July 1, 2021.
Ord. 54-04, 246-06, 187-14, 54-16, 101-17, 105-21

CIVIL SERVICE COMMISSION

<u>Number</u>	<u>Classification</u>	<u>Steps Authorized</u>	<u>Classified Service</u>
1	Secretary to Civil Service Commission	11 A-F	Classified/appointed by Civil Service Commission

CITY COUNCIL

<u>Number</u>	<u>Classification</u>	<u>Steps Authorized</u>	<u>Classified Service</u>
1	President of Council	Sec. 31.01	Elected
6	Council members	Sec. 31.01	Elected
1	Clerk of Council/Certified Clerk of Council	Pay Grade 103/104 (annual salary paid bi-weekly)	Unclassified/appointed by Council

1 Deputy Clerk of Council/Legislative Assistant Pay Grade 14F Part-time
 (part-time)
 Ord. 2-04, 17-10, 22-10, 170-10, 206-10, 134-11, 21-15

COMMUNITY DEVELOPMENT DEPARTMENT

<u>Number</u>	<u>Classification</u>	<u>Steps Authorized</u>	<u>Classified Service</u>
1	Community Development Director	Pay Grade 122	Unclassified, appointed by Mayor, confirmed by Council (annual salary paid bi-weekly)
1	Economic Development Director	Pay Grade 112	Unclassified/appointed by Mayor, confirmed by Council (annual salary paid bi-weekly)
1	Building Official	Pay Grade 114	Unclassified/appointed by Mayor-confirmed by Council
1	Building Dept. Admin. Assist.	7 A-F	Classified
1	Economic Development/Planning Admin. Asst.	7 A-F	Classified
1	Building/Property Maintenance Inspector	16 A-F per contract	Classified
1	Code Enforcement Inspector*	8 A-F	Classified
1	Clerk (part-time)	Sec. 31.02(B)(11)	Part-time
1	Economic Development & Marketing Manager	Pay Grade 110	Unclassified, appointed by Mayor

*The full-time position of Code Enforcement Inspector may not be filled if there is a person filling the part-time position (see Section 31.02).

Ord. 41-06, 88-06, 99-09, 82-10, 152-02, 153-02, 2-04, 21-04, 33-04, 7-06, 22-11, 25-11, 76-11, 134-11, 151-11, 2-12, 14-12, 130-13, 120-14, 114-15, 41-17, 158-18, 42-21, 79-21

PROPOSED

SECTION 31.05 DEPARTMENTAL ASSIGNMENTS

There shall be the following number of positions, officers, and employees of the various departments hereinafter set forth and they shall receive compensation within the respective classification and pay grades established in Section 31.03; and the salaries and compensation shall be paid to such officers and the employees of the City from the various funds for which the services are performed, unless otherwise hereinafter designated, as follows:

CABLE TV

<u>Number</u>	<u>Classification</u>	<u>Steps Authorized</u>	<u>Classified Service</u>
1	Cable TV Executive Director/General Manager	16 A-F	Classified
1	Cable TV Operations Director	12 A-F	Classified
2	Cable TV Production Assistant (part-time)**	Sec. 31.02(B)(9)	Part-time
1	Technical Operations Director *	14 A-F***	Classified

Note: All Cable TV positions are appointed by and under the direction of the ACCESS Commission.

*Jointly funded position with Medina City Schools. See agreement authorized by Ord. 246-06, 101-17

**The position of Production Assistant may be filled by more than one person not to exceed twenty-nine (29) hours per week combined.

*** Technical Operations Director Position to be paid at pay grade 14 A-F - effective July 1, 2021.

Ord. 54-04, 246-06, 187-14, 54-16, 101-17, 105-21

CIVIL SERVICE COMMISSION

<u>Number</u>	<u>Classification</u>	<u>Steps Authorized</u>	<u>Classified Service</u>
1	Secretary to Civil Service Commission	11 A-F	Classified/appointed by Civil Service Commission

CITY COUNCIL

<u>Number</u>	<u>Classification</u>	<u>Steps Authorized</u>	<u>Classified Service</u>
1	President of Council	Sec. 31.01	Elected
6	Council members	Sec. 31.01	Elected
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1 Deputy Clerk of Council/Legislative Assistant Pay Grade 14F- 15A Part-time
 (part-time)

Ord. 2-04, 17-10, 22-10, 170-10, 206-10, 134-11, 21-15

COMMUNITY DEVELOPMENT DEPARTMENT

<u>Number</u>	<u>Classification</u>	<u>Steps Authorized</u>	<u>Classified Service</u>
1	Community Development Director	Pay Grade 122	Unclassified, appointed by Mayor, confirmed by Council (annual salary paid bi-weekly)
1	Economic Development Director	Pay Grade 112	Unclassified/appointed by Mayor, confirmed by Council (annual salary paid bi-weekly)
1	Building Official	Pay Grade 114	Unclassified/appointed by Mayor, confirmed by Council (annual salary paid bi-weekly)
1	Building Dept. Admin. Assist.	7 A-F	Unclassified/appointed by Mayor-confirmed by Council
1	Economic Development/Planning Admin. Asst.	7 A-F	Classified
1	Building/Property Maintenance Inspector	16 A-F per contract	Classified
1	Code Enforcement Inspector*	8 A-F	Classified
1	Clerk (part-time)	Sec. 31.02(B)(11)	Part-time
1	Economic Development & Marketing Manager	Pay Grade 110	Unclassified, appointed by Mayor

*The full-time position of Code Enforcement Inspector may not be filled if there is a person filling the part-time position (see Section 31.02).

Ord. 41-06, 88-06, 99-09, 82-10, 152-02, 153-02, 2-04, 21-04, 33-04, 7-06, 22-11, 25-11, 76-11, 134-11, 151-11, 2-12, 14-12, 130-13, 120-14, 114-15, 41-17, 158-18, 42-21, 79-21

OK
D. Hanwell
11-9-2022

REQUEST FOR COUNCIL ACTION

No. RCA 22-252-11/14

Committee: Finance

FROM: Dennis Hanwell

DATE: November 9, 2022

SUBJECT: Health Insurance with Medical Mutual of Ohio

SUMMARY AND BACKGROUND:

Respectfully request Medina City Council to authorize the Mayor to sign the necessary contracts and forms to renew health insurance for the City with Medical Mutual of Ohio for the calendar year 2023. (See attached documents)

*Respectfully request approval at Finance Committee Meeting on 11/14/21 and Council approval with the emergency clause on 11/28/22 so that necessary paperwork and documentation can be submitted in time for the 1/1/23 implementation.

Estimated Cost:

Suggested Funding:

- Sufficient funds in Account No.
- Transfer needed from Account No. _____ to Account No. _____

NEW APPROPRIATION needed in Account No. _____

Emergency Clause Requested: Yes

Reason: In order to sign necessary paperwork and documentation for 1/1/23 implementation.

COUNCIL USE ONLY:

Committee Action/Recommendation:

Council Action Taken:

Ord./Res.

Date:

City of Medina
2023 MMO Renewal



Benefits Schedule:	MMO - With Chamber Discount Current Plan		MMO - With Chamber Discount Renewal	
	Network	Non-Network	Network	Non-Network
In Network				
Deductible	\$500 / \$1,000	\$1,000 / \$2,000	\$500 / \$1,000	\$1,000 / \$2,000
Coinsurance After Deductible	20%	40%	20%	40%
Out of Pocket Maximum	\$1,000/\$2,000	\$3,000/\$6,000	\$1,000/\$2,000	\$3,000/\$6,000
Lifetime Maximum	Unlimited		Unlimited	
Physician Office Visit	\$20	40%	\$20	40%
Specialist Office Visit	\$40	40%	\$40	40%
Preventive Care	No Copay	40%	No Copay	40%
Emergency Room		\$100 copay		\$100 copay
Urgent Care	\$20	40%	\$20	40%
Prescription Drugs				
Tier I		\$15		\$15
Tier II		\$30		\$30
Tier III		\$50		\$50
Mail Order Rx				
Tier I		\$30		\$30
Tier II		\$60		\$60
Tier III		\$100		\$100

GROSS PREMIUM (BASED ON RFP Census)	Current Plan			Renewal		
	Lives	Est. Monthly Rate	Annual Premium	Lives	Est. Monthly Rate	Annual Premium
Employee	37	\$ 880.64	\$ 391,004	37	\$ 959.90	\$ 426,196
Family	92	\$ 2,201.64	\$ 2,430,611	92	\$ 2,399.79	\$ 2,649,368
TOTAL PREMIUM	129	\$	2,821,615	129	\$	3,075,564
						9.00%
EMPLOYEE CONTRIBUTIONS - 14%	Lives	Monthly Rate	Annual Contributions	Lives	Monthly Rate	Annual Contributions
Employee	21	\$ 123.29	\$ 31,069	21	\$ 134.39	\$ 33,865
Family	73	\$ 308.23	\$ 270,009	73	\$ 335.97	\$ 294,310
Total CONTRIBUTIONS	94		\$301,078	94		\$328,176

EMPLOYEE CONTRIBUTIONS - 20%	Lives	Monthly Rate	Annual Contributions	Lives	Monthly Rate	Annual Contributions
Employee	14	\$ 176.13	\$ 29,590	14	\$ 191.98	\$ 32,253
Family	21	\$ 440.33	\$ 110,963	21	\$ 479.96	\$ 120,949
Total CONTRIBUTIONS	35		\$140,552	35		\$153,202

TOTAL NET COST		\$2,379,984	\$2,594,186
Per Capita Cost		\$18,449	\$20,110
Premium Difference			\$214,202
Percentage Difference			9.00%

Contributions are based on enrollment as of renewal

Includes \$3,000 Wellness Dollars

This proposal is for illustrative purposes only. All benefits are subject to the terms and conditions of the Master Contract. Illustrated rates are based on census and data supplied. Final rates will be based on actual enrollment. Rates are not final until approved by underwriting.

City of Medina
Dental Marketing Summary
Effective Date January 1, 2023

Carriers that declined to quote: Lincoln and Mutual of Omaha



Plan Summary	Volume	MUTUAL		MUTUAL		MUTUAL		MUTUAL		MUTUAL		MUTUAL	
		Monthly Rate	Annual Cost	Monthly Rate	Annual Cost	Monthly Rate	Annual Cost	Monthly Rate	Annual Cost	Monthly Rate	Annual Cost	Monthly Rate	Annual Cost
Employee	27	\$25.66	\$6,281	\$27.35	\$9,981	\$25.08	\$9,116	\$36.13	\$11,705	\$29.03	\$9,406	\$26.45	\$9,570
Employee + Family	92	\$72.85	\$80,426	\$77.95	\$86,056	\$71.39	\$78,815	\$102.95	\$125,974	\$85.44	\$94,326	\$78.22	\$86,385
Total Annual Premium	119		\$86,708		\$96,917		\$86,931		\$125,374		\$103,731		\$94,925
Change from Current					\$6,210		7.0%		7.0%		7.0%		7.0%
Deductible		\$25/\$50	\$25/\$50	\$25/\$50	\$25/\$50	\$25/\$50	\$25/\$50	\$25/\$30	\$25/\$30	\$25/\$30	\$25/\$30	\$25/\$50	\$25/\$50
Type A		80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%
Type B		80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%
Type C		80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%
Ortodontia		60%	60%	60%	60%	60%	60%	60%	60%	60%	60%	60%	60%
Out of Network UCR		UCR 60th	UCR 60th	UCR 60th	UCR 60th	UCR 90th	UCR 90th	UCR 90th	UCR 90th	UCR 60th	UCR 60th	UCR 90th	UCR 90th
Calendar Year Maximum		\$1,350	\$1,350	\$1,350	\$1,350	\$1,350	\$1,350	\$1,500+roll-over	\$1,500+roll-over	\$1,350	\$1,350	\$1,400+roll-over	\$1,400+roll-over
Ortho Lifetime Maximum		\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
Services		Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive
Fluoride Treatment		Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive
Sealants		Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive
Space Maintainers		Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive	Preventive
Periodontics		Basic	Basic	Basic	Basic	Basic	Basic	Basic	Basic	Basic	Basic	Basic	Basic
Denture Repairs		Major	Major	Major	Major	Major	Major	Major	Major	Major	Major	Major	Major
Major Restorative Services		Major	Major	Major	Major	Major	Major	Major	Major	Major	Major	Major	Major
Implants		Major	Major	Major	Major	Major	Major	Major	Major	Major	Major	Major	Major
Rate Guarantee		1 Year	1 Year	1 Year	1 Year	2 Years	2 Years	2 Years	2 Years	2 Years	2 Years	1 Year	1 Year
Participation Requirement		75% Participation	75% Participation	75% Participation	75% Participation	Minimum of 10 enrolled employees	79% Participation	100% participation if the employer contributes 100% of the premium or a minimum of 50% of all eligible employees if the employer contributes less than 100% of the premium.	50% Participation				
Employer Contribution		75%	75%	75%	75%	Contributory	Contributory	Contributory	Contributory	Contributory	Contributory	Contributory	Contributory

Benefit - Basic Coverd 80/70 Major in 60%

** 7% Renewal (Originally 8%)

Any discrepancies between this summary and a carrier's proposal is resolved in favor of the terms of the proposal.

REQUEST FOR COUNCIL ACTION

No. RCA 22-155-6/27

Committee: Special Legislation
6-28-a

FROM: Jess Hazeltine

DATE: June 14, 2022

SUBJECT: Display of Flags on Government Property

SUMMARY AND BACKGROUND:

I am respectfully proposing the attached ordinance be adopted into law by City Council upon review by the Law Director. This ordinance protects the City of Medina and its right to approve and fly flags that align with the City of Medina's Mission Statement and goals. Upon adoption of this ordinance, the City of Medina will have an established policy in place for future displays by the City.

6-28 Ramb - Not going to vote on tonight

11-9-22 Jess - Read Misson Statement - proposed legislation to fly flags on city owned posts & property. we will consider any other Council members request.
• Not uncommon in Ohio.
Paul - prepared statement (read)

Estimated Cost:

Suggested Funding:

- sufficient funds in Account No.
- transfer needed from Account No. _____ to Account No. _____
- NEW APPROPRIATION needed in Account No. _____

Emergency Clause Requested:

Reason:

COUNCIL USE ONLY:

Committee Action/Recommendation:

Council Action Taken: 6/28/22 Hold for LD review
11/9/22 JH/BL move to Finance
2-1 (PR)

Ord./Res.

Date:

ORDINANCE NO. XX-22

**AN ORDINANCE ADOPTING GUIDELINES
REGARDING THE DISPLAY OF FLAGS ON
CITY PROPERTY.**

WHEREAS: City Council desires to establish clear guidelines regarding the display of all flags flown on City owned property; and,

WHEREAS: City Council declares that flagpoles on property owned by the City of Medina are not intended to serve as a forum for free expression by the public, but rather as a non-public forum only for the display of flags authorized by City Council either as required by law or as an expression of the City's official government speech.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MEDINA, COUNTY OF MEDINA, STATE OF OHIO:

SEC. 1: Flags displayed on City owned property shall be displayed in accordance with Federal and State statutes and regulations, including but not limited to, United States Code, Title 4, Chapter 1 and Ohio Revised Code Section 5.012.

SEC. 2: That Council adopts the following guidelines regarding the display of commemorative flags on City owned property:

1. As used in these guidelines, a "Commemorative Flag" shall mean a flag that identifies with a specific historical event, cause, theme, nation, or group of people that the City Council chooses to honor, recognize, or commemorate consistent with the City's policies and priorities.
2. The Mayor may order the Commemorative Flag of any duly recognized Sister City of the City of Medina to be flown on property owned by the City of Medina during official visits of representatives of the Sister City provided that City Council has not authorized another Commemorative Flag for the same location and period of time.
3. The Mayor may order the Commemorative Flag recognizing the City of Medina as a Tree City USA on property owned by the City of Medina during the week before and the week following National Arbor Day provided that City Council has not authorized another Commemorative Flag for the same location and period of time.
4. Except as provided above, Commemorative Flags may be displayed only as authorized by resolution of City Council as an expression of the City's official government speech.

5. City Council shall only consider a request to display a Commemorative Flag made by a member of City Council. Requests to fly a Commemorative Flag made by members of the public will not be considered.
6. City Council shall set forth in the authorizing resolution the specific location and period of time that the Commemorative Flag shall be displayed.
7. Commemorative Flags must be the same size or smaller than the United States or Ohio flags being flown.
8. If any other flag is being flown at half-staff, the Commemorative Flag will also be flown at half-staff.
9. The following are not allowed as Commemorative Flags and will not be considered by City Council:
 - a. Flags of a particular religious movement or creed to avoid the appearance of the City government endorsing religion or a particular religious movement or creed; or
 - b. Flags of a political party or candidate to avoid the appearance of City government endorsing a political party or candidate.

SEC. 4: That the Clerk of Council be and hereby is instructed to record this Ordinance in the appropriate record book.

SEC. 5: 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. 6: That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: _____

SIGNED: _____
President of Council

ATTEST: _____
Clerk of Council

APPROVED: _____

SIGNED: _____
Mayor

RCA 22-155.6/27

MEMO

TO: Mayor Dennis Hanwell

FROM: Gregory A. Huber, Law Director

DATE: July 5, 2022

RE: Raising Flags as Private Speech as Opposed to Raising Flags by Way of Government Speech

You asked that I summarize the law that applies when the City of Medina raises flags at the behest of private individuals or private groups. Recently, the City of Medina raised pride flags on city-owned flagpoles utilizing city employees at the request of Councilwoman Hazeltine; my understanding is that the flags were purchased by a non-profit group for display. The question that you have asked me has to do with whether we can receive flags at the request of an outside group of individuals, and at the same time, deny the request from a different group of individuals if they want to raise flags that City of Medina citizens may find offensive. In other words, if we begin to raise flags at the behest of private individuals or private groups, do we lose control over the content of what is on the flags? The federal courts analyze this issue in terms of whether flag flying constitutes private speech as opposed to government speech. The distinction between private speech and government speech seems to very much turn upon the procedure and process by which these flags are acquired and subsequently raised.

Councilwoman Hazeltine provided me with a Supreme Court case entitled *Shurtleff v. City of Boston*, 142 S. Ct. 1583 (2022). The providing of this case for my review was helpful as the case is the most recent and relevant precedent on the subject from the highest court. There are other federal cases that also bear upon these issues. My conclusion from reading the relevant case law is that the flying of LGBTQ+ Pride flags at the behest of private individuals, non-profits, or private organizations, in fact, constitutes private speech. Because these ceremonial flags constitute private speech, the City of Medina, down the road, will find it difficult to deny requests to fly other flags based upon their content if the city engages in permitting private speech. On the other hand, if the City of Medina seeks to fly LGBTQ+ Pride flags on its own accord where the City of Medina purchases the flags, and we put them up ourselves, the courts consider the flying of the flags under those conditions as "government speech." If the city purchases the flags and the city puts them upon city flagpoles, the city is not obligated in the future to fly other flags as the city is free to limit its own speech based upon content. If the city flies Pride flags as government speech and the city denies other individuals the right to fly flags they want to fly and we are flying Pride flags by way of government speech, we are permitted to discriminate on what it is that we are putting on our flag poles.

In *Shurtleff v. City of Boston*, 142 S. Ct. 1583 (2022), the Supreme Court of the United States analyzed how it is that a city may allow private individuals and groups to fly ceremonial flags. Boston City Hall maintains three flagpoles on the exterior of its building. The first pole flies the flag of the United States of America; the second pole flies the flag of the State of Massachusetts; and the third pole typically flies the flag of the City of Boston. On occasion, at the request of private groups or individuals, the city would allow ceremonial flags to be flown in place of the city flag. Over the course of 12 years between 2005 and 2017, the City of Boston approved 50 unique flags to be flown on the third pole. Those flags typically included foreign nations. Some of the flags were for specific groups or causes like the Pride flag and a flag honoring emergency services personnel. In 2017, the Plaintiff, Mr. Shurtleff, requested leave to file a Christian flag in connection with his work with an upcoming event being held for Camp Constitution. The Boston City Commissioners declined Mr. Shurtleff's request citing concerns over whether a religious flag would, in fact, constitute government speech promoting a specific religion, and thus, resulting in a violation of the Constitutional Establishment Clause. Upon denial of his request, Mr. Shurtleff sued the city alleging violations of his First Amendment Free Speech rights. The Shurtleff case is a good example of litigation that can occur when flags are permitted by a city at the request of one group, and flags are not permitted by the city at the request of another group.

The U. S. Supreme Court began its analysis in *Shurtleff* by considering the meaning behind the three flags that were typically raised by the City of Boston. The three flags as noted hereinabove that were typically flown involved the American flag, the state flag, and the flag for the City of Boston. The court noted that the third flag, the City of Boston flag, clearly symbolizes the City of Boston and that these flags usually conveyed the city's messages. Thus, the question became in *Shurtleff* whether when a City of Boston flag was swapped out for a ceremonial flag, did the ceremonial flag also represent the city's message. In determining whether the flag displays were government speech, the court considered whether the City of Boston shaped or controlled the flag's content and meaning. The United States Supreme Court reasons as follows:

The circumstantial evidence of the public's perception does not resolve the issue. The most salient feature of this case is that Boston neither actively controlled these flag raisings nor shaped the messages the flags sent. To be sure, Boston maintained control over the plaza's physical premises, presumably to avoid chaos. But the key issue is whether Boston shaped or controlled the flag's content and meaning; such evidence would tend to show that Boston intended to convey the flag's messages as its own.

The U. S. Supreme Court in examining these issues also looked to evidence of "the history of expression at issue; the public's likely perception as to who (the government or a private person) is speaking; and the extent to which the government has actively shaped or controlled the expression." See also, *Walker v. Texas Div., Sons of Confederate Veterans Inc.*, 576 U.S. 200 at 209-214.

The City of Boston had an application form for whenever someone wanted to hold an event at Boston's public forums. The public forums included the public plaza at Boston City Hall. The form merely asked for contact information for the organizer and a brief description of the event with proposed dates and times. The Boston city employee who processed the applications testified that he did not request information with respect to reviewing flags prior to the events, and in fact, the practice of the City of Boston was to approve all requested flags until receiving Mr. Shurtleff's request. The city did not have any policy in place that provided guidance on permissible flag content. As for its involvement in the flags, the city did provide a hand crank to the groups raising a ceremonial flag so that groups could raise their own chosen flags. The United State Supreme Court found that the physical control of the flags was not dispositive on whether the flag flying was personal speech or private speech. The court found that the City of Boston's control over the flag's content and meaning is the essential consideration. The U. S. Supreme Court found in the Boston case that because the ceremonial flag was being raised at the behest of a private organization, the ceremonial flag was not government speech. The City of Boston was not controlling flag content and was raising flags upon private request.

The U. S. Supreme Court in the City of Boston case examined other cases where the court found that internal control over the content of the flag and internal purchase of a flag by a government, in fact, did constitute government speech. Good examples of government speech involve the cases, *Walker v. Texas Div., Sons of Confederate Veterans Inc.*, 576 U.S. 200 at 209-214, and *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009). If the city is engaging in government speech, the city can deny other requests for other flags that the city does not want. After comparing the *Pleasant Grove City* case and the *Walker* case, the U. S. Supreme Court found that Boston had no record of controlling the flags that it was flying on its ceremonial flagpole. The court concluded that because the City of Boston was not exercising control over the flags that were flying on the ceremonial flagpole and because the flags were being provided by outside groups, the flying of the ceremonial flags in Boston was "private speech." The court held:

Because the flag raising program did not express government speech, Boston's refusal to let Petitioner Shurtleff fly his flag in fact violated the Free Speech Clause of the First Amendment. When the government does not speak for itself, it may not exclude private speech based on 'religious viewpoint'; doing so, constitutes impermissible viewpoint discrimination.

The U. S. Supreme Court in the City of Boston case further found that if Boston wanted the ceremonial flags to be deemed "government speech," it could have implemented a policy to that effect. The court cited to the flag policy implemented by the City of San Jose. San Jose takes the position that none of the flagpoles on its campuses are intended for use as a form for free expression by the public. The San Jose policy goes on to list flags that are approved for flying, i.e. national holiday and other federally approved flags. Given the City of Boston's

failure to have a policy and its lack of involvement in the content and meaning of ceremonial flags, the City of Boston flag-flying program constituted private speech. Because the ceremonial flag-flying program in Boston constitutes private speech, the city could not deny anyone from flying any flag without engaging in viewpoint discrimination. The court noted that the City of Boston is free to change its policy going forward.

In the matter at hand, the City of Medina does not have an established policy regulating the content and meaning of ceremonial flags that it permits to be flown on city grounds or city property. If the City of Medina further engages in the flying of flags at the behest of private individuals, private groups, or non-profit groups, the flying of flags in this manner will be considered "private speech." If we pursue that model, we may have to accept the flying of confederate flags, religious flags, or other flags that have possible offensive content. On the other hand, if the City of Medina seeks to raise ceremonial flags on its own initiative in accordance with recognized national holidays or other specifically recognized city purposes, then presumably that ceremonial flag flying will constitute government speech, and the city may deny requests to fly other flags based upon their content. Implementing a policy like that in place in San Jose could quell any confusion and may clarify the city's intention to speak or not speak through the use of ceremonial flags. I am including a copy of San Jose's written policy with this memorandum.

Summary

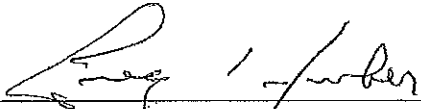
Options available with respect to ceremonial flags are as follows:

- (1) Refuse to fly ceremonial flags and simply fly the American flag and/or the State of Ohio flag.
- (2) Permit "private speech" where the city flies flags at the behest of private individuals, private groups, or non-profit organizations. Permitting private speech will prevent the city from regulating the content of flags.
- (3) Permit "government speech" where a ceremonial flag is purchased by the city and erected by the city with the intent that it represent "communication directly from the government." By engaging in government speech, the city may prevent the flying of flags that are not acceptable to the Medina City Council. If the ceremonial flag is controversial, there may be political disagreement, but government speech is defensible in court if inappropriate flags are disallowed.
- (4) Follow the example as set out in the City of Boston case and simply designate a flagpole as a place where citizens may put up flags of their choosing. This

Page 5

methodology will be considered "private speech" and the content of flags at this flagpole will not be regulated.

I am enclosing a written example of the San Jose flag policy with this memorandum. If anyone should have any questions, please do not hesitate to contact me.



Gregory A. Haber, Law Director

GAH/sjs
Enclosure

City of San José, California

COUNCIL POLICY

TITLE EXHIBITION OF FEDERAL, STATE, AND CITY FLAGS FROM CITY BUILDINGS – ALL OCCASIONS	PAGE 1 of 3	POLICY NUMBER 2-1
EFFECTIVE DATE April 27, 1970	REVISED DATE October 17, 2006	
APPROVED BY COUNCIL ACTION 4-27-70; 8-3-82, Item 11 k; 9-28-82, Item 12 a; 4-2-85, Item 7 e; 10-17-2006, Item 3.7a; 11-14-2006; Item 3.5c, Res. 73490		

PURPOSE

To establish guidelines for: (1) the exhibition of the flag of the United States of America, the California State flag, the San Jose City flag from City buildings and the New City Hall flag at City Hall, and (2) the display of street flags for parades and holidays, and (3) the display of ceremonial flags.

POLICY

It is the policy of the City of San José that flags should be displayed in conformance with Federal and State policies, as stated in the Federal "Our Flag" publication of the Congress, House Document No. 96-144; and the State of California Government Code Sections 430 and 437.

In order to establish a policy with respect to the locations and days when the United States of America, California State, and San Jose City flags should be displayed, the following standards should be followed.

The Director of General Services is responsible for ensuring the proper execution of this policy at all City facilities except the Airport, where the Director of Aviation is responsible for proper execution of this policy.

STANDARDS

A. Federal, State and City Flags

1. Outdoor flags will be flown at City facilities in the following order of precedence: first, the United States flag; second, the California State flag; third, the San Jose City flag; and fourth, the New City Hall flag.
2. Weather permitting, flags should be displayed daily in front of or at a location near City Hall, the Police Administration Building, the Civic Auditorium, the Airport, and all Fire and Police facilities during business hours.
3. Flags should not be displayed in inclement weather. However, all-weather flags may be flown on a 24-hour basis as long as they are illuminated from sunset to sunrise.

City of San José, California

TITLE	PAGE	POLICY NUMBER
EXHIBITION OF FEDERAL, STATE, AND CITY FLAGS FROM CITY BUILDINGS – ALL OCCASIONS	2 of 3	2-1

The City Hall flags shall be all-weather flags, shall be flown on a 24-hour basis and shall be illuminated at night.

4. The San Jose City flag will be flown wherever there are sufficient poles to do so in accordance with #2 above. The City flag may be displayed on the same pole with, and underneath the State flag, whenever the pole is of sufficient height. The Federal, State, and City flags shall not be flown on a single pole of any height.
5. New City facilities where any flags are to be flown shall be constructed with a sufficient number of poles to allow the City flag to be flown.
6. Indoor City flags shall be displayed at a minimum in the City Council Chambers and in the Mayor's Office.
7. On recognized Federal and/or State holidays, and on other special occasions as listed below, flags should be flown from all locations listed in paragraph A-2 above.
 - a) January 1, New Year's Day
 - b) January 20, (2001, 2005, 2009, etc., every fourth year) on the day the President of the United States is inaugurated
 - c) Third Monday in January, Martin Luther King's birthday
 - d) Third Monday in February, Presidents' Day
 - e) Second Sunday in May, Mother's Day
 - f) Third Saturday in May, Armed Services Day
 - g) Last Monday in May, Memorial Day. The flags to be flown at half-staff (first raise to top, then slowly lower to half-staff) until noon and at full staff from noon until sunset. NOTE: The United States flag must always be flown by itself when displayed at half-staff.
 - h) Third Sunday in June, Father's Day
 - i) June 14, Flag Day
 - j) July 4, Independence Day
 - k) First Monday in September, Labor Day
 - l) September 9, Admission Day
 - m) September 17, Constitution Day
 - n) Second Monday in October, Columbus Day
 - o) The first Tuesday after the first Monday in November of a presidential election year and gubernatorial election days
 - p) November 11, Veteran's Day
 - q) Fourth Thursday in November, Thanksgiving Day
 - r) December 25, Christmas Day
 - s) State holidays
 - t) Special occasions of Federal, State and local proclamation
8. Flags at all City facilities shall be displayed in accordance with the above standards. However, the City Manager may order flags to be lowered to half staff including, but not limited to flags of the United States of America and State of California in honor of the death of a City employee killed in the line of duty.

City of San José, California

TITLE EXHIBITION OF FEDERAL, STATE, AND CITY FLAGS FROM CITY BUILDINGS – ALL OCCASIONS	PAGE 3 of 3	POLICY NUMBER 2-1
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B. Street Flags

Street flags are defined as flags flown on a guy wire over a city street. The guy wire is generally attached to city streetlights and is oriented perpendicular to the flow of traffic. Street flags may be flown in the downtown area on Veteran's Day and Memorial Day, if requested by a group sponsoring an event on that day and approved by the City Council. Funding for this flag flying may be provided by an outside agency or at the City's expense, depending on the decision of the City Council.

C. Ceremonial Flags

The City's flagpoles are not intended to serve as a forum for free expression by the public. The following flags may be displayed by the City as an expression of the City's official sentiments:

1. **Flags of Governments Recognized by the United States:** Flags of the governments recognized by the United States may be displayed upon the request of the Mayor, a member of the City Council or the City Manager.
2. **Flags of Sister Cities:** The flags of official Sister Cities of San Jose may be displayed in conjunction with an event involving the Sister City.
3. **Flags Displayed in Conjunction With Official Ceremonial Items:** Other flags may be displayed in conjunction with official actions, ceremonial items, or proclamations of the City Council.
4. **Flags of Professional Sports Teams:** The City Manager may order the display of the flag of a professional sports team in commemoration of a significant achievement involving the City of San Jose.