

# **FINANCE COMMITTEE AGENDA**

## **March 24, 2025**

### **Finance Committee (6:00 p.m.)**

1. Assignment of Requests for Council Action
2. 25-066-3/24 – Revise Civil Service Rule VI (C) (5)
3. 25-067-3/24 – Water Rates
4. 25-068-3/24 – Expenditure – Kleinfelder – PY25 CDBG
5. 25-069-3/24 – Interurban Building Relocation & Use
6. 25-070-3/24 – Grant Application – Violent Crim Reduction Funding – Police
7. 25-071-3/24 – Cleveland Clinic Children's Hospital Aquatic Therapy Lease – MCRC
8. 25-072-3/24 – Purchase Replacement Vault Restroom at Roscoe Ewing Park
9. 25-073-3/24 – Agreement w/ Wheeling & LE Railway – US 42 Resurfacing Project
10. 25-074-3/24 – LPA Agreement w/ODOT – US 42 Resurfacing and Bumpouts
11. 25-075-3/24 – Increase PO #25-1004 to \$35,000 – Wright Traffic Control – Engr.

## **REQUESTS FOR COUNCIL ACTION/DISCUSSION**

### **Finance Committee**

- 25-066-3/24 – Revise Civil Service Rule VI (C) (5)
- 25-067-3/24 – Water Rates
- 25-068-3/24 – Expenditure – Kleinfelder – PY25 CDBG
- 25-069-3/24 – Interurban Building Relocation & Use
- 25-070-3/24 – Grant Application – Violent Crime Reduction Funding – Police
- 25-071-3/24 – Cleveland Clinic Children's Hospital Aquatic Therapy Lease – MCRC
- 25-072-3/24 – Purchase Vault Restroom – Roscoe Ewing Park
- 25-073-3/24 – Engineering Agreement w/ Wheeling & Lake Erie – US-42 Resurfacing
- 25-074-3/24 – LPA Project Agreement w/ ODOT – US 42 Resurfacing & Bumpouts
- 25-075-3/24 – Increase PO #25-1004 – Wright Traffic Control - Engineering

3/24/25

ok  
20 Hammer  
3-6-25

## REQUEST FOR COUNCIL ACTION

No. RCA 25-066-3/24

FROM: Civil Service Commission

DATE: 3/5/2025

SUBJECT: Revision of Civil Service Rule VI (C)(5)

Committee: Finance

### SUMMARY AND BACKGROUND:

The Civil Service Commission respectfully requests City Council to consider and accept a revision to Civil Service Rule VI (C) (5) Parts of Examination. This request was brought to the Commission's attention by Chief Kinney. To help with recruitment of patrol officers, the Ohio Peace Officer Training Academy has recently changed the scoring for physical fitness testing for entry level candidates. They did not want to lower the standard, instead they decided to give them a second try because some days you aren't feeling well or the weather can affect your outcome. Candidates are allowed to come back, within a given period, and retest if they miss an exercise event.

Currently this section reads:

Applicants for lateral transfer appointment will be required to pass the Medina Police Department physical agility test which will be proctored by a team of Medina Police Officers.

We are asking to add the following to Civil Service Rule VI (C)(5):

***The physical fitness testing guidelines for lateral transfer patrol candidates will align with the most recent guidelines for entry-level patrol officer candidates.***

With this addition to the Civil Service rule, this will allow the Commission to be consistent and mirror the entry level candidates' requirements for the physical fitness section. If OPOTA makes additional changes for entry level candidates, then the lateral transfer candidates' guidelines would change also.

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

Emergency Clause Requested:

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### COUNCIL USE ONLY:

Committee Action/Recommendation:

Council Action Taken:

Ord./Res.

Date:

## REQUEST FOR COUNCIL ACTION

No. RCA 25-067-3/24  
Committee: Finance/W&U

FROM: Keith H. Dirham  
DATE: Friday, March 14 Pi Day, 2025  
SUBJECT: Water Rates

### SUMMARY AND BACKGROUND:

Avon Lake Municipal Utilities has scheduled what they call the Eastern Transmission Lines 1&2 Annual Customer Meeting for May 15, 2025. I call this the "rate increase meeting". Their name is more formal and official, my name is more descriptive and accurate.

ALMU will likely announce an increase to take effect January 1, 2026 at the May 15 meeting. If we wait until then to address it, an RCA submitted immediately after the May 15 meeting would be assigned to committee at the May 26 Council Meeting then (probably) sent to URR in June and back to Finance in late June, probably too late to be passed by Council at the July 14 Council Meeting.

I am submitting this request in advance of the meeting in the hopes that we can get a Utility Rate Review Commission Meeting scheduled to occur soon after the May 15 meeting. This is so that whatever increase ALMU imposes can be addressed before Council's summer recess. My concern here is to give residents and businesses the maximum notice possible.

The alternative timeline that I envision is something like this:

- Utility Rate Review Commission Meeting in late May.
- Water and Utilities Committee Meeting in early June.
- Finance Committee by no later than June 23.
- Council adoption by no later than July 14.

Since I am submitting this request in advance of the May 15 "rate increase meeting", I have no further details at this time and will provide them to URR, Water and Utilities Committee and Council when they become available.

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:

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COUNCIL USE ONLY:

Committee Action/Recommendation:

Council Action Taken:

Ord./Res.

Date:



RCA 25-068-3/24

Finance

**City of Medina**

**Board of Control/Finance Committee Approval**

**Administrative Code: 141**

- Department Heads can authorize expenditures up to \$2,000.00 (requisition)
- Board of Control authorizes expenditures from \$2,000.01 to \$20,000.00 (BOC form).
- Finance Committee authorizes expenditures from \$20,000.01 to \$35,000.00 (BOC form).
- Council authorizes expenditures/bids over \$35,000.00 (RCA form). Board of Control awards all bids, unless otherwise specified in authorizing ordinance. (Ord. 77-23)

Date: 3/17/2025

Department: Community Development

Amount: \$22,000.00

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

Account Number: 001-0410-52215 (Initially) then Assigned Grant Account

Vendor: Kleinfelder

Department Head/Authorized Signature: 

**Item/Description:**

City Council authorized the Mayor to solicit requests of RFP/RFQ's for administrative services for the

Program Year 2025 (PY25) Community Development Block Grant (CDBG) Program for the City of Medina.

This request is to award the RFP/RFQ to Kleinfelder to provide administrative services for the PY25 CDBG

Program and for the Mayor to enter into an agreement with Kleinfelder for such services.

The funds to cover Kleinfelder's services (\$22,000) are available from the CDBG grant funds, if awarded.

Prior to the awarding of the grant, payments may be made out of Planning Contract Services.

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**FINANCE COMMITTEE APPROVAL: (expenditures from \$20,000.01 to \$35,000.00)**

Date Approved/Denied by Finance Committee: \_\_\_\_\_

Date to Finance: \_\_\_\_\_

\_\_\_\_\_  
Clerk of council

- 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: 4/25/2023

# REQUEST FOR COUNCIL ACTION

No. RCA 25-069-3/24

FROM: Andrew Dutton

Committee: Finance

DATE: 3/18/25

SUBJECT: Interurban Building Relocation and Use

## SUMMARY AND BACKGROUND:

### Interurban Building Background

The Interurban Building was originally located near the current intersection of Pearl Road and Stonegate Drive. The building served as a station on the Cleveland Southwestern and Columbus Railway, which reached Medina in 1907 and ceased operations in 1931. The Interurban Building was stored in a city garage for many years and in 1991, the Community Design Committee worked with the city to restore the building and place it at the northeast corner of the Feckley Parking Lot. The city currently maintains ownership of the Feckley Parking Lot and the Interurban Building.

### Temporary Relocation

At the September 9, 2024 Finance Committee meeting, there was discussion regarding the potential relocation of the Interurban Building. After consideration, the decision was made to temporarily relocate the Interurban Building to a trailer in the Feckley Parking during the construction of the hotel. The cost of the temporary move was paid by the developer of the Legacy Hotel.

### Legacy Hotel Construction

With demolition complete and construction of the hotel progressing, the Legacy Hotel team has asked for a decision regarding the location of the Interurban Building. The request has been made because the site will need to be prepared if the Interurban Building will be returned to its previous location adjacent to South Court Street.

### Council Consideration

City Council is being asked to consider proposals received from the Legacy Hotel and the Medina County Historical Society and determine the permanent location of the Interurban Building.

**Estimated Cost:** NA

**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:**

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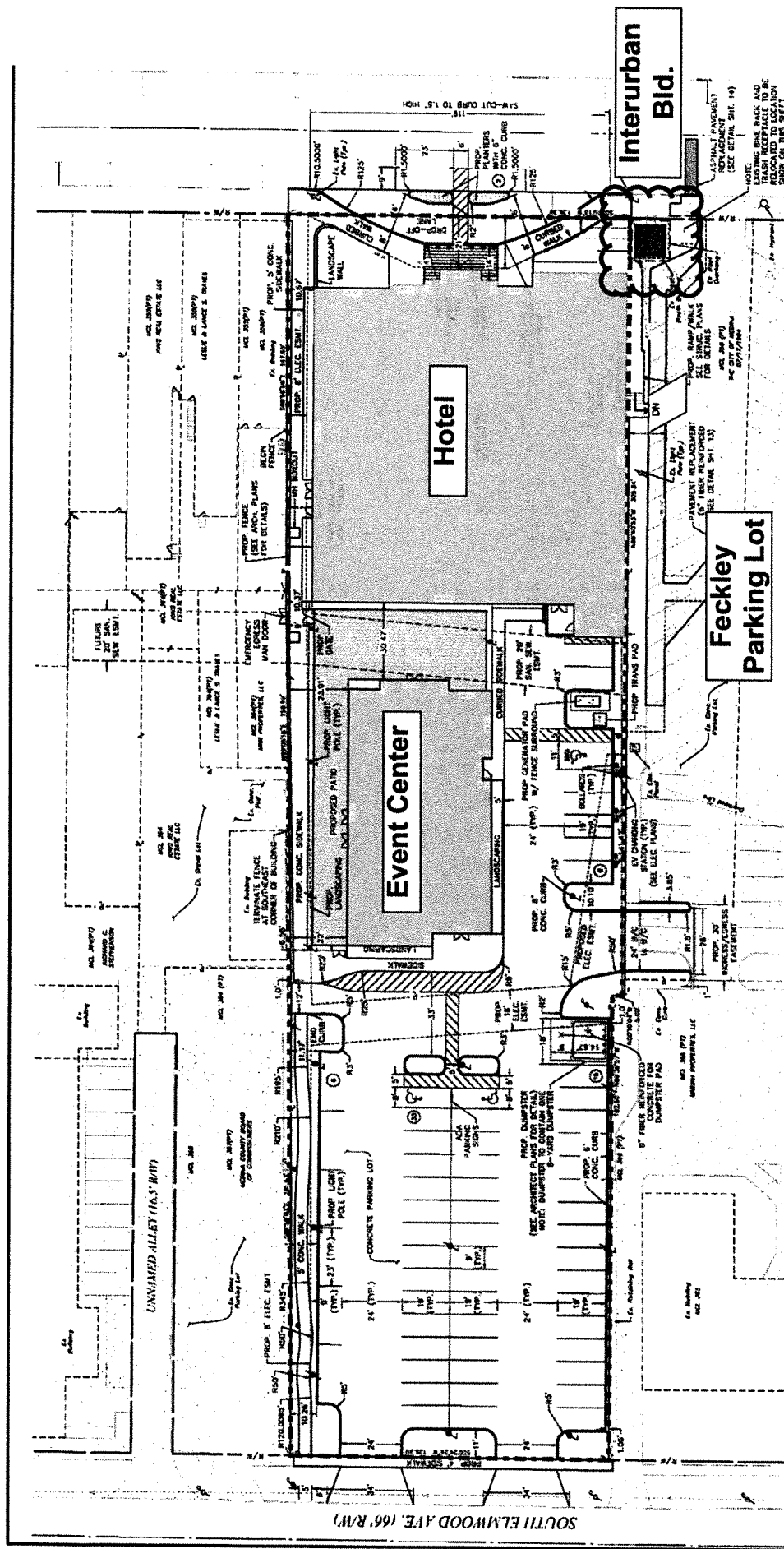
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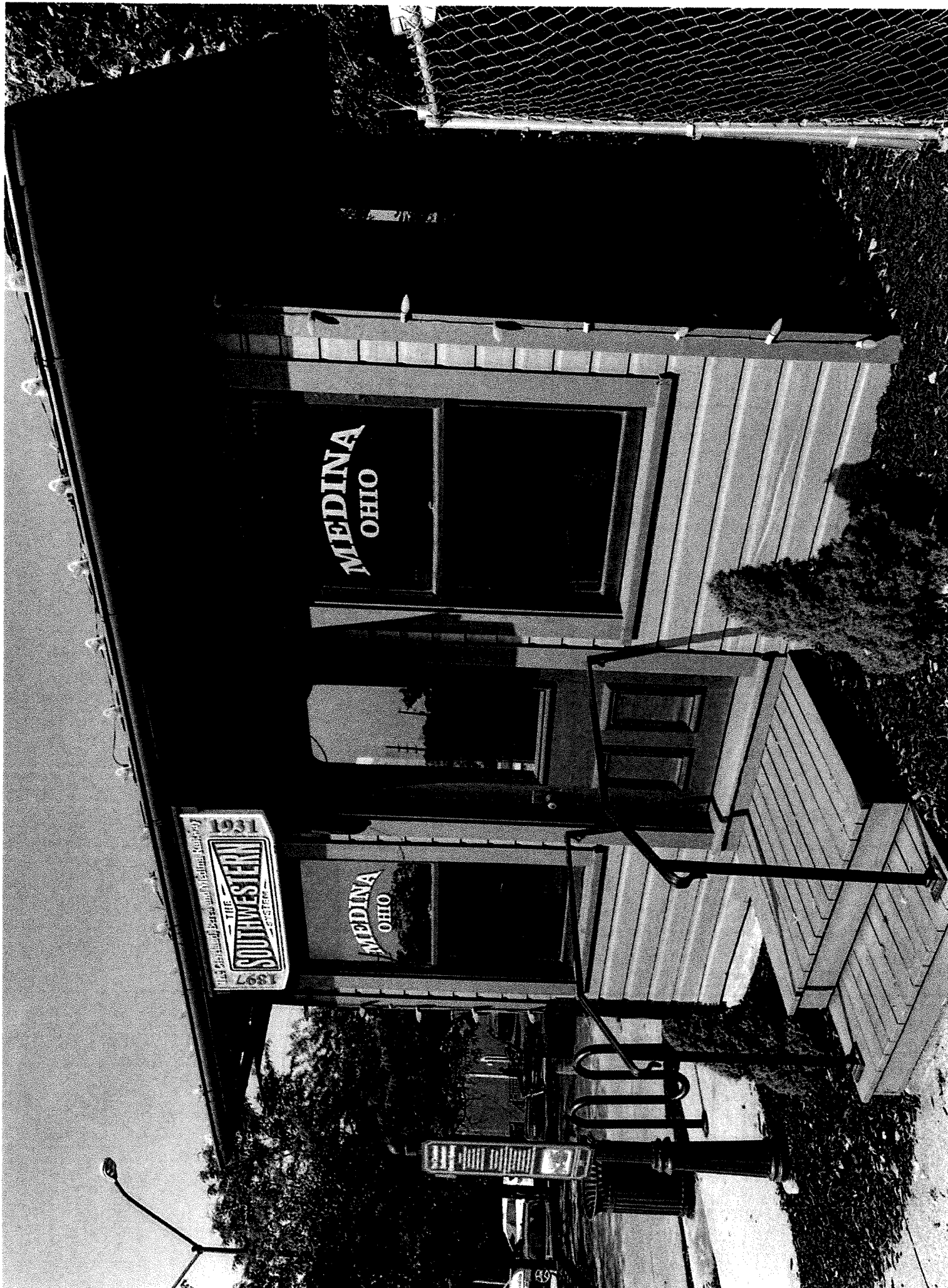
**Committee Action/Recommendation:**

**Council Action Taken:**

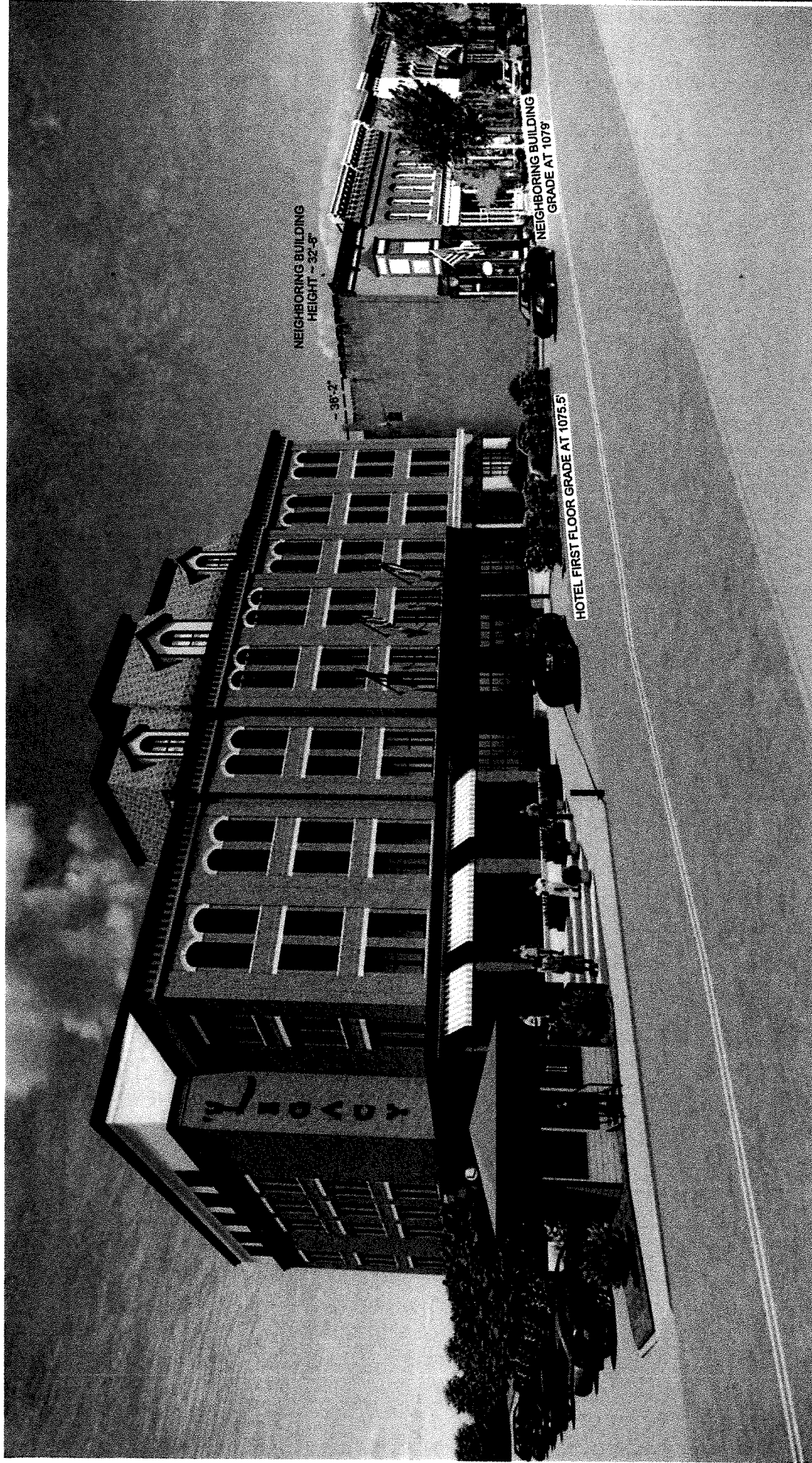
**Ord./Res.**

**Date:**

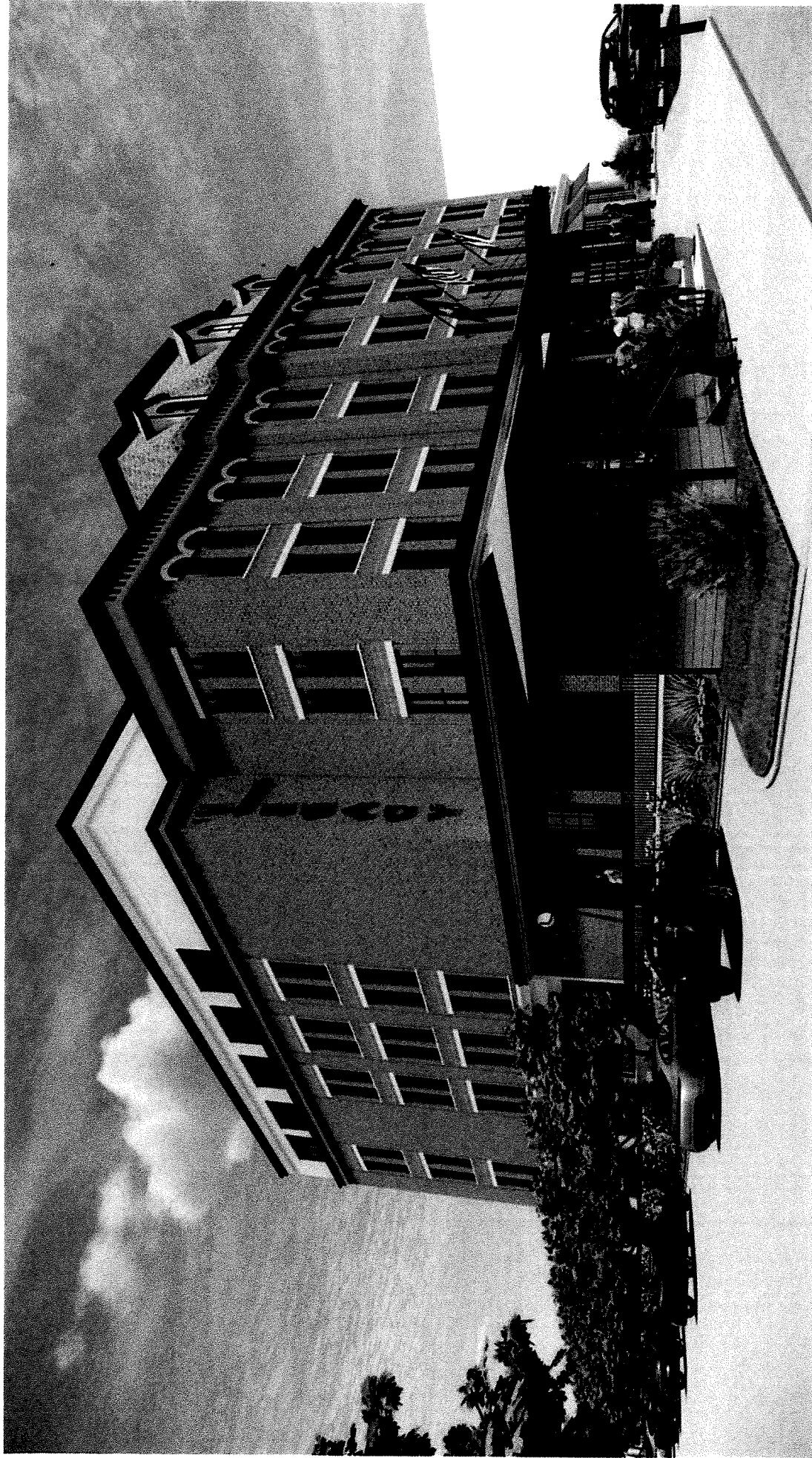








	<p>MEDINA HOTEL - EVENT CENTER  DATE: FEBRUARY 27, 2024  PROJECT NO. 14423</p>	<p>PROJECT INFORMATION</p>	<p>SHEET NAME  SOUTH EAST CORNER -  3D STREET  PERSPECTIVE</p>	<p>SHEET NO.  HSK08</p>
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SHEET NO.

HSK16

SHEET NAME  
UPDATED SOUTH EAST  
CORNER - 3D  
PERSPECTIVE

PROJECT INFORMATION

MEDINA HOTEL - EVENT CENTER  
DATE: FEBRUARY 27, 2024  
PROJECT NO. 14423





**Medina County Historical Society  
206 North Elmwood Street  
Medina, Ohio 44256**



March 17, 2025

Mayor Dennis Hanwell  
City Council President John Coyne III  
Community Development Director, Andrew Dutton  
Medina City Hall  
132 North Elmwood Ave.  
Medina, OH 44256

Dear Sirs

The Medina County Historical Society (MCHS) is urging the Medina City Council to take action to preserve the historic Interurban building. We are offering safe storage of the building on MCHS-owned property at 205 S. Prospect Street until the final location is determined. The attached PowerPoint illustrates several alternatives including the Yost Sunoco lot and each provides a unique opportunity for the City Council to preserve a historic landmark and educate the public on the importance of history.

Preserving the historic Interurban building at the museum offers several benefits:

1. **Historical Significance:** The Interurban was a significant part of the transportation industry, and preserving the building allows for greater exposure to tell that history.
2. **Educational Opportunity:** A museum location would educate the public on the importance of history and the role of the Interurban in the community and throughout Ohio.
3. **Community Engagement:** Preserving the building can foster a sense of pride and connection within the community, as it maintains a historic landmark.

By showcasing the town's historical structures, Medina City Council has a unique opportunity to preserve a historic landmark with an organization that has a proven record of maintaining historic structures in our town. Please give our proposal thoughtful consideration.

Sincerely,

Brian T. Feron

President

Medina County Historical Society

*Established 1922*

*Phone 330-722-1341 Email [MCHS@Zoominternet.net](mailto:MCHS@Zoominternet.net)*

*Web: [Medinacountyhistoricalsociety.com](http://Medinacountyhistoricalsociety.com)*



March 17, 2025

Mayor Dennis Hanwell  
City Council President John Coyne III  
City Council Representatives  
Medina City Hall  
132 North Elmwood Ave.  
Medina, OH 44256

Dear Mayor Hanwell, City Council President John Coyne III, and City Council Representatives:

In the decades since its founding in 1970, the Community Design Committee (CDC) has lead the effort to restore Medina's historic Victorian business district; placed an exact replica of an 1875 gazebo in the center of public square (using funds from the Letha House Foundation); contributed to the municipal Engine House Museum; partnered with the City of Medina on projects including street light maintenance; the creation of the Historic District and design guidelines; and the Medina Downtown Neighborhood Improvement Placemaking Strategy.

The Interurban Station was initially located on North Court Street in front of what is now Panera Bakery in Medina Township. The structure was donated to the City of Medina in 1988 by Mr. and Mrs. Gerald Jameyson. The building was stored at the City's Service Department property on West Smith Road until 1991, when the CDC and the City orchestrated its relocation to its South Court Street position. The CDC managed the rehabilitation of the Interurban Station with the generosity of many local donors. A list of the rehabilitation participants has been included in this packet for your review.

Since 1991, the CDC has maintained the exterior and interior of the Interurban, carefully maintaining its wood cladding, slate roof, and historical signage, doors, and windows. It has planted landscaping and created and installed the historical educational/interpretive sign in front of the Station.

The development of the Medina Hotel provides the City of Medina with the opportunity to secure once again for posterity a piece of Medina History. Although the current Interurban Station's South Court location provides foot traffic past the building, the current location is not conducive for visitors to gather and learn about the importance this transportation mode had on the City of Medina, Medina County, and this area of Ohio. The site does not provide an opportunity to walk around the structure to view its historically preserved architecture. It also does not provide viewing into the building from the windows located on its two sides. Visitors can only view displays and its interior, inclusive of its functional pot belly stove, from the front windows.





The Community Design Committee supports the Medina County Historical Society's offer to house the Interurban Station on its property located at 205 South Prospect Street at the McDowell-Phillips House Museum. The Medina County Historical Society has demonstrated its capacity to be responsible stewards of historical artifacts. It has restored three historically significant homes, a barn, and most recently the War Bond Building, deeded to them by the Medina County Commissioners. They are also stewards of thousands of Medina County artifacts, many of which are one-of-a-kind and priceless.

The MCHS could offer a location where Interurban visitors could enjoy the building's architecture and could learn about the importance the Interurban railway had on the area's development through guided tours and other educational sessions. The McDowell-Phillips House location also places the Interurban Station within a few feet of its original route. The railway traveled from the Chippewa Lake area north on Medina Street, turned east on West Liberty Street at Serenite Restaurant & Culinary Institute, and then turned north on North Court Street at Cool Beans Cafe. The railway carried passengers back and forth from Cleveland to Columbus through Medina County.

The Medina Community Design Committee can provide the Medina County Historical Society financial support to relocate the building to their South Prospect Street property. The CDC can also provide the restoration that needs to be completed on the Station, as well as continue to underwrite its maintenance and preservation.

The Community Design Committee requests that the Council consider the opportunity for the City to once again collaborate with its historical preservation partners in relocating and preserving this unique Medina artifact.

Sincerely,

A handwritten signature in cursive script that reads "Michele Nichols".

Michele Nichols, President, Medina Community Design Committee  
Board of the Medina Community Design Committee

Cc:

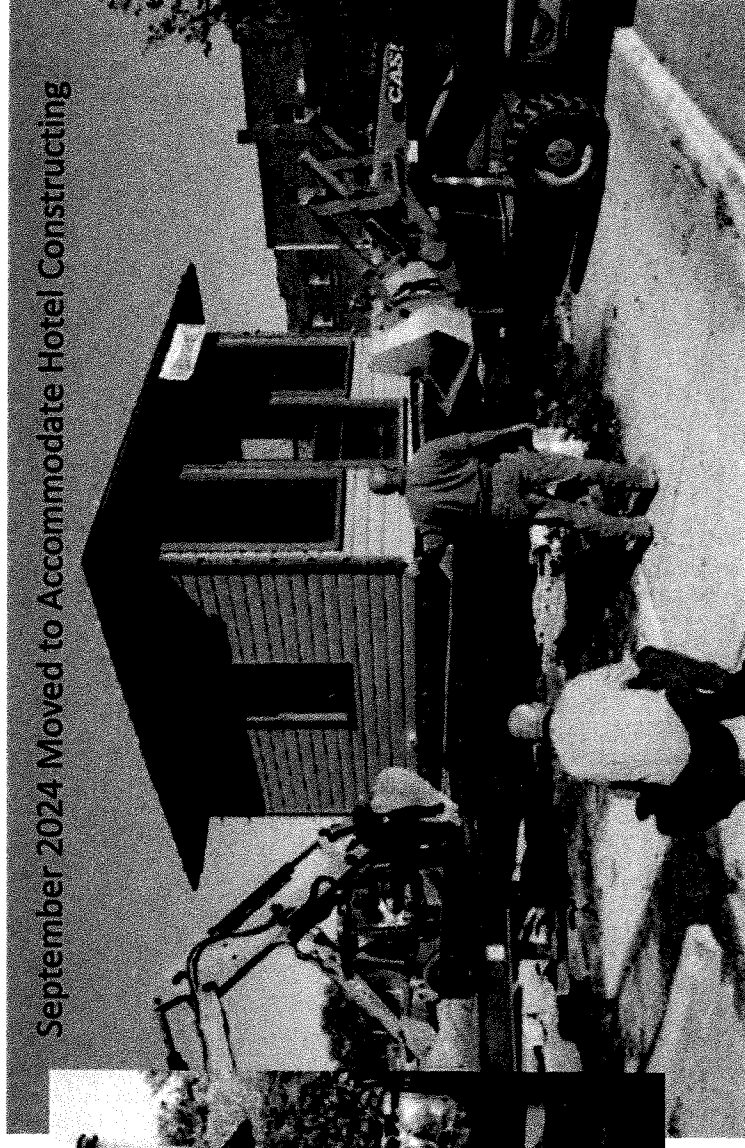
Brian Feron, President, Medina County Historical Society

Andrew Dutton, Community Development Director, City of Medina

# Interurban Station – South Court St. Proposed Relocation and Temporary Storage

Medina Community Design Committee

Medina County Historical Society

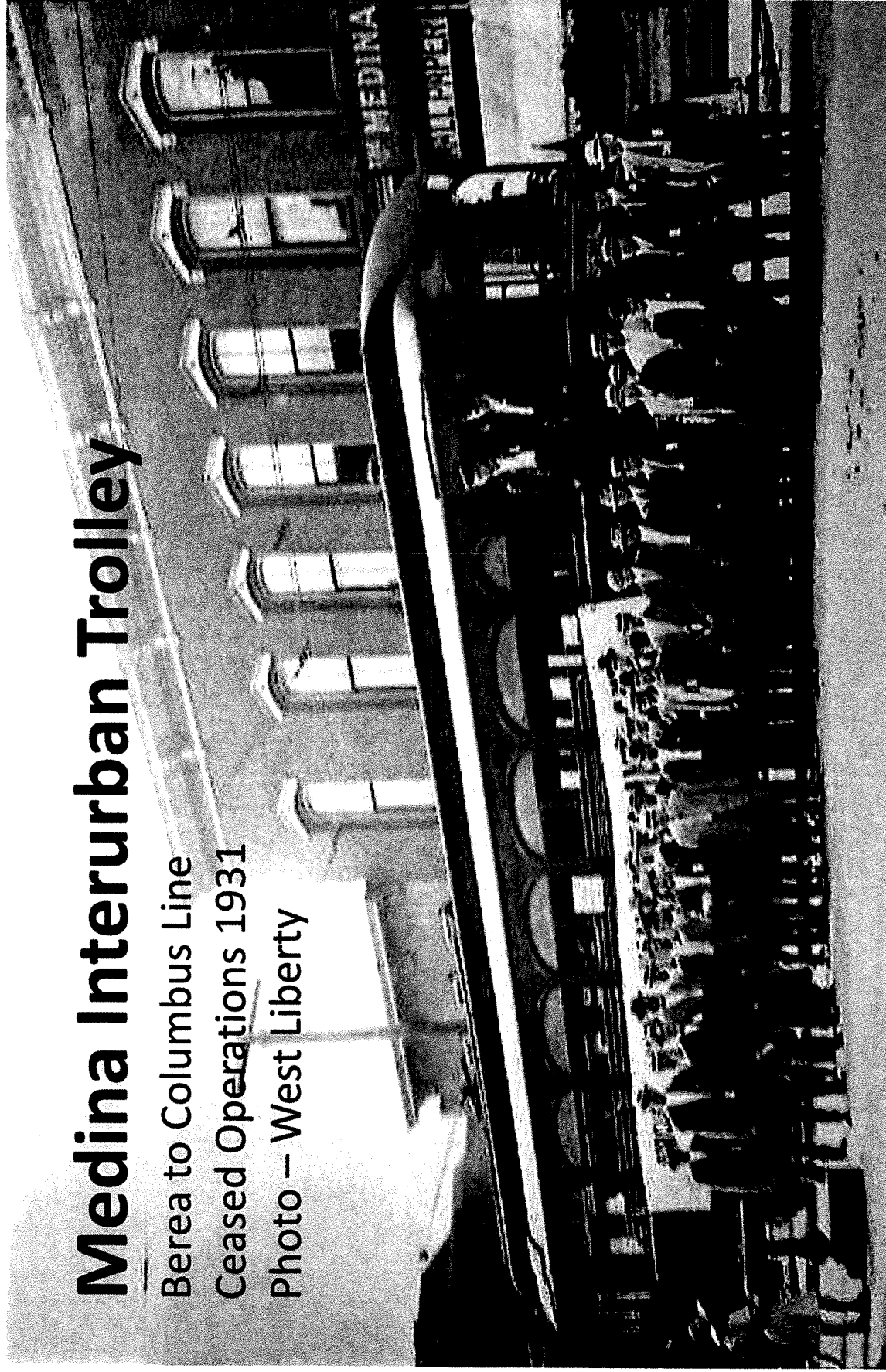


# Medina Interurban Trolley

Berea to Columbus Line

Ceased Operations 1931

Photo – West Liberty



# Interurban Station – South Court St.

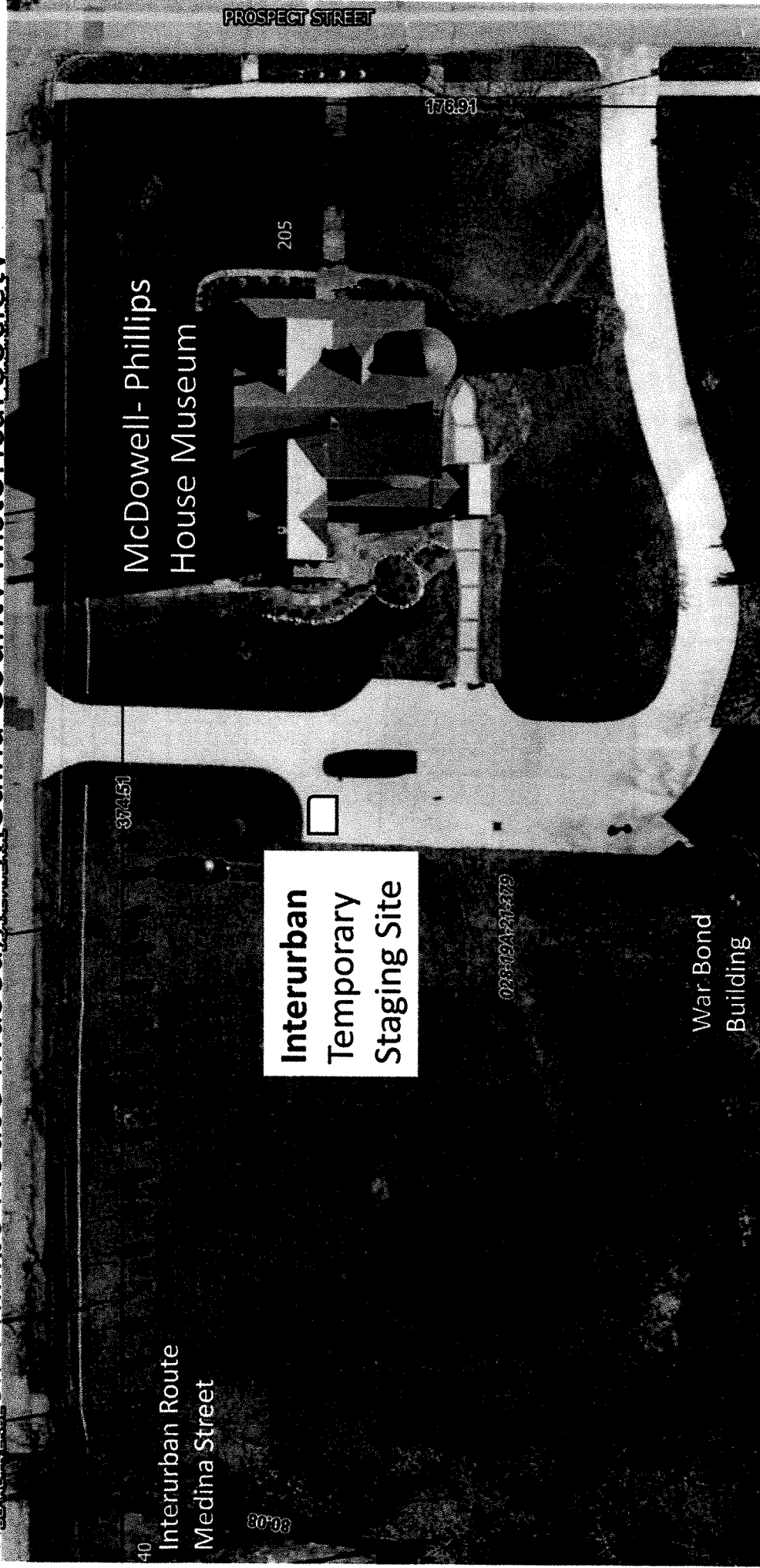
Restored by Community Design Committee 1991

Continuing maintenance and repair 35 years



# Proposed Interurban Staging Site

McDowell-Phillips House Museum – Medina County Historical Society



# Permanent Interurban Location Option A



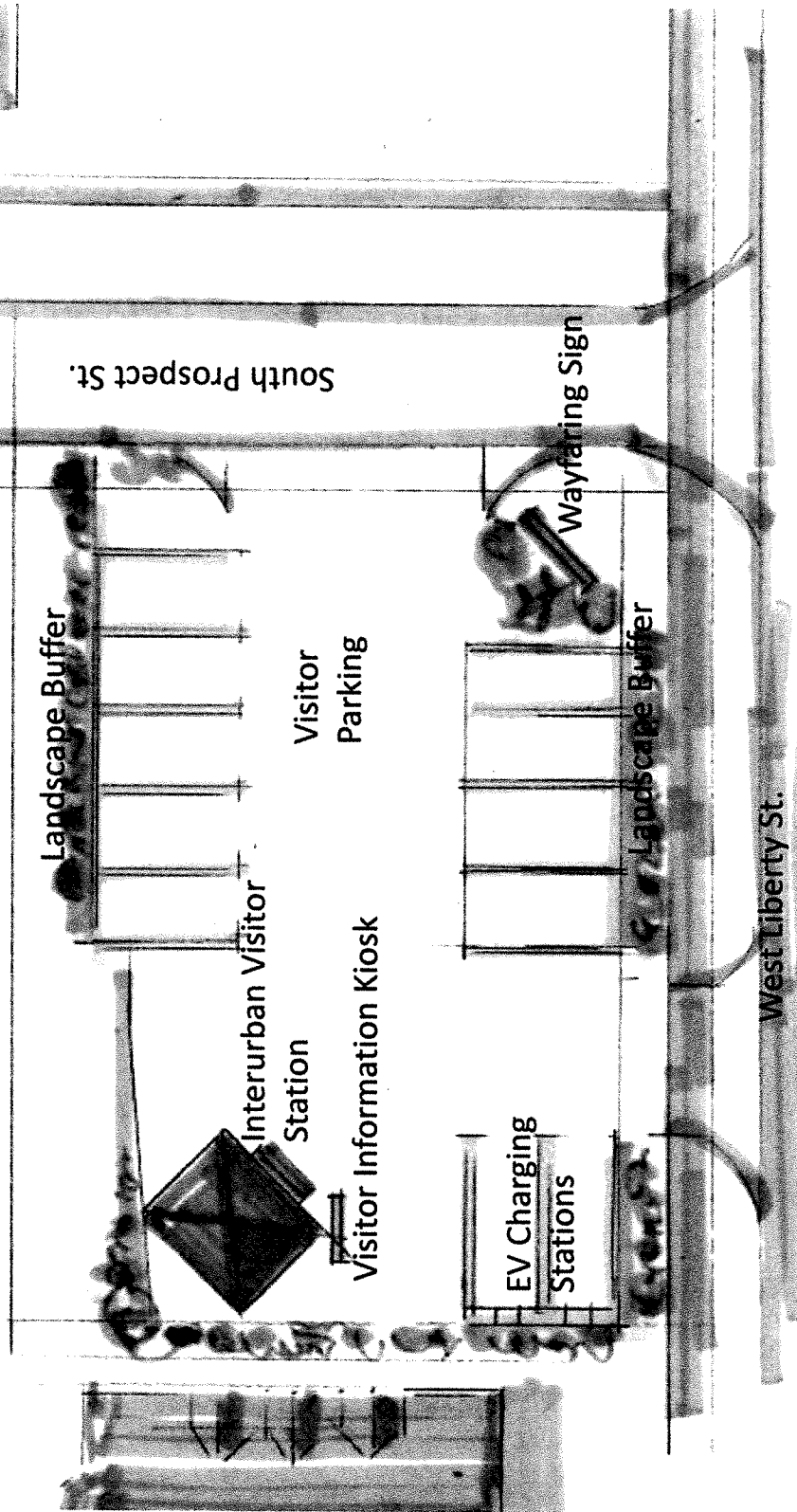
## Potential Interurban Visitor Center

West Liberty and South Prospect



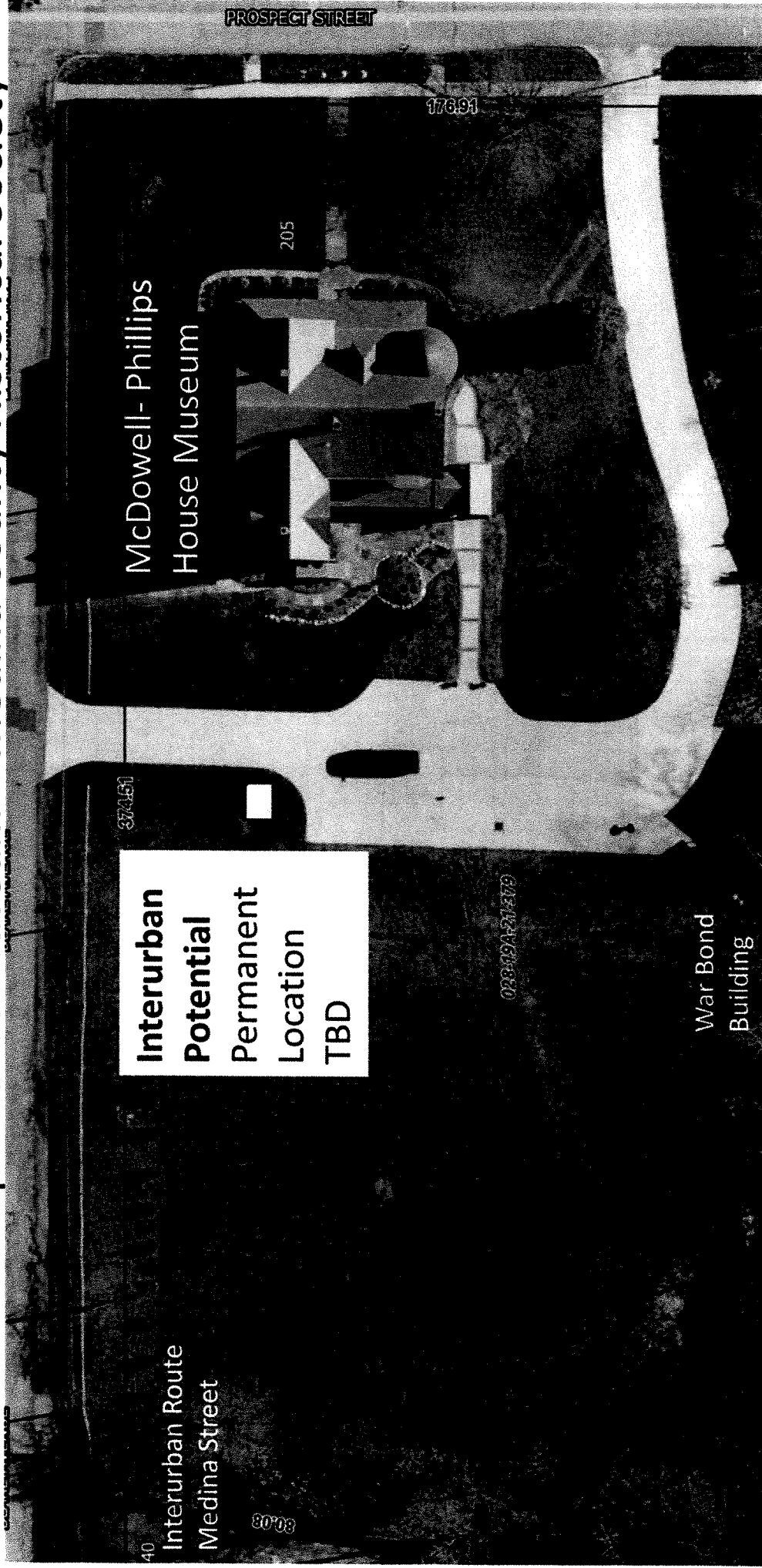
# Potential Interurban Visitor Center

Site Plan (lot size: 124' x 128')



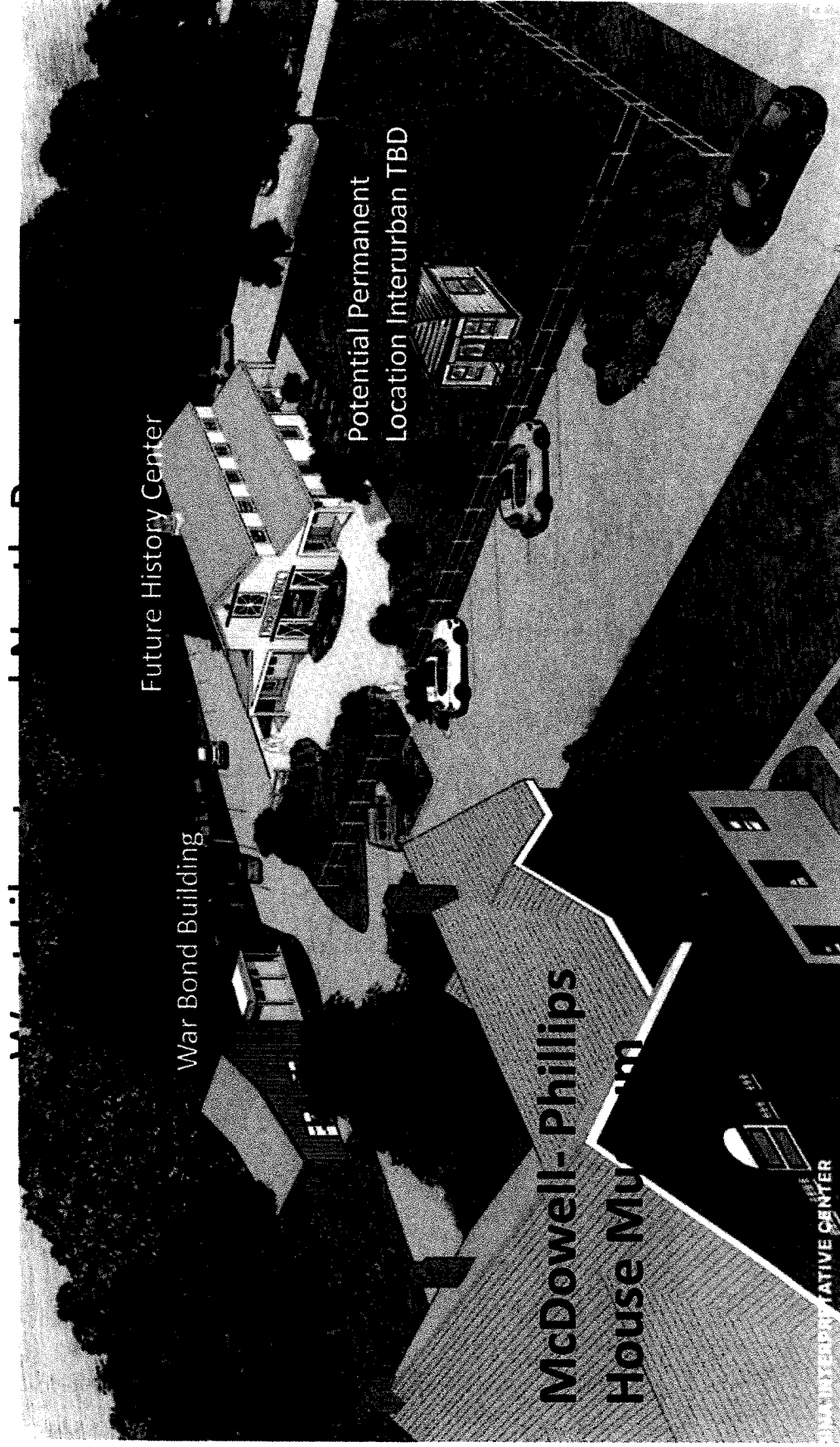
# Permanent Interurban Location –Option B

McDowell-Phillips House Museum – Medina County Historical Society





# Permanent Location Option B:



*OK 2/7 Tanner*  
**REQUEST FOR COUNCIL ACTION** *3-18-25*

No. RCA 25-070-3/24

**From: POLICE DEPARTMENT**  
**Chief Edward R. Kinney**

*[Signature]*  
(Signature)

Mayor's Initials: \_\_\_\_\_

Committee

*Finance*

Guidelines: See information on back of form

**Date:** 3/18/25

**Subject:** Application and Acceptance of grant

**Summary and Background:** The Medina Police Department respectfully requests approval to apply and accept grant funds from the 2025 State Violent Crime Reduction Funding Grant. The amount requested is \$11,097.00. This grant is sought for the purchase of three night-vision monocular and three helmet mounts to be used by SWAT and patrol members. If the grant funding is approved, MPD requests the addition of N-Vision Optics as a new vendor for the City of Medina from which the products will be purchased.

**Suggested Funding:** N/A

**Sufficient Funds in Account:** n/a

**Transfer Needed From:** n/a      **To:**

**New Appropriation Needed:** No

**Account No:**

**Emergency Clause Requested:**

**No    Yes    If yes, reason:**  
**Council Use Only:** \_\_\_\_\_

**Committee Recommendation:**

**Council Action Taken:**

**Ord./Res.No:**  
**Date:**



N-Vision Optics  
220 Reservoir Street, Suite 26  
Needham, MA 02494

T (781) 505 8360  
F (781) 583 9981  
www.nvisionoptics.com

Quote Number TD20240425

Date of Quote: 3/13/2025  
Quote Valid for: 60 days

Organization Name: Medina Police Department

Contact: Bryan Wagner  
Phone: 330-725-7777

Address:

Fax:  
e-mail: [bwagner@medinaoh.org](mailto:bwagner@medinaoh.org)

N-Vision Optics LLC is pleased to offer the following quotation for end use by the Medina Police Department. If you have any questions, please contact N-Vision Optics at 781-505-8360.

Item No.	Description	Qty	Unit Price	Total Price
PVS-14WH	Night Vision Monocular, Generation 3 Auto-Gated P-45 Thin-Filmed White Phosphor Image Intensifier	3	\$ 3,450.00	\$ 10,350.00
A3256368-2	Helmet Mount Assembly ACH/MCH	3	\$ 249.00	\$ 747.00
TOTAL QUOTE VALUE IN USD (\$) :				11,097.00

**NOTES:**

1. Shipping: Free
2. Packaging: Standard Commercial Packaging.
3. Delivery: PVS-14WH - 60-90 Days

Quote prepared by: Tymmothy Dore  
Date: 13-Mar-25



OK  
Hawell  
3-18-25

## REQUEST FOR COUNCIL ACTION

No. RCA 25-091-3/24

FROM: Medina Community Recreation Center *JSCW*

DATE: March 17, 2025

Committee: Finance

SUBJECT: Cleveland Clinic Children's Hospital Aquatic Therapy Lease

### SUMMARY AND BACKGROUND:

The MCRC is respectfully requesting the Mayor to sign a Lease/ License Agreement with Cleveland Clinic Children's Hospital for use of a portion of the Leisure Pool for children's rehabilitation. We currently have a similar agreement with Cleveland Clinic Medina Hospital for use of the pool and the land therapy room, but CC Children's Hospital has stated they are a separate cost center and cannot be covered under that existing agreement. Jim Hartley, Rehab Manager of CC Medina Therapy requested that we meet with CC Children's to draft a similar agreement with similar terms. CC Children's is requesting one four-hour block of time weekly to be billed at a monthly rate of \$875. The proposed lease term is May 1, 2025 through December 31, 2027. We will reevaluate terms if they request additional blocks of time. The two groups time blocks do not conflict.

Please refer to the attached Contract.

### 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: The hospital would like to start aquatic therapy in May.

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### COUNCIL USE ONLY:

Committee Action/Recommendation:

Council Action Taken:

Ord./Res.  
Date:

## **License Agreement**

This License Agreement (the "License"), dated as of the latest date of signature below, is by and between the City of Medina, for and on behalf of its Medina Community Recreation Center, with a principal place of business at 855 Weymouth Road, Medina, Ohio 44256 (hereinafter the "Licensor"), and Cleveland Clinic Children's Hospital for Rehabilitation, an Ohio non-profit corporation located at 2801 Martin Luther King Jr. Blvd., Cleveland, Ohio 44104 (hereinafter the "Licensee").

### **A. Grant of License:**

For and in consideration of the fees set forth in Exhibit A attached hereto and made a part hereof, Licensor hereby grants Licensee the right to use the indoor swimming pool, including but not limited to the lap lane in the leisure pool (collectively, the "Licensed Area") as scheduled in advance in accordance with Exhibit A, as well as the locker rooms/family changing rooms designated as Rooms 4108 (women's) and 4114 (men's) on the first floor of the Medina Community Recreation Center located at 455 Weymouth Road, Medina, Ohio 44256 (the "Premises") for the purpose of patient aquatic rehabilitation (the "Permitted Use") during such days and hours each week (the "Scheduled Use") as may be determined by mutual agreement of the parties effective May 1, 2025 (the "Commencement Date") and continuing through December 31, 2027 (the "Term"). The parties acknowledge and agree that during the Scheduled Use Licensee shall have the exclusive use of the Licensed Area or such portions thereof as have been agreed to in advance by the parties for the Permitted Use.

### **B. Licensee agrees as follows:**

1. To provide to Licensor a Certificate of Liability Insurance as evidence that it has for the entire term of the License comprehensive general liability insurance for bodily injury and property damage, combined in a minimum amount of \$1,000,000.00 for each claim and \$3,000,000.00 aggregate.
2. To accept the Licensed Area in its "as is" condition without any express or implied warranty by Licensor or its agent or representatives concerning any matter relating to the Licensed Area.
3. To operate in accordance with all applicable laws, rules, ordinances, and regulations of any federal, state, local, or other governmental authority and in accordance with the rules and regulations applicable to the Licensed Area.
4. If any government approvals, licenses or permits are required in connection with Licensee's occupancy and use of said Licensed Area, then Licensee shall be responsible for obtaining such approvals, licenses and permits at Licensee's sole cost and expense. Copies of any and all required permits, licenses and approvals shall be provided to Licensor upon request.
5. Not to injure, damage or deface said Licensed Area and to properly dispose of all garbage and leave the Licensed Area in the same condition as existed prior to the commencement of this License.
6. To use the Licensed Area solely for patient aquatic rehabilitation.

**C. Licensor agrees as follows:**

1. To provide to Licensee a Certificate of Liability Insurance as evidence that it has for the entire term of the License comprehensive general liability insurance for bodily injury and property damage, combined in a minimum amount of \$2,000,000.00 for each claim and \$2,000,000.00 aggregate.
2. To operate in accordance with all applicable laws, rules, ordinances, and regulations of any federal, state, local, or other governmental authority and in accordance with the rules and regulations applicable to the Premises.
3. To provide Licensee with full use of the Licensed Area, including but not limited to the lap lane in the leisure pool as well as a wheelchair accessible locker room and family changing rooms; and aquatic equipment, including but not limited to kickboards and flotation devices.
4. To staff the Licensed Area during Licensee's use of the Licensed Area.

**D. Additional Conditions**

1. Licensee's right to use the Licensed Area shall commence on the Commencement Date and shall expire at the end of the Term, provided however, that this License is terminable by either Licensor or Licensee for any reason upon thirty (30) day written notice to the other at the contact information stated below. Notice shall be given by personal delivery, or by courier or overnight delivery by a recognized national delivery or local courier service. Either party may change its contact information by notifying the other party in writing. Notice shall be deemed given upon receipt, or delivery refused, at the following addresses:

To Licensee at:

Cleveland Clinic Children's Hospital for Rehabilitation  
2801 Martin Luther King Jr. Blvd.  
Cleveland, Ohio 44104  
Attention: Director, Pediatric Therapy Services

with a copy to:

The Cleveland Clinic Foundation  
9500 Euclid Avenue (HS1-02)  
Cleveland, Ohio 44195  
Attention: Sr. Director, Real Estate

and to:

The Cleveland Clinic Foundation  
3050 Science Park Drive (AC321)

Beachwood, Ohio 44122  
Attention: Sr. Counsel, Real Estate

To Licensor at:  
City of Medina  
Medina Community Recreation Center  
855 Weymouth Road  
Medina, Ohio 44256  
Attention: Christy Moats

2. Licensor and Licensee each reserve the right to the control and use of their respective names, copyrights, symbols, trademarks and service marks in advertising, promotional materials or otherwise.
3. Licensee shall not assign the License and shall not sublicense the Licensed Area or any part thereof or any right or privilege appurtenant thereto, without the prior written consent of Licensor, which consent may be granted or withheld by Licensor in its sole discretion. Any such assignment or sublicense without the prior written consent of Licensor shall be void and have no force or effect.
4. An authorized representative of each party shall execute this License and all notices given by such party hereunder. Licensee represents and warrants that the individual(s) executing this License is authorized to bind Licensee to the rights, obligations, conditions and terms set forth in this License. Licensor represents and warrants that the individual(s) executing this License has full power and authority to grant this License and is authorized to bind Licensor to the rights, obligations, conditions and terms set forth herein.
5. Except for (a) the parties' attorneys, accountants and financial advisors, or (b) pursuant to a response being provided by Licensor under The Ohio Public Records Act, neither party shall disclose to any third party the terms or conditions of this License without the express written consent of the other party. If either Licensor or Licensee discloses the terms or conditions of this License to any permitted third party, it shall cause such third party to abide by the confidentiality provision hereof. In the event of a breach of this provision, the disclosing party shall be responsible to the other party for any damages resulting from such breach.
6. All terms and conditions of this License shall terminate upon expiration of this License.

[SIGNATURES ARE ON FOLLOWING PAGE]



It is agreed that this License will be in force when signed by both parties.

**LICENSOR:**

**City of Medina**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**LICENSEE:**

**Cleveland Clinic Children's  
Hospital for Rehabilitation**

By: \_\_\_\_\_

Name: Victoria Kunkel

Title: Director, Pediatric Therapy  
Service

Date: \_\_\_\_\_

## **EXHIBIT A**

### **LICENSE FEES, SCHEDULING AND INVOICING**

- *From May 1, 2025 through December 31, 2027, Licensee shall pay to Licensor a fee of Eight Hundred Seventy-Five and 00/100 Dollars (\$875.00) per month for the usage of the Licensed Area.*
- *Licensee shall schedule all patient visits with Licensor through Epic on such days and times as are mutually agreed to between the parties.*
- *Licensee shall pay Licensor the fees due for its use of the Licensed Area monthly in arrears, with Licensor submitting an invoice for the month's usage by the last day of the month of the period being billed for.*

OK Jansen Wehrley  
3-18-25

# REQUEST FOR COUNCIL ACTION

No. RCA 25-072-3/24  
Committee: Finance

**FROM:** Jansen Wehrley <sup>ssw</sup>  
**DATE:** March 18, 2025  
**SUBJECT:** Purchase Replacement Vault Restroom- Roscoe Ewing Park  
**SUMMARY AND BACKGROUND:**

The Parks Department respectfully requests Council authorization to purchase one Gunnison precast concrete single vault restroom from CXT Incorporated. This restroom will replace one Romtec unit that is reaching the end of its service life at Roscoe Ewing Park.

This will be purchased through the Sourcewell Cooperative Purchasing Program utilizing contract #081721-CXT. The City of Medina's Sourcewell Member ID is #29417

See attached.

**Estimated Cost:** \$50,465.00  
**Suggested Funding:** 104-0301-54412 Carryforward

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

**Emergency Clause Requested:** NO  
**Reason:**

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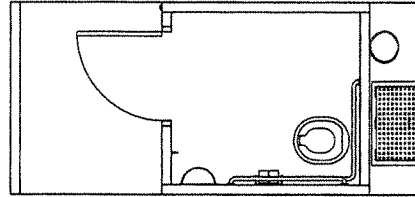
**COUNCIL USE ONLY:**  
**Committee Action/Recommendation:**

**Council Action Taken:**

**Ord./Res.**  
**Date:**

## GUNNISON — 6' 6" x 14' 8"

Gunnison is a single vault style restroom. Standard features include polyethylene lined concrete vault, simulated barnwood textured walls, simulated cedar shake textured roof, off loaded, and set up at site.



**CXT**  
800.696.5766  
cxtinc.com

Price Per Unit			
Base Price	\$ 23,436.00		\$ 23,436.00
<b>Added Cost Options</b>		<b>Click to Select</b>	
Earth Work (includes excavation, backfill and cleanup)	\$ 4,500.00	<input checked="" type="checkbox"/>	4,500.00
Optional Wall Texture - choose one <input type="radio"/> Split Face Block (\$3,500) <input type="radio"/> Stone (\$5,000) <input type="radio"/> Custom Texture (\$6,000) Reset Wall Texture			0.00
Optional Roof Texture <input type="checkbox"/> Ribbed Metal	\$ 3,500.00		0.00
Insulated Roof Panel	\$ 1,800.00	<input type="checkbox"/>	0.00
Room Wastebasket	\$ 250.00	<input type="checkbox"/>	0.00
Stainless Steel Riser	\$ 2,500.00	<input type="checkbox"/>	0.00
Hand Sanitizer Dispenser	\$ 150.00	<input type="checkbox"/>	0.00
Baby Changing Table	\$ 750.00	<input type="checkbox"/>	0.00
Fiberglass Door	\$ 3,300.00	<input type="checkbox"/>	0.00
Owl Guard	\$ 150.00	<input type="checkbox"/>	0.00
Marine Package (excluding fiberglass door and frame)	\$ 4,500.00	<input type="checkbox"/>	0.00
Solar Light Kit	\$ 1,200.00	<input type="checkbox"/>	0.00
Solar Fan Kit	\$ 1,200.00	<input type="checkbox"/>	0.00
Rain Vent Cap	\$ 150.00	<input type="checkbox"/>	0.00
Timed Lock System	\$ 1,350.00	<input type="checkbox"/>	0.00
Total for Added Cost Options:		\$	4,500.00
Custom Options: OH Installatio Surcharge 2025		\$	6,801.00
Engineering and State Fees:		\$	6,500.00
Estimated One-Way Transportation Costs to Site (quote):		\$	9,228.00
Estimated Tax:		\$	
Total Cost per Unit Placed at Job Site:		\$	50,465.00

Estimated monthly payment on 5 year lease \$1,014.35

<b>Other Options</b>				
One Color: (select one)	Two-Tone Color: Walls Buckskin	Top Section: (select one)	Bottom Section: (select one)	Rock Color: (select one)
	Roof Mocha Carmel	Floor Plan: Left Hand Floor Hand	Toilet Paper Holder: 3-Roll Stainless Steel	
Deadbolt Lock: <input checked="" type="checkbox"/>	Privacy Latch ADA Handle: <input checked="" type="checkbox"/>			
Signage:		Wall Vent Location: (upon entering door)		
<input type="checkbox"/> Men	<input type="checkbox"/> Women	<input checked="" type="checkbox"/> Unisex	<input checked="" type="checkbox"/> Accessible	<input type="checkbox"/> Right Side
		<input checked="" type="checkbox"/> Left Side	<input checked="" type="checkbox"/> Rear	<input type="checkbox"/> Door

\*Building includes restroom signs in Braille and roman lettering.



Notes:

This price quote is good for 60 days from date below, and is accurate and complete.

I accept this quote. Please process this order.

Company Name

**Christopher Swistak**  
Digitally signed by Christopher Swistak  
Date: 2025.03.18 09:34:16 -04'00'  
CXT Sales Representative

Date

\_\_\_\_\_  
Company Representative  
Date



CXT® Precast Concrete Products manufactures restroom, shower and concession buildings in multiple designs, textures and colors. The roof and walls are fabricated with high strength precast concrete to meet all local building codes and textured to match local architectural details. All CXT buildings are designed to meet A.D.A. and to withstand heavy snow, high wind and category E seismic loads. All concrete construction also makes the buildings easy to maintain and withstand the rigors of vandalism. The buildings are prefabricated and delivered complete and ready-to-use, including plumbing and electrical where applicable. With thousands of satisfied customers nationwide, CXT is the leader in prefabricated concrete restrooms.

1. ORDERING ADDRESS(ES): CXT Precast Concrete Products, 606 N. Pines Road, Suite 202, Spokane Valley, WA 99206

2. ORDERING PROCEDURES: Fax 509-928-8270

3. PAYMENT ADDRESS(ES):

**Remitting by check:**

CXT, Inc., PO Box 676208, Dallas, TX 75267-6208

**Remitting by ACH or wire transfer:**

Beneficiary: CXT, Inc.

Beneficiary Bank: PNC Bank, Pittsburgh, PA

Account: 1077766885 ABA/Routing: 043000096

Email remittance details to AR@lbfoster.com

4. WARRANTY PROVISIONS: CXT provides a one (1) year warranty. The warranty is valid only when concrete is used within the specified loadings. Furthermore, said warranty includes only the related material necessary for the construction and fabrication of said concrete components. All other non-concrete components will carry a one (1) year warranty. CXT warrants that all goods sold pursuant hereto will, when delivered, conform to specifications set forth above. Goods shall be deemed accepted and meeting specifications unless notice identifying the nature of any non-conformity is provided to CXT in writing within the specified warranty. CXT, at its option, will repair or replace the goods or issue credit for the customer provided CXT is first given the opportunity to inspect such goods. It is specifically understood that CXT's obligation hereunder is for credit, repair or replacement only, F.O.B. CXT's manufacturing plants, and does not include shipping, handling, installation or other incidental or consequential costs unless otherwise agreed to in writing by CXT.

This warranty shall not apply to:

1. Any goods which have been repaired or altered without CXT's express written consent, in such a way as in the reasonable judgment of CXT, to adversely affect the stability or reliability thereof;

2. To any goods which have been subject to misuse, negligence, acts of God or accidents; or

3. To any goods which have not been installed to manufacturer's specifications and guidelines, improperly maintained, or used outside of the specifications for which such goods were designed.

5. TERMS AND CONDITIONS OF INSTALLATION (IF APPLICABLE): All prices subject to the "Conditions of Sale" listed on the CXT quotation form.

Customers are responsible for marking exact location building is to be set; providing clear and level site, free of overhead and/or underground obstructions; and providing site accessible to normal highway trucks and sufficient area for the crane to install and other equipment to perform the contract requirements. Site must allow for the crane to be within three feet of the building location and the truck to be within three feet of the crane. Customer shall provide notice in writing of low bridges, roadway width or grade, unimproved roads or any other possible obstacles to access. CXT reserves the right to charge the customer for additional costs incurred for

special equipment required to perform delivery and installation. Customers will negotiate installation on a project-by-project basis, which shall be priced as separate line items. For more information regarding installation and truck turning radius guidelines please see our website at <http://www.cxtinc.com>.

In the event delivery of the building/s ordered is/are not completed within 30 days of the agreed to schedule through no fault of CXT, an invoice for the full contract value (excluding shipping and installation costs) will be submitted for payment. Delivery and installation charges will be invoiced at the time of delivery and installation.

Should the delivery and installation costs increase due to changes in the delivery period, this increase will be added to the price originally quoted, and will be subject to the contract payment terms.

In the event that the delivery is delayed more than 90 days after the agreed to schedule and through no fault of CXT, then in addition to the remedies above, a storage fee of 1-½% of contract price per month or any part of any month will be charged.

**\*\*Customer is responsible for all local permits and fees.**

6. DELIVERY CHARGE: All prices F.O.B. origin prepaid and added to invoice. CXT operates three (3) manufacturing plants in the United States and will deliver from the closest location on our carriers.

7. PAYMENT TERMS: All orders are cash in advance. At CXT's discretion, credit may be given after approval of credit application. Payment to CXT by the purchaser of any approved credit amount is net 30 days after submission of invoice to purchaser. Interest at a rate equal to the lower of (i) the highest rate permitted by law; or (ii) 1.5% per month will be charged monthly on all unpaid invoices beginning with the 35th day (includes five (5) day grace period) from the date of the invoice. Under no circumstance can retention be taken. If CXT initiates legal proceeding to collect any unpaid amount, purchaser shall be liable for all of CXT's costs, expenses and attorneys' fees and costs of any appeal.

8. LIMITATION OF REMEDIES: In the event of any breach of any obligations hereunder; breach of any warranty regarding the goods, or any negligent act or omission of any party, the parties agree to submit all claims to binding arbitration. Any settlement reached shall include all reasonable costs including attorney fees. In no event shall CXT be subject to or liable for any incidental or consequential damages. Without limitation on the foregoing, in no event shall CXT be liable for damages in excess of the purchase price of the goods herein offered.

9. DELIVERY INFORMATION: All prices F.O.B. origin prepaid and added to invoice. CXT operates three (3) manufacturing plants in the United States and will deliver from the closest location on our carriers. Use the information below to determine the origin:

- F.O.B. 6701 E. Flamingo Avenue, Building 300, Nampa, ID 83687 applies to: AK, CA, HI, ID, MT, ND, NV, OR, SD, UT, WA, WY.

- F.O.B. 901 North Highway 77, Hillsboro, TX 76645 applies to AR, AZ, CO, IA, KS, LA, MN, MO, MS, NE, NM, OK, TX.

- F.O.B. 362 Waverly Road, Williamstown, WV 26183 applies to AL, CT, DE, FL, GA, IL, IN, KY, MA, MD, ME, MI, NC, NH, NJ, NY, OH, PA, PR, RI, SC, TN, VA, VT, WI, WV.

- Prices exclude all federal/state/local taxes. Tax will be charged where applicable if customer is unable to provide proof of exemption.

**REQUEST FOR COUNCIL ACTION**

NO. RCA 25-073-3/24

FROM: Patrick Patton

DATE: March 18, 2025

COMMITTEE  
REFERRAL: Finance

SUBJECT: Engineering Agreement with the Wheeling & Lake Erie Railway regarding the US-42 resurfacing Project #1151

This request asks Council to enter into the attached Preliminary Engineering Agreement with the Wheeling & Lake Erie Railway (W&LE) and authorize the Mayor to sign the agreement for the City.

This project includes resurfacing US 42 (S. Court Street) within railroad right-of-way at their grade crossing south of Smith Road. In order to be granted authorization to complete any work within their right-of-way, W&LE must review and approve the project plans. This agreement must be in place for W&LE to review these project plans.

Thank you for your consideration.

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ESTIMATED COST: \$5,000.

SUGGESTED FUNDING: 108-0610-54411

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:

WLE AC&Y Subdivision Mile Post 140.28

Agreement No. \_\_\_\_\_

### **PRELIMINARY ENGINEERING AGREEMENT**

This Engineering Agreement ("Agreement") is made as of \_\_\_\_\_, 2025 by and between **Wheeling & Lake Erie Railway Company**, a Delaware corporation with its principal place of business in Ohio ("RAILROAD"), and the **City of Medina, Ohio**, ("CITY")

#### **EXPLANATORY CITYMENT**

1. The CITY wishes to facilitate the development of plans for MED-US 42-16.78 - US 42 Resurfacing Improvements over the RAILROAD's AC&Y Subdivision tracks at Mile Post 140.28, in the City of Medina in Medina County, OH. (the "**Project**").
2. The project work will include asphalt resurfacing up to the exiting concrete grade crossing panels on South Court Street. The project is part of PID 119446 resurfacing and maintenance improvements. The CITY has requested that RAILROAD proceed with certain necessary engineering and/or design services for the Project to facilitate the parties' consideration of the Project.
3. Subject to the approval of RAILROAD, which approval may not be unreasonably withheld, the Project is to be constructed, if at all, at no cost to RAILROAD, under a separate construction agreement to be executed by the parties at a future date.

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

#### **1. Scope of Work**

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

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

## 2. Reimbursement of RAILROAD Expenses.

- 2.1 Reimbursable Expenses. The CITY shall reimburse RAILROAD for all costs and expenses incurred by RAILROAD in connection with the Engineering Work, including, without limitation: (1) all out of pocket expenses, (2) travel and lodging expenses, (3) telephone, facsimile, and mailing expenses, (4) costs for equipment, tools, materials and supplies, (5) sums paid to consultants and subcontractors by RAILROAD and (6) RAILROAD labor, together with RAILROAD labor overhead percentages established by RAILROAD pursuant to applicable law, (collectively, “**Reimbursable Expenses**”).
- 2.2 Estimate. RAILROAD has estimated the total Reimbursable Expenses for the Project to be approximately **\$5,000.00** (the “**Estimate**” as amended or revised). As per 23 CFR 646.216 (d) (vi), RAILROAD shall submit an itemized estimate for approval by the CITY prior to beginning work. In the event RAILROAD anticipates that actual Reimbursable Expenses may exceed such Estimate, it shall provide the CITY with the revised Estimate of total Reimbursable Expenses for the CITY's approval and confirmation that sufficient funds have been appropriated to cover the total Reimbursable Expenses as reflected in the revised Estimate. RAILROAD may elect, by delivery of notice to the CITY, to immediately cease all further Engineering Work, unless and until CITY provides such approval and confirmation.
- 2.3 Federal Reimbursement. Any federal reimbursement to the CITY for railroad work performed on projects undertaken pursuant to the provisions of 23 CFR part 646, subpart B, shall be made in accordance with 23 CFR part 140, subpart I, as applicable.
- 2.4 Payment Terms
- 2.4.1 The CITY shall pay RAILROAD for Reimbursable Expenses in the amounts and on the dates set forth in the Payment Schedule attached to this Agreement as Exhibit A (the “**Payment Schedule**,” as revised from time to time pursuant to Section 2.2). RAILROAD agrees to submit invoices to the CITY for Reimbursable Expenses. The CITY shall remit payment to RAILROAD within thirty (30) days following delivery to the CITY of such proper invoice or, if later, the payment date (if any) set forth in the Payment Schedule.
- 2.4.2 Following completion of all Engineering Work, RAILROAD shall submit to the CITY a final invoice that reconciles the total Reimbursable Expenses incurred by RAILROAD against the total payments received from the CITY. The CITY shall pay to RAILROAD the amount by which actual Reimbursable Expenses exceed total payments, as shown by the final invoice, within thirty (30) days following delivery to CITY of the final invoice.
- 2.4.3 In the event that the CITY fails to pay RAILROAD any sums due RAILROAD under this Agreement: (i) the CITY shall pay RAILROAD interest as permitted by applicable law on the delinquent amount until paid in full; and (ii) RAILROAD may elect, by delivery of notice to CITY: (A) to immediately cease all further work on the Project, unless and until the CITY pays the entire delinquent sum, together with accrued interest; and/or (B) to terminate this Agreement.



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

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

3. Appropriations. The CITY represents to RAILROAD that: (i) the CITY has obtained appropriations sufficient to reimburse RAILROAD for the Reimbursable Expenses encompassed by the initial Estimate; (ii) the CITY shall use its best efforts to obtain appropriations necessary to cover Reimbursable Expenses encompassed by subsequent Estimates approved by the CITY; and (iii) the CITY shall promptly notify RAILROAD in the event that the CITY is unable to obtain such additional appropriations. It is agreed and understood by all parties that the obligations described in this agreement are subject to Section 126.07 of the Ohio Revised Code.
4. Termination.
- 4.1 By the CITY. The CITY may terminate this Agreement, for any reason, by delivery of notice to RAILROAD. Such termination shall become effective upon the expiration of fifteen (15) calendar days following delivery of notice to RAILROAD or such later date designated by the notice.
- 4.2 By RAILROAD. RAILROAD may terminate this Agreement as provided pursuant to Section 2.4.3.
- 4.3 Consequences of Termination. If the Agreement is terminated by either party pursuant to this Section or any other provision of this Agreement, the parties understand that it may be impractical for them to immediately stop the Engineering Work. Accordingly, they agree that, in such instance a party may continue to perform Engineering Work until it has reached a point where it may reasonably and safely suspend the Engineering Work. The CITY shall reimburse RAILROAD pursuant to this Agreement for the Engineering Work performed, plus all costs reasonably incurred by RAILROAD to discontinue the Engineering Work and all other costs of RAILROAD incurred as a result of the Project up to the time of full suspension of the Engineering Work. Termination of this Agreement or Engineering Work on the Project, for any reason, shall not diminish or reduce the CITY's obligation to pay RAILROAD for Reimbursable Expenses incurred in accordance with this Agreement. In the event of the termination of this Agreement or the Engineering Work for any reason, RAILROAD's only remaining obligation to the CITY shall be to refund to the CITY payments made to RAILROAD in excess of Reimbursable Expenses in accordance with Section 2.
5. Subcontracts. RAILROAD shall be permitted to engage consultants and subcontractors to perform all or any portion of the Engineering Work.
6. Notices. All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered upon personal delivery, upon the expiration of three (3) days following mailing by first class U.S. mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the parties at the addresses set forth below, or such other addresses as either party may designate by delivery of prior notice to the other party:

If to RAILROAD:

Wheeling & Lake Erie Railway Company  
100 East First Street  
Brewster, OH. 44613  
Attention: Jeffrey A. Davis, Jr.  
Manager of Real ECITY

If to the CITY:

City of Medina  
132 N. Elmwood Avenue  
Medina, OH 44256  
Attn: Patrick Patton  
City Engineer

7. Project Construction. Nothing contained in this Agreement shall be deemed to constitute RAILROAD's approval of or consent to the construction of the Project.
8. Entire Agreement. This Agreement embodies the entire understanding of the parties, may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter. In the event of any inconsistency between this Agreement and the Exhibits, the more specific terms of the Exhibits shall be deemed controlling.
9. Waiver. If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.
10. Assignment. RAILROAD may assign this Agreement and all rights and obligations herein to a successor in interest, parent company, affiliate, or future affiliate. RAILROAD shall consult with the CITY prior to assignment. Upon assignment of this Agreement by RAILROAD and the assumption by RAILROAD's assignee of RAILROAD's obligations under this Agreement, RAILROAD shall have no further obligations under this Agreement. The CITY shall not assign its rights or obligations under this Agreement without RAILROAD's prior written consent, which consent may be withheld for any reason.
11. Termination by Operation of Law. If engineering efforts covered under said agreement are not complete by June 30, 2019, it is the expressed intention of the parties to renew said obligations for one successive biennium period; with the renewal period beginning July 1, 2019, and ending no later than June 30, 2021; until such time as engineering efforts covered under said agreement are complete. Said renewal is conditioned upon the CITY determining future appropriations will permit the CITY to renew said obligations.
12. Record Keeping Requirements. The RAILROAD shall keep all financial records in a manner consistent with generally accepted accounting procedures. Documentation to support each action shall be filed in a manner allowing it to be readily located. During the period covered by this contract and until the expiration of three years after final payment under this contract, the RAILROAD agrees to provide CITY, its duly authorized representatives or any person, agency, or instrumentality providing financial support to the work undertaken hereunder, with access to and the right to examine any books, documents, papers, and records of the RAILROAD involving transactions related to this contract.

### 13. Conflicts of Interest

- 13.1 No personnel of RAILROAD who exercises any functions or responsibilities in connection with the review or approval of the understanding or carrying out of any such work, shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work.
- 13.2 Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of this contract, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to CITY in writing. Thereafter, he or she shall not participate in any action affecting the work under this contract, unless CITY shall determine that, in the light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

### 14. Equal Employment Opportunity

- 14.1 In carrying out this contract, the RAILROAD shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, sexual orientation, gender identity, or age. The RAILROAD will ensure that applicants who are hired to perform the Engineering Work and that employees performing the Engineering Work are treated during employment without regard to their race, religion, color, sex, national origin, disability, sexual orientation, gender identity, or age. Such action shall include, but not be limited to, the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.
- 14.2 The RAILROAD agrees that while it is performing the Engineering Work it will post on the internet notices setting forth the provisions of this nondiscrimination clause. In all solicitations or advertisements for employees placed by or on behalf of the RAILROAD for the Engineering Work, the RAILROAD will CITY that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, disability, or age. The RAILROAD shall incorporate the foregoing requirements of this paragraph in all of its contracts for any of the work prescribed herein (other than subcontracts for standard commercial supplies or raw materials) and will require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.
- 14.3 RAILROAD agrees to fully comply with Title VI of the Civil Rights Act of 1964, 42 USC Sec. 2000. RAILROAD shall not discriminate on the basis of race, color, or national origin in its programs or activities. The Director of Transportation may monitor the RAILROAD's compliance with Title VI.
15. Antitrust. CITY and the RAILROAD recognize that in actual economic practice, overcharges resulting from antitrust violations are usually borne by CITY. As consideration for the award of the contract, and intending to be legally bound, the RAILROAD assigns to CITY all right, title and interest, to all claims and causes of action the RAILROAD now has or may acquire under CITY or federal antitrust laws PROVIDED that the claims or causes of action relate to the goods or services that are acquired and used for purposes of the Engineering Work and are Reimbursable Expenses, and EXCEPT as to any claims or causes of action which result from antitrust violations that occur after the price is established under the Contract and that are not passed on to CITY. Additionally, RAILROAD warrants that any overcharges resulting from antitrust violations by RAILROAD's first tier suppliers and subcontractors shall not be knowingly passed on to CITY.

16. Compliance with Law. The RAILROAD agrees to comply with all applicable federal, CITY, and local laws in the conduct of the work hereunder. RAILROAD accepts full responsibility for payment of all taxes including without limitation, unemployment compensation insurance premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by RAILROAD in the performance of the work authorized by this contract. CITY is exempt from federal excise taxes and all CITY and local taxes, unless otherwise provided herein. CITY does not agree to pay any taxes on commodities, goods, or services acquired from any RAILROAD.
17. Certification of Funds. It is expressly understood by the parties that none of the rights, duties, and obligations described in this contract shall be binding on either party until all statutory provisions under the Ohio Revised Code, including but not limited to Section 126.07, have been complied with and until such time as all necessary funds are made available and forthcoming from the appropriate CITY agencies, and, when required, such expenditure of funds is approved by the General Assembly and by the Controlling Board of the CITY of Ohio or, in the event that federal funds are used, until such time that CITY gives the RAILROAD written notice that such funds have been made available to CITY, by CITY's funding source.
18. Change or Modifications. Either party may, at any time during the term of this contract, request amendments or modifications. Requests for amendments or modifications shall be in writing and shall specify the requested changes and the justifications of such changes. Should the parties consent to modification of the contract, then an amendment shall be drawn, approved, and executed in the same manner as the original contract.
19. Applicable Law. This Agreement shall be governed by the laws of the CITY of Ohio and any applicable federal law, specifically 23 CFR part 646, subpart B.
20. Governing Law/Severability.
- 20.1 This Contract and any claims arising out of this Contract shall be governed by the laws of the CITY of Ohio. Any provision of this Contract prohibited by the law of Ohio shall be deemed void and of no effect.
- 20.2 If any provision of the Contract or the application of any such provision shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of the Contract shall remain in full force and effect.
21. Drug-Free Workplace. RAILROAD agrees to comply with all applicable CITY and federal laws regarding drug-free workplace. RAILROAD shall make a good faith effort to ensure that all RAILROAD employees, while performing the Engineering Work on CITY property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.
22. Ohio Ethics Law Requirements. In accordance with Executive Order 2007-01S, RAILROAD, by signing this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflict of interest laws, and (3) will take no action inconsistent with those laws and this order. RAILROAD understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this contract and may result in the loss of other contract with the CITY of Ohio.
23. Ohio Elections Law. RAILROAD certifies that all applicable parties listed in Division (I)(3) or (J)(3) of R.C. 3517.13 are in compliance with Divisions (I)(1) and (J)(1) of R.C. 3517.13.

24. Force Majeure. Except as otherwise provided herein, neither the RAILROAD nor CITY shall be liable to the other for any delay or failure of performance of any provisions contained herein, nor shall any such delay or failure of performance constitute default hereunder, to the extent that such delay or failure is caused by force majeure. The term force majeure, as used herein shall mean without limitation: acts of God, such as epidemics; lightning; earthquakes; fire, storms; hurricanes; tornadoes; floods; washouts; droughts, or other severe weather disturbances; explosions; arrests; restraint of government and people; and other such events or any other cause which could not be reasonably foreseen in the exercise of ordinary care, and which is beyond the reasonable control of the party affected and said party is unable to prevent.
25. CITY Audit Findings. RAILROAD affirmatively represents to CITY that it is not subject to a Finding for Recovery under R.C. 9.24, or that it has taken the appropriate remedial steps required under R.C. 9.24 or otherwise qualifies under that section. RAILROAD agrees that if this representation is deemed to be false, the contract shall be void *ab initio* as between the parties to this contract, and any funds paid by CITY hereunder shall be immediately repaid to CITY, or an action for recovery may be immediately commenced by CITY for recovery of said funds.
26. Debarment. RAILROAD represents that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either R.C. 5513.06 or R.C. 125.25. If this representation is found to be false, this Agreement is void *ab initio* and RAILROAD shall immediately repay to CITY any funds paid under this Agreement.
27. Signatures. Any person executing this Contract in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this Contract on such principal's behalf.

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

City of Medina, OH:

By: \_\_\_\_\_  
Dennis Hanwell  
Mayor

Wheeling & Lake Erie Railway Company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT A**

### **PAYMENT SCHEDULE**

#### **Progress Payments**

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

## REQUEST FOR COUNCIL ACTION

FROM: Patrick Patton

DATE: March 18, 2025

SUBJECT: LPA Project Agreement with ODOT for Job #1151: US 42 Resurfacing and Pedestrian Bumpouts

NO. RCA 25-074-3/24

COMMITTEE  
REFERRAL: Finance

On this date, the Ohio Department of Transportation (ODOT) submitted to the City the attached LPA Federal Local Let Project Agreement for the US 42 Resurfacing and Pedestrian Bumpouts Project. We respectfully request Council's authorization to enter into this project agreement with ODOT for this project.

The City was awarded \$1,402,136 in funds for this project from two separate grants, \$902,136 from NOACA, and \$500,000 from ODOT's Safety Program. The funding split for the project will be as follows:

- NOACA \$ 902,136.00 ( 47.1%)
- ODOT \$ 500,000.00 ( 26.1%)
- City: \$ 514,539.13 ( 26.8%)
- TOTAL: \$1,916,675.13 (100.0%)

Please be advised, the City has entered into similar type agreements with ODOT in the past, most recently for the Prospect Street Bridge Replacement and the S. Huntingtin Street Bridge Replacement.

Thank you for your consideration

ESTIMATED COST: \$514,539.13

SUGGESTED FUNDING: 108 Street M&R Special

Sufficient Funds in Account Number: 108-0610-54414

Transfer Needed from:

New Appropriation Account Number:

Emergency Clause Requested: No

Reason:

COUNCIL USE ONLY:

COMMITTEE RECOMMENDATION:

Council Action Taken:

Ord./Res. Number:

Date:



CFDA 20.205

**LPA FEDERAL LOCAL-LET PROJECT AGREEMENT**

**THIS AGREEMENT** is made by and between the State of Ohio, Department of Transportation, (ODOT), 1980 West Broad Street, Columbus, Ohio 43223 and **The City of Medina (LPA) 132 North Elmwood Avenue, Medina, Ohio 44256.**

**1. PURPOSE**

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.
- 1.2 Section 5501.03 (D) of the **Ohio Revised Code (ORC)** provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.
- 1.3 The **bridge replacement on Prospect Street (PROJECT)** is a transportation activity eligible to receive Federal funding, and which is further defined in the PROJECT scope.
- 1.4 The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the PROJECT and to establish the responsibilities for the local administration of the PROJECT.

**2. LEGAL REFERENCES AND COMPLIANCE**

- 2.1 This Agreement is authorized and/or governed by the following statutes and/or policies, which are incorporated, by reference, in their entirety:

**A. FEDERAL**

- 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 23 CFR 1.33 – Conflicts of Interest
- 23 CFR Part 172 – Procurement, Management and "Administration of Engineering and Design Related Service"
- 23 CFR 630.106 – Authorization to Proceed
- 23 CFR 636.116 – What Organizational Conflict of Interest Requirements Apply to Design-Build Projects?
- 23 CFR Part 645 –Utilities
- 48 CFR Part 31 – Contract Cost Principles and Procedures
- 49 CFR Part 26 –Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs
- 23 USC § 112 – Letting of Contracts
- 40 USC §§ 1101-1104 – "Selection of Architects and Engineers"
- Federal Funding Accountability and Transparency Act (FFATA)

B. STATE

- ORC 102.03
- ORC 153.65 -153.71
- ORC 5501.03(D)
- ORC 2921.42 and 2921.43
- Ohio Administrative Code 4733-35-05

C. ODOT

- ODOT's Manual for Administration of Contracts for Professional Services
- ODOT's Specifications for Consulting Services – 2016 Edition
- ODOT's Consultant Prequalification Requirements and Procedures
- ODOT's Construction and Material Specifications Manual
- ODOT's Construction Administration Manual of Procedures
- ODOT's Local-let Manual of Procedures

2.2 The LPA shall comply with all applicable Federal and State laws, regulations, executive orders, and applicable ODOT manuals and guidelines. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

2.3 The LPA shall have on file a completed and approved Local-let Participation Requirement Review Form (FORM) before the first required submission of the Project's Stage Plan Set. Failure to comply will result in the delay of the Federal Authorization for Construction, until the FORM has been completed and approved. Failure to submit a completed FORM will result in the PROJECT reverting to ODOT-let and the LPA will be prohibited from participating in the Local-let Program until the Form is completed and approved by ODOT.

3. FUNDING

80%

\$1,917,000 \$1,402,136

3.1 The total cost for the PROJECT construction cost is estimated to be ~~\$1,809,000~~ ODOT shall provide to the LPA ~~100~~ percent of the eligible costs, up to a maximum of ~~\$1,809,000~~ in Federal funds for the construction phase (including Construction Engineering). This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Manager. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with the actual construction of the improvements and construction engineering/inspection activities of the PROJECT.

3.2 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all 100% Locally funded work, and all cost overruns and contractor claims in excess of the maximum(s) indicated in 3.1 above.

4. PROJECT DEVELOPMENT AND DESIGN

4.1 The LPA and ODOT agree that the LPA is qualified to administer this PROJECT and is in full compliance with all LPA participation requirements.

4.2 The LPA and ODOT agree that the LPA has received funding approval for the PROJECT from the applicable ODOT Program Manager having responsibility for monitoring such projects using the Federal funds involved.

4.3 The LPA shall design and construct the PROJECT in accordance with a recognized set of written design standards. The recognized set of written design standards may be either the LPA's formally written local design standards that have been reviewed and accepted by ODOT or ODOT's Design Manuals and the appropriate AASHTO publication. Notwithstanding the foregoing, for projects that contain a high crash rate or areas of crash concentrations, ODOT may require the LPA to use a design based on ODOT's L&D Manual. The LPA shall be responsible for

ensuring that any standards used for the PROJECT are current and/or updated. The LPA shall be responsible for informing the District LPA Manager of any changes.

- 4.4 The LPA shall designate a Project Design Engineer, who is a registered professional engineer to serve as the LPA's principal representative for attending to project responsibilities. If the Project Design Engineer is not an employee of the LPA, the LPA must engage the services of a pre-qualified ODOT consultant, who has been chosen using a Qualification-Based Selection (QBS) process, as required pursuant to ORC 153.65 through 153.71. The pre-qualified list is available on the ODOT website at: [www.dot.state.oh.us/DIVISIONS/Engineering/CONSULTANT](http://www.dot.state.oh.us/DIVISIONS/Engineering/CONSULTANT).
- 4.5 If Federal funds are used for a phase of project development and the LPA executes an agreement with a consultant prior to the receipt of the "Authorization" notification from ODOT, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 4.6 ODOT reserves the right to move this PROJECT into a future sale year if the LPA does not adhere to the established PROJECT schedule, regardless of any funding commitments.
5. **ENVIRONMENTAL RESPONSIBILITIES**
- 5.1 In the administration of this PROJECT, the LPA shall be responsible for conducting any required public involvement events, for preparing all required documents, reports and other supporting materials needed for addressing applicable environmental assessment, for clearance responsibilities for the PROJECT pursuant to the National Environmental Policy Act (NEPA) and related regulations, including but not limited to the requirements of the National Historic Preservation Act, and for securing all necessary permits.
- 5.2 If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire an ODOT Pre-Qualified Consultant through a QBS process. The pre-qualified list is available on the ODOT web page at [ODOT's Office of Contracts](#). If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.
- 5.3 ODOT shall be responsible for the review of all environmental documents and reports and shall complete all needed coordination activities with State and Federal regulatory agencies toward securing environmental clearance.
- 5.4 The LPA shall be responsible for assuring compliance with all commitments made as part of the PROJECT's environmental clearance and/or permit requirements during the construction of the PROJECT.
- 5.5 The LPA shall require its consultant(s), selected to prepare a final environmental document pursuant to the requirements of NEPA, to execute a copy of a disclosure statement specifying that the consultant(s) has no financial or other interest in the outcome of the PROJECT.
- 5.6 The LPA shall submit a Notice of Intent to the Ohio EPA to obtain coverage under the National Pollution Discharge Elimination System (NPDES) Construction General Permit for all projects where the combined Contractor and Project Earth Disturbing Activity (EDA) are one (1) acre or more. If the LPA chooses not to use ODOT's L&D Vol. 2 on Local-let LPA projects, they may use an alternative post-construction Best Management Practice(BMP)criterion with Ohio EPA approval.

6. RIGHT-OF-WAY(R/W)/ UTILITIES/ RAILROAD COORDINATION

- 6.1 All R/W Acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (Uniform Act), any related Federal regulations issued by the FHWA, and any rules, policies, and procedures issued by ODOT.
- 6.2 If existing and newly acquired R/W is required for this PROJECT, the LPA shall certify that all R/W has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective R/W functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the appraisal and appraisal review functions. Appraisal review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA.
- 6.3 If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and procedures.
- 6.4 All relocation assistance activities shall be performed by the LPA in conformity with Federal and State laws, including the Uniform Act, and any related Federal regulations issued by the FHWA, and any rules, policies, and procedures issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions, nor shall the LPA hire a sub-consultant for Relocation and another sub-consultant for Relocation Review. Relocation Review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.
- 6.5 The LPA shall provide the ODOT District Office with its LPA Certification of Right of Way Control Letter, certifying that all R/W property rights necessary for the PROJECT are under the LPA's control, that all R/W has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with project construction activities. ODOT shall make use of the LPA's Certification of Right of Way Control Letter, as well as evaluate the LPA's and/or consultant's performance of the project real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all Federal funds disbursed to it under this Agreement if the certification of the LPA is found to be in error or otherwise invalid.
- 6.6 In the administration of this PROJECT, the LPA agrees to follow all procedures described in the ODOT Utilities Manual and 23 CFR Part 645. When applicable, the LPA shall enter into a Utility Relocation Agreement with each utility prior to the letting of construction.
- 6.7 The LPA shall submit all subsequent modifications to the design of the PROJECT and/or any disposal of property rights acquired as part of the PROJECT to ODOT and FHWA for approval. Consistent with Sections 6.1 and 6.4 of this Agreement, the LPA shall assure that, if any property acquired for this PROJECT is subsequently sold for less than fair market value, all Title VI requirements are included in the instrument which transfers the property. Consistent with sections 6.1 and 6.4 of this Agreement, the LPA shall assure that if the LPA grants a permit or license for the property acquired for this PROJECT that the license or permit require the licensee or permit holder to adhere to all Title VI requirements.
- 6.8 Unless by prior written agreement, the LPA shall be responsible for any necessary railroad coordination and agreements. The LPA shall comply with the provisions of Title 23 of the Code of Federal Regulations and applicable chapters of the ORC regarding all activities relating to Railroad-Highway projects.

- 6.9 No reimbursable construction costs shall be incurred by the LPA prior to the receipt of the "Authorization to Advertise" notification from ODOT. If such costs are incurred, ODOT may terminate this Agreement and cease all Federal funding commitments.
7. ADVERTISING, SALE, AND AWARD
- 7.1 The LPA **shall not** advertise for bids prior to the receipt of the "Authorization to Advertise" notification from ODOT. Should advertising or work commence prior to the receipt of the "Authorization to Advertise" notification, ODOT shall immediately terminate this Agreement and cease all Federal funding commitments.
- 7.2 Any use of sole source or proprietary bid items must be approved by the applicable ODOT district. All sole source or proprietary bid items should be brought to the attention of the LPA Manager as soon as possible so as not to cause a delay in the plan package submission process. Bid items for traffic signal and highway lighting projects must be in conformance with ODOT's Traffic Engineering Manual.
- 7.3 Once the LPA receives Federal authorization to advertise, the LPA may begin advertising activities. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The period between the first legal advertising date and the bid opening date shall be a minimum of 21 calendar days. The LPA shall submit to ODOT any addendum to be issued during the advertisement period that changes estimates or materials. ODOT shall review and approve such addendum for project eligibility. All addenda shall be distributed to all potential bidders prior to opening bids and letting the contracts.
- 7.4 The LPA must incorporate ODOT's LPA Bid Template in its entirety in project bid documents. The template includes Form FHWA-1273, Required Contract Provisions, a set of contract provisions and proposal notices that are required by regulations promulgated by the FHWA and other Federal agencies, which must be included in all contracts as well as appropriate subcontracts and purchase orders.
- 7.5 The LPA shall require the contractor to be enrolled in, and maintain good standing in, the Ohio Bureau of Workers' Compensation Drug-Free Safety Program (DFSP), or a similar program approved by the Bureau of Workers' Compensation, and the LPA must require the same of any of its subcontractors.
- 7.6 Only ODOT pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in effect/current **at the time of award**. For work types that ODOT does not pre-qualify, the LPA must still select a qualified contractor. Subcontractors are not subject to the pre-qualification requirement, unless otherwise directed by the LPA in the bidding documents. In accordance with FHWA Form 1273, Section VII and 23 CFR 635.116, the prime contractor must perform no less than 30% of the total original contract price. The 30%-prime contractor requirement does not apply to design-build contracts.
- 7.7 In accordance with ORC 153.54, et. seq., the LPA shall require that the selected contractor provide a performance and payment bond in an amount equal to at least 100% of its contract price as security for the faithful performance of its contract. ODOT shall be named an obligee on any bond. If the LPA has 100% locally funded work product within this Agreement, the LPA must allocate the correct percent of the performance and payment bond cost to the 100% locally funded work product.
- 7.8 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is not subject to a finding for recovery under ORC 9.24, that the contractor has taken the appropriate remedial steps required under ORC 9.24, or that the contractor otherwise qualifies under the exceptions to this section. Findings for recovery can be viewed on the Auditor of State's website at

<https://ohioauditor.gov/findings.html> . If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all Federal funding commitments.

- 7.9 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is an active registrant on the Federal System for Award Management (SAM). Pursuant to 48 CFR 9.404, contractors that have an active exclusion on SAM are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all Federal funding commitments.
- 7.10 Per ORC 9.75(B), the LPA is prohibited from imposing any geographical hiring preference on any bidder in the LPA's bid documents or on any successful contractor in the LPA's award or contract for the construction of the PROJECT.
- 7.11 After analyzing all bids for completeness, accuracy, and responsiveness, per ORC 153.12, the LPA shall approve the award of the contract in accordance with laws and policies governing the LPA within 60 days after bid opening. Within 45 days of that approval, the LPA shall submit to ODOT notification of the project award by submitting a bid tabulation, a copy of the ordinance or resolution, and direct payment information as required in by this Agreement, if applicable.

## 8. CONSTRUCTION CONTRACT ADMINISTRATION

- 8.1 The LPA shall provide and maintain competent and adequate project management covering the supervision and inspection of the development and construction of the PROJECT. The LPA shall bear the responsibility of ensuring that construction conforms to the approved plans, surveys, profiles, cross sections, and material specifications. If a consultant is used for engineering and/or inspection activities, the LPA must use a QBS process as required pursuant to ORC 153.65 through 153.71. Any construction contract administration or engineering costs incurred by the LPA or their consultant prior to the construction contract award date will not be eligible for reimbursement under this Agreement.
- 8.2 The LPA must maintain a project daily diary that is up-to-date and contains the following information: all work performed, list of equipment utilized, project personnel and hours worked, pay quantities, daily weather conditions, special notes and instructions to the contractor, and any unusual events occurring on or adjacent to the PROJECT. Additionally, the LPA is responsible for documenting measurements, calculations, material quality, quantity, and basis for payment; change orders, claims, testing and results, traffic, inspections, plan changes, prevailing wage, EEO and DBE, if applicable. The LPA is responsible for ensuring all materials incorporated into the PROJECT comply with ODOT's Construction and Material Specifications and meet the requirements of Appendix J in the LATP Manual of Procedures.
- 8.3 The LPA shall certify both the quantity and quality of material used, the quality of the work performed, and the amount of construction engineering cost, when applicable, incurred by the LPA for the eligible work on the PROJECT, as well as at the completion of construction. The LPA shall certify that the construction is in accordance with the approved plans, surveys, profiles, cross sections and material specifications or approved amendments thereto.
- 8.4 The Federal-aid Highway Program operates on a reimbursement basis, which requires that costs actually be incurred and paid before a request is made for reimbursement. The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. If the LPA is requesting reimbursement, it must provide documentation of payment for the project costs requested. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for either current payment or reimbursement of the Federal/State share of the expenses involved, attaching copies of all source documentation associated with

pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed daily as the items of work are completed and accepted.

- 8.5 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with the cost-sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations, and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio (STATE). ODOT shall pay the Contractor or reimburse the LPA within 30 days of receipt of the approved Contractor's invoice from the LPA.
- 8.6 The LPA shall notify ODOT of the filing of any mechanic's liens against the LPA's Contractor within three (3) business days of receipt of notice of the mechanic's lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of ORC Chapter 1311 may result in the termination of this Agreement. Upon the receipt of notice of a mechanic's lien, ODOT reserves the right to (1) withhold an amount of money equal to the amount of the mechanic's lien that may be due and owing to either the LPA or the Contractor; (2) terminate direct payment to the affected Contractor; or (3) take both actions, until such time as the mechanic's lien is resolved.

- 8.7 Payment or reimbursement to the LPA shall be submitted to:

Keith Dirham, Finance Director
City of Medina
132 North Elmwood Avenue
Medina, Ohio 44256

- 8.8 If, for any reason, the LPA contemplates suspending or terminating the contract of the Contractor, it shall first seek ODOT's written approval. Failure to timely notify ODOT of any contemplated suspension or termination, or failure to obtain written approval from ODOT prior to suspension or termination, may result in ODOT terminating this Agreement and ceasing all Federal funding commitments.
- 8.9 If ODOT approves any suspension or termination of the contract, ODOT reserves the right to amend its funding commitment in paragraph 3.1 and, if necessary, unilaterally modify any other term of this Agreement in order to preserve its Federal mandate. Upon request, the LPA agrees to assign all rights, title, and interests in its contract with the Contractor to ODOT to allow ODOT to direct additional or corrective work, recover damages due to errors or omissions, and to exercise all other contractual rights and remedies afforded by law or equity.
- 8.10 Any LPA right, claim, interest, and/or right of action, whether contingent or vested, arising out of, or related to any contract entered into by the LPA for the work to be performed by the Contractor on this PROJECT (the Claim(s)), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in/to the Claim(s) and against any other person(s) or entity(ies) against which such subrogation rights may be enforced. The LPA shall immediately notify ODOT in writing of any Claim(s). The LPA further authorizes ODOT to sue, compromise, or settle any such Claim(s). It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all the LPA's rights to recover under such Claim(s). The LPA agrees to cooperate with reasonable requests from ODOT for assistance in pursuing any action on the subrogated Claim(s) including requests for information and/or documents and/or to testify.
- 8.11 After completion of the PROJECT, and in accordance with 23 USC 116 and applicable provisions of the ORC, the LPA shall maintain the PROJECT to design standards and provide adequate maintenance activities for the PROJECT, unless otherwise agreed to by ODOT. The PROJECT must remain under public ownership and authority for 20 years unless otherwise agreed to by ODOT. If the PROJECT is not being adequately maintained, ODOT shall notify the LPA of any

deficiencies, and if the maintenance deficiencies are not corrected within a reasonable amount of time, ODOT may determine that the LPA is no longer eligible for future participation in any federally funded programs.

- 8.12 The LPA must provide the final invoices, and final report (Appendix P located in the Construction Chapter of the LPA Manual) along with all necessary closeout documentation within six (6) months of the physical completion date of the PROJECT. All costs must be submitted within six (6) months of the established completion date. Failure to submit final invoices along with the necessary closeout documentation within the six (6)-month period may result in closeout of the PROJECT and loss of eligibility of any remaining Federal and or State funds.
- 8.13 The LPA shall be responsible for verifying that a C92 GoFormz has been completed by the prime contractor for each subcontractor and material supplier working on the PROJECT, prior to starting work. This requirement will be routinely monitored by the District Construction Monitor to ensure compliance.
- 8.14 The LPA shall be responsible for monitoring all DBE Subcontractors on the project to ensure they are performing a Commercially Useful Function (CUF) as directed in the LATP Manual of Procedures.
- 8.15 The LPA shall be responsible for monitoring payments made by prime contractors and Subcontractors to ensure compliance with the Prompt Payment requirements outlined in Construction and Materials Specifications (C&MS) 107.21.

#### 9. CERTIFICATION AND RECAPTURE OF FUNDS

- 9.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the STATE for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by ORC 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.
- 9.2 Unless otherwise directed by ODOT, if for any reason the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it has received for the PROJECT. If the LPA has not repaid ODOT in full an amount equal to the total funds ODOT disbursed on behalf of the PROJECT, any funds recovered from the performance and payment bond as required under section 7.7 shall be used to offset the Federal dollars reimbursed to FHWA.

#### 10. NONDISCRIMINATION

- 10.1 In carrying out this Agreement, the LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability as that term is defined in the American with Disabilities Act, military status (past, present, or future), or genetic information. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.



- 10.2 The LPA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. The LPA shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such project work.
- 10.3 The LPA shall not discriminate on the basis of race, color, national origin, or sex in the award of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement and in the fulfillment of DBE-related requirements set forth by ODOT. The LPA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. ODOT's DBE Program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation ("U.S. DOT"), is incorporated by reference in this agreement. The fulfillment of DBE-related requirements by the LPA is a legal obligation and failure to do so shall be treated as a violation of this Agreement.
- 10.4 During the performance of this contract, the LPA, for itself, its assignees and successors in interest agrees as follows:
- (a) **Compliance with Regulations:** The LPA will comply with the regulations relative to nondiscrimination in Federally assisted programs of the U.S. DOT, 49 CFR Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.  
  
In addition, the LPA will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as "ADA/504").
  - (b) **Nondiscrimination:** The LPA, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The LPA will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.
  - (c) **Solicitations for Contractors or Subcontractors, including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a contract or subcontract, including procurements of materials or leases of equipment, each potential contractor, subcontractor, or supplier will be notified by the LPA of the LPA's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency.
  - (d) **Information and Reports:** The LPA will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or FHWA to be pertinent to ascertain compliance with such Regulations, orders

and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

- (e) **Sanctions for Noncompliance:** In the event of the LPA's noncompliance with the nondiscrimination provisions of this contract, the STATE will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:
  - (1) withholding of payments to the LPA under the contract until the LPA complies, and/or
  - (2) cancellation, termination, or suspension of the contract, in whole or in part.
- (f) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs 10.4 (a) through (e) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

#### 11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

- 11.1 The LPA shall ensure that any designs, specifications, processes, devices, or other intellectual properties specifically devised for the PROJECT by its consultant(s) and/or contractor(s) performing work become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA's consultant(s) and/or contractor(s) shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices, or other intellectual properties, and in providing them to the PROJECT, shall relinquish any such protections should they exist.
- 11.2 The LPA shall not allow its consultant(s) and/or contractor(s) to utilize within the development of the PROJECT any copyrighted, patented or similarly protected design, specification, process, device or other intellectual property unless the consultant(s) and/or contractor(s) has provided for such use by suitable legal agreement with the owner of such copyright, patent, or similar protection. Consultant(s) and/or contractor(s) making use of such protected items for the PROJECT shall indemnify and save harmless the LPA and any affected third party from any and all claims of infringement on such protections, including any costs, expenses, and damages which it may be obliged to pay by reason of infringement, at any time during the prosecution or after the completion of work on the PROJECT.
- 11.3 In the case of patented pavements or wearing courses where royalties, licensing and proprietary service charges, exacted or to be exacted by the patentees, are published and certified agreements are filed with the LPA, guaranteeing to prospective bidders free unrestricted use of all such proprietary rights and trademarked goods upon payment of such published charges, such patented pavements or wearing courses may be specifically designated in the proposal and competition secured upon the item exclusive of the patent or proprietary charges.

12. TERMINATION: DEFAULT AND BREACH OF CONTRACT

- 12.1 Neglect or failure of the LPA to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, may be an event of default, unless such neglect or failure are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or STATE or any of their departments or political subdivisions, or any other cause not reasonably within the LPA's control. If a default has occurred, ODOT may terminate this Agreement with 30 days written notice, except that if ODOT determines that the default can be remedied, then ODOT and the LPA shall proceed in accordance with sections 12.2 through 12.4 of this Agreement.
- 12.2 If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred and ODOT determines that the default can be remedied, the LPA shall have 30 days from the date of such notification to remedy the default or, if the remedy will take in excess of 30 days to complete, the LPA shall have 30 days from the date of notification to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the 30 days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.
- 12.3 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any consultants or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.
- 12.4 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.
- 12.5 This Agreement and the obligation of the parties herein may be terminated by either party with 30 days written notice to the other party. Upon receipt of any notice of termination, the LPA shall immediately cease all work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODOT may require.
- 12.6 In the event of termination by either party for convenience, the LPA shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the LPA shall not exceed the total amount of consideration stated in this Agreement. In the event of termination, any payments made by ODOT in which services have not been rendered by the LPA shall be returned to ODOT.

13. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

13.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in ORC 126.30.

13.2 The LPA hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees or agents in the performance of the LPA's obligations made or agreed to herein.

14. NOTICE

14.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

If to ODOT:

Patrick J. Patton, P.E.	Steve Shepherd, LPA Manager
City of Medina, Engineer	Ohio Department of Transportation
132 North Elmwood Avenue	906 Clark Ave
Medina, Ohio 44256	Ashland, Ohio 44805
PPatton@medinaoh.org	Steve.Shepherd@dot.ohio.gov

15. GENERAL PROVISIONS

15.1 *Recovery of LPA's allocable project Direct Labor, Fringe Benefits, and/or Indirect Costs:*

To be eligible to recover any costs associated with the LPA's internal labor forces allocable to this PROJECT, the LPA shall make an appropriate selection below: [LPA official must initial the option selected.]

☐

**1. No cost recovery of LPA's project direct labor, fringe benefits, or overhead costs.**

- (A) The LPA **does not** currently maintain an ODOT approved Federally compliant time-tracking system<sup>1</sup>, **and**
- (B) The LPA **does not** intend to have a Federally compliant time-tracking system developed, implemented, and approved by ODOT prior to the period of performance of this PROJECT, **and/or**
- (C) The LPA **does not** intend to pursue recovery of these project direct labor, fringe benefits, or overhead costs during the period of performance of this PROJECT Agreement.

<sup>1</sup> A "federally compliant time-tracking system" is supported by a system of internal controls and record-keeping that accurately reflects the work performed; which provides reasonable assurance that the time being charged is accurate, allowable, and properly allocated; is incorporated in official records such as payroll records; reasonably reflects the employee's total activity; provides a time or percentage breakdown on all activities, both Federally funded and non-Federally funded for the employee and complies with the LPA's pre-established accounting practices and procedures.



**2. Direct labor plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.<sup>2</sup>**

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, *and*
- (B) The LPA *does not* currently have, and *does not* intend to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.



**3. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.<sup>3</sup>**

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, *and*
- (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.



**4. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the LPA's ODOT approved Indirect Cost Rate.<sup>4</sup>**

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, *and*
- (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT, *and*
- (C) Instead of using the Federal 10% De Minimis Indirect Cost Rate, the LPA currently has, or intends to negotiate, an ODOT approved indirect cost rate prior to the period of performance of this PROJECT.

For any allocable project labor costs to be eligible for reimbursement with Federal and/or State funds, the LPA must maintain compliance with all timekeeping requirements specified in 2 CFR Part 200 and the ODOT LPA Cost Recovery Guidance, including ODOT Questions and Answers and related supplementary guidance, as applicable. Additionally, if the LPA elects to recover fringe

<sup>2</sup> [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 10 %of modified total direct costs (MTDC) per 2 CFR 200.414. The definition of MTDC is provided in the regulation at 2 CFR 200.68. Any questions regarding the calculation of MTDC for a specific project should be directed to the Office of Local Programs. Further, regardless of whether the LPA subrecipient negotiates overhead rates with ODOT or uses the 10% de minimis rate, LPAs are required to maintain Federally-compliant time-tracking systems. Accordingly, LPAs are permitted to bill for labor costs, and then potentially associated fringe/indirect costs, only if the labor costs are accumulated, tracked, and allocated in accordance with compliant systems. Before an LPA is eligible to invoice ODOT for and recover the 10% de minimis indirect cost rate on any project, the LPA's time-tracking system and methods for tracking other project costs must be reviewed and approved by the ODOT Office of External Audits. A non-Federal entity that elects to charge the de minimis rate must meet the requirements in 2 CFR 200 Appendix VII Section D, Part 1, paragraph b.

<sup>3</sup> [Also be sure to read footnotes # 1 and 2] The fringe benefits rate billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the ODOT Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rate for that fiscal year to determine which rate is applicable. Accordingly, the fringe benefits rate applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rate.

<sup>4</sup> [Also be sure to read footnote # 1] The fringe benefits and indirect cost rates billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rates for that fiscal year to determine which rates are applicable. Accordingly, the rates applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rates.

and/or indirect costs, the LPA shall maintain compliance with Appendix VII of 2 CFR Part 200 and the LATP Manual of Procedures.

- 15.2 If the LPA decides to change its indirect cost recovery option, the change shall not become effective until this Agreement is amended pursuant to section 15.12 below to reflect the indirect cost recovery option utilized by the LPA on the PROJECT.
- 15.3 *Financial Reporting and Audit Requirements:* One or more phases of this Agreement include a sub award of Federal funds to the LPA. Accordingly, the LPA must comply with the financial reporting and audit requirements of 2 CFR Part 200.

All non-Federal entities, including ODOT's LPA sub-recipients, that have aggregate Federal awards expenditures from all sources of \$750,000 or more in the non-Federal entity's fiscal year must have a Single Audit, or program-specific audit, conducted for that year in accordance with the provisions of 2 CFR Part 200.

Federal and State funds expended to or on behalf of a subrecipient must be recorded in the accounting records of the LPA subrecipient. The LPA is responsible for tracking all project payments throughout the life of the PROJECT in order to ensure an accurate Schedule of Expenditures of Federal Awards (SEFA) is prepared annually for all *Applicable Federal Funds*. *Applicable Federal Funds* are those that are identified with the various project phases of this Agreement as a subaward. *Applicable Federal Funds* include not only those LPA project expenditures that ODOT subsequently reimburses with Federal funds, but also those Federal funds project expenditures that are disbursed directly by ODOT upon the request of the LPA.

The LPA must separately identify each ODOT PID and/or Project and the corresponding expenditures on its SEFA. LPAs are responsible for ensuring expenditures related to this PROJECT are reported when the activity related to the Federal award occurs. Further, the LPA may make this determination consistent with 2 CFR 200.502 and its established accounting method to determine expenditures including accrual, modified accrual or cash basis.

When project expenditures are not accurately reported on the SEFA, the LPA may be required to make corrections to and republish the SEFA to ensure Federal funds are accurately reported in the correct fiscal year. An ODOT request for the restatement of a previously published SEFA will be coordinated with the Ohio Auditor of State.

- 15.4 *Record Retention:* The LPA, when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its records and financial statements as necessary relating to the LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three (3) years after FHWA approves the LPA's final Federal voucher for reimbursement of project expenses. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

As the LPA, ODOT or the United States government may legitimately request from time to time, the contractor agrees to make available for inspection and/or reproduction by the LPA, ODOT or United States government, all records, books, and documents of every kind and description that relate to this Agreement.

Nothing contained in this Agreement shall in any way modify the LPA's legal duties and obligations to maintain and/or retain its records under Ohio public records laws.

- 15.5 *Ohio Ethics and Conflict of Interest Laws:* LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics and Conflict of Interest laws as provided by ORC 102.03, 102.04, 2921.42 and 2921.43 and 23 CFR 1.33.
- 15.6 *State Property Drug-Free Workplace Compliance:* In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.
- 15.7 *Trade:* Pursuant to the federal Export Administration Act and ORC 9.76(B), the LPA and any contractor(s) or sub-contractor(s) shall warrant that they are not boycotting any jurisdiction with whom the United States and the STATE can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

The STATE does not acquire supplies or services that cannot be imported lawfully into the United States. The LPA certifies that it, its contractor(s), subcontractor(s), and any agent of the contractor(s) or its subcontractor(s), acquire any supplies or services in accordance with all trade control laws, regulations or orders of the United States, including the prohibited source regulations set forth in subpart 25.7, Prohibited Sources, of the Federal Acquisition Regulation and any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control. A list of those sanctions by country can be found at <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>. These sanctions generally preclude acquiring any supplies or services that originate from sources within, or that were located in or transported from or through Cuba, Iran, Libya, North Korea, Syria, or the Crimea region of Ukraine.

- 15.8 *Lobbying:* Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). LPA agrees that it will not use any funds for Lobbying, 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions or the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier, up to the recipient.
- 15.9 *Debarment.* LPA represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either ORC 153.02 or 125.25 or by the Federal Government pursuant to 2 CFR Part 1200 and 2 CFR Part 180.
- 15.10 *Governing Law:* This Agreement and any claims arising out of this Agreement shall be governed by the laws of the STATE. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement, or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
- 15.11 *Assignment:* Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.

- 15.12 *Merger and Modification:* This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.
- 15.13 *Severability:* If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.
- 15.14 *Signatures:* Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.
- 15.15 *Facsimile Signatures:* Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile or electronic signature on any other party delivered in such a manner as if such signature were an original.

The parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

<b>LPA:</b>	<b>STATE OF OHIO OHIO DEPARTMENT OF TRANSPORTATION</b>
<b>By:</b>	<b>By:</b>
<b>Title:</b>	Pamela Boratyn Director
<b>Date:</b>	<b>Date:</b>



RCA 25-075-3/24  
Finance  
Only  
3-18-25

City of Medina

Board of Control/Finance Committee Approval

Administrative Code: 141

• Department Heads can authorize expenditures up to \$2,000.00 (requisition)

• Board of Control authorizes expenditures from \$2,000.01 to \$20,000.00 (BOC form).

• Finance Committee authorizes expenditures from \$20,000.01 to \$35,000.00 (BOC form).

• Council authorizes expenditures/bids over \$35,000.00 (RCA form). Board of Control awards all bids, unless otherwise specified in authorizing ordinance. (Ord. 77-23)

Date: 3/18/2025 Department: Engineering

Amount: \$15,250.00 B.O.C. Approval Date: (Finance Use Only)

Account Number: 108-0610-54411

Vendor: Wright Traffic Control (W00551)

Department Head/Authorized Signature:

Item/Description:

Increase PO #25-1004 by \$15,250 to a total of \$35,000 for additional traffic control services.

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FINANCE COMMITTEE APPROVAL: (expenditures from \$20,000.01 to \$35,000.00)

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: 4/25/2023