

ORDINANCE NO. 5-24

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN ENGINEERING AND SURVEYING AGREEMENT WITH CUNNINGHAM AND ASSOCIATES FOR ENGINEERING DESIGN SERVICES FOR THE MEDINA STREET BRIDGE REPLACEMENT PROJECT.

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

- SEC. 1:** That the Mayor is hereby authorized and directed to execute an Engineering and Surveying Agreement with Cunningham and Associates, Inc. for engineering design services for the Medina Street Bridge Replacement Project.
- SEC. 2:** That the funds to cover the agreement in the estimated amount of \$72,850.00 are available in Account No. 108-0610-54411.
- SEC. 3:** That a copy of the Agreement is marked Exhibit A, attached hereto and incorporated herein.
- SEC. 4:** That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.
- SEC. 5:** That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: January 8, 2024

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: January 9, 2024

SIGNED: Dennis Hanwell
Mayor

Effective date: February 7, 2024

ENGINEERING AND SURVEYING AGREEMENT

ORD. 5-24
Exh. A

for the

MEDINA STREET BRIDGE REPLACEMENT
DESIGN SERVICES CONTRACT

in the

CITY OF MEDINA, OHIO

THIS IS AN AGREEMENT effective as of Feb. 7, 2024, pursuant to Ordinance No. 524

between the **City of Medina, Ohio**, 132 North Elmwood Avenue, Medina, Ohio ("Owner")

and **Cunningham & Associates, Inc.**, 203 West Liberty Street, Medina, Ohio ("Engineer").

Owner's Project of which Engineer's services under this Agreement are a part, is generally identified as follows:

Medina Street Bridge Replacement - Design Service Contract

Engineer's Services under this Agreement are generally identified as follows:

Refer to Engineering and Surveying Proposal – See Exhibit A attached

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time as agreed upon by the Engineer and the City.
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete

construction. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:

1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
- b. By Engineer:
- 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.
- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
 - C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any

failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.

- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; and (3) such limited license to Owner shall not create any rights in third parties.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability

for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.01 *Basis of Payment:*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:

- 1. **A Lump Sum Design Fee of \$72,850.00**

- B. The portion of the compensation amount billed monthly for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

- 7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any. Engineer's standard hourly rates are listed as part of Exhibit A, attached.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER: City of Medina, Ohio

By: Dennis Hanwell

Title: Dennis Hanwell, Mayor

Date Signed: January 9, 2024

ENGINEER: Cunningham & Associates, Inc.

By: Nils E. Johnson

Title: Nils E. Johnson, P.E. - President

Date Signed: 1/18/2024

Engineer License or Firm's Certificate
Number: 01536

State of: Ohio

Approved for Legal Form:

Greg 1- [Signature]
Director of Law
City of Medina, OH

EXHIBIT A



Cunningham & Associates, Inc.

Civil Engineering & Surveying
203 W. Liberty St., Medina, Oh 44256
Phone: (330) 725-5980 * Fax (330) 725-8019

December 5, 2023

City of Medina
Patrick Patton, P.E.
City Engineer
132 North Elmwood Avenue
Medina, OH 44258

Re: Engineering and Surveying Services
Medina Street Bridge Replacement
City of Medina, Medina County, Ohio

Dear Mr. Patton,

We are pleased to submit this proposal covering the engineering and surveying services necessary to prepare construction drawings for the Medina Street Bridge Replacement. Our proposal is based on the project scope in the RFQ prepared by the City of Medina dated September 22, 2023.

We propose to provide the necessary engineering and surveying services for the replacement of the Medina Street Bridge project as follows:

SCOPE OF SERVICES AND DESIGN TASKS

A) Topographic Survey & Existing Conditions Plan;

This section is intended to provide a detailed topographic survey and existing conditions plan to include the following:

- Establish centerline right-of-ways for Medina Street
- Locate any monuments and property corners that can be used for control within the construction drawings
- Reference points and benchmarks
- Property lines, right-of-way lines
- Provide cross sections at appropriate intervals

- Locate all utilities within the defined project area
- Topographic information – identify ground features. Locate all trees, vegetation, and landscaping within the defined project area.
- Driveway aprons and driveways
- House walks and sidewalks
- Locate existing storm and sanitary sewers with casting elevations and inverts elevations.
- Locate all water values, meter vaults, hydrants, and other related water items

Lump Sum Fee: \$6,500.00

B) Environmental Assessment

This section is intended to provide professional environmental services for the proposed reconstruction of the bridge crossing. It is believed that this work will fall under the Army Corps of Engineers Nationwide Permit #3.

- **Task 1 - Preliminary Ecological Assessment**
In order to determine what quality and type of ecological resources are present within the Study Area, we will conduct a preliminary ecological assessment to evaluate current conditions.
- **Task 2 - Ecological Professional Opinion Letter**
We propose to review the information gathered and retained per Task 1 along with pertinent construction plans and details to determine what level of ecological permitting, if any, would be needed to perform the proposed work.

Lump Sum Fee: \$4,400.00

NOTE: If the letter authored per Task 2 identifies any additional ecological surveys and/or permits, a subsequent proposal will be issued to the client to perform these services.

C) Hydrologic/Hydraulic Analysis

This section is intended to cover the necessary analysis to include the following:

- Hydrologic study of watershed to determine peak flow events
- Hydraulic Analysis of proposed bridge structure and stream channels immediately upstream and downstream

Lump Sum Fee: \$4,750.00

D) **Structural Analysis**

This section is intended to cover the coordination of the structural analysis of the proposed bridge structures, abutments, wing walls, and foundations.

- All geotechnical work to be coordinated and provided by the City of Medina.
- The majority of the structural design and calculations will be provided by the pre-cast supplier.

Lump Sum Fee: \$6,500.00

E) **Design**

This section is intended to encompass work relating to all other aspects of the project not included within the hydraulic and structural analysis, including but not limited to: utilities, roadway pavement, sidewalks, etc.

Lump Sum Fee: \$6,500.00

F) **Right-Of-Way**

This section is intended to cover the necessary work within the plans relative to the existing road right-of-way and proposed temporary and permanent additional right-of-way areas to include the following:

- Complete ownership research, provide current parcel ownership information on plans
- Show property lines on base map and plan/profile sheets
- Preparation of legal description and plats for the necessary right-of-way acquisition.

Lump Sum Fee: \$4,500.00

G) **Utility Relocation Plans**

This section is intended to cover the preparation of the necessary plan and profile drawings for the relocation of utilities.

Lump Sum Fee: \$5,700.00

H) **Detailed Construction Plans**

This section is intended to cover the design and preparation of detailed construction drawings to include the following items:

- Title Sheet
- Existing Conditions Plan/Demolition Plan
- Geometric Plan with control points
- Plan and profile sheets showing all proposed improvements including utilities
- Cross sections including typical sections
- Culvert/Bridge detailed plans
- Pavement plans
- Maintenance of traffic plans
- General notes and City construction standards
- Standard Details

Lump Sum Fee: \$26,500.00

I) **Bid Documents and Specifications**

This section is intended to cover preparation of the following to assist the City in preparation of the project manual to include the following:

- Preparation of project unit price quantities
- Engineer's estimate of project construction cost
- Provide final plans including specifications

Lump Sum Fee: \$4,500.00

J, K, L) **Project and Construction Administration**

This section is intended to cover the necessary services to assist the City during the bidding phase and construction phase of the project to include the following:

- Attendance at necessary project meetings
- Response to pre-bid questions and request for information during the bidding phase
- Review shop drawings/material submittals
- Assist with technical questions that arise during construction

(To be billed hourly as requested. Estimated budget \$3,000.00)

TOTAL DESIGN FEE =	\$72,850.00
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ADDITIONAL SERVICES:

Additional services may be necessary to complete this project and can be provided as requested. These services may include construction staking, construction inspection, preparation of as-built drawings, or re-establishing roadway monuments and right-of-way pins. These services can be provided in accordance with the following schedule of hourly rates; or a separate proposal can be provided if requested:

Office/Clerical	\$ 60.00 per hour
Field Inspector	\$ 65.00 per hour
CAD Designer I	\$ 80.00 per hour
CAD Designer II	\$100.00 per hour
Surveying Technician	\$105.00 per hour
Design Engineer	\$120.00 per hour
Professional Surveyor I	\$125.00 per hour
Professional Surveyor II	\$155.00 per hour
Professional Engineer I	\$140.00 per hour
Professional Engineer II	\$175.00 per hour
2-Man Survey Crew	\$195.00 per hour
1-Man Survey Crew	\$155.00 per hour

The City of Medina shall pay for all testing, legal services, recording fees, permit fees, application fees, review fees and inspection fees that may be required to accomplish the work covered by this proposal.

Thank you for considering us for this work and if there are any questions or a need for further clarification, please do not hesitate to call.

Very truly yours,



Nils E. Johnson, P.E.