

**ORDINANCE NO. 9 - 2021**

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A JOBS AND COMMERCE ECONOMIC DEVELOPMENT AGREEMENT WITH THE OHIO DEPARTMENT OF TRANSPORTATION, AND, TO ENTER INTO A SUBRECIPIENT AGREEMENT WITH MADISON INTERSTATE PROPERTIES, LLC, EACH RELATED TO THE DEVELOPMENT AND CONSTRUCTION OF GREAT LAKES WAY; AND DECLARING AN EMERGENCY.**

WHEREAS, Madison Interstate Properties, LLC (the "Developer") is undertaking the construction of a new commercial subdivision within the Village in the area of the southeast quadrant of the I-90/S.R. 528 interchange. The development includes the construction of a new roadway of approximately 1,300 feet in length to serve the new commercial developments within the subdivision (the roadway being the "Project"). The roadway, tentatively to be called "Great Lakes Way," is to be contracted by and paid for fully by Developer at an estimated construction cost of \$1,808,978.00; and

WHEREAS, it is Developer's intent after completion to dedicate Great Lakes Way to the Village; and

WHEREAS, the Ohio Department of Transportation ("ODOT"), being aware of the Project, has made available non-federal funds through its Jobs & Commerce Economic Development Program ("JCED") in not-to-exceed sums of \$100,000.00 and a second round of \$200,000.00 (the actual amount(s) of any reimbursements are the lower of those sums or 6% of the total project cost); and

WHEREAS, ODOT is aware that the Project is to be privately funded and constructed; and

WHEREAS, ODOT officials have represented that the Project is eligible for JCED funds, notwithstanding that it is to be privately funded and constructed; and

WHEREAS, JCED funds are not guaranteed, are subject to General Assembly appropriation, and are further subject to the terms and conditions of the "Jobs and Commerce Economic Development Agreement Between the State of Ohio, Department of Transportation and Village of Madison" (the "JCED Agreement") which agreement is attached hereto as Exhibit "A" and incorporated herein by this reference; and

WHEREAS, Developer has requested the Village's assistance in obtaining the JCED funds to reimburse some of its Project costs; and

WHEREAS, the Administration and Developer have negotiated a "Subrecipient Agreement" setting forth the Developer's obligations in order to receive any of the JCED funds, if same are ultimately available, which agreement is attached hereto and incorporated herein as Exhibit "B;" and

WHEREAS, the Council opines and finds that entering in the JCED Agreement with ODOT and the Subrecipient Agreement with the Developer are in furtherance of the public good and welfare insofar as the economic benefits of the Project will expand the Village's tax base and create new job opportunities for the community, the Council now therefore provides authorization to the Mayor to execute these agreements.

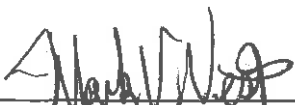
NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF MADISON, COUNTY OF LAKE AND STATE OF OHIO:

SECTION 1. The Mayor is hereby authorized to enter into and execute on behalf of the Village the Jobs & Commerce Economic Development Agreement with ODOT in conformity with the agreement attached hereto as Exhibit "A."

SECTION 2. The Mayor is hereby authorized to enter into and execute on behalf of the Village the Subrecipient Agreement with Developer in conformity with the agreement attached hereto as Exhibit "B."

SECTION 3. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including § 121.22 of the Ohio Revised Code.

SECTION 4. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of the Village of Madison, and for the further reason that its immediate adoption is (i) necessary in order for the Project to commence and meet construction deadlines, and (ii) qualify for and participate in the JCED program; wherefore, this Ordinance shall take effect and be in force immediately upon its passage.

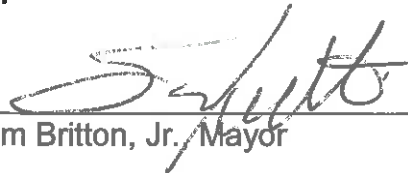
  
\_\_\_\_\_  
Mark V. Vest  
President of Council

PASSED: April 26, 2021

Attested:

  
\_\_\_\_\_  
Kristie M. Crockett, Fiscal Officer / Clerk of Council

Approved:

  
\_\_\_\_\_  
Sam Britton, Jr., Mayor

4/29/2021  
Date

**SUBRECIPIENT AGREEMENT**

between

**VILLAGE OF MADISON, OHIO**  
and  
**MADISON INTERSTATE PROPERTIES, LLC**

THIS AGREEMENT, entered into this 16<sup>th</sup> day of APRIL 2021, by and between:

VILLAGE OF MADISON, an Ohio municipal corporation (hereinafter referred to as the "Village"), whose mailing address for all purposes, inclusive of Notice(s) is:

c/o Village Administrator  
33 East Main Street  
Madison, Ohio 44057  
dbailey@madisonvillage.org

with copies to: Joseph P. Szeman  
Director of Law  
8500 Station Street, Suite 245  
Mentor, Ohio 44060  
szeman@hsklawyers.com

and:

MADISON INTERSTATE PROPERTIES, LLC, an Ohio for-profit limited liability company (entity no. 4503515) (hereinafter referred to as the "Developer"), whose mailing address for all purposes, inclusive of Notice(s) is:

c/o Harry Allen, III  
7455 Tyler Boulevard  
Mentor, Ohio 44060  
hallen3@glpower.com

WITNESSETH:

WHEREAS, Madison Interstate Properties, LLC is undertaking the construction of a new commercial subdivision within the Village in the area of the southeast quadrant of the I-90/S.R. 528 interchange. The development includes the construction of a new roadway of approximately 1,300 feet in length to serve the new commercial developments within the subdivision (the roadway being the "Project"). The roadway, tentatively to be called "Great Lakes Way," is to be contracted by and paid for fully by Developer at an estimated construction cost of \$1,808,978.00. Plans and profiles for the roadway are collectively attached hereto and incorporated herein for descriptive purposes as Exhibit "1."

WHEREAS, it is Developer's intent after completion to dedicate Great Lakes Way to the Village.

WHEREAS, the Ohio Department of Transportation ("ODOT"), being aware of the Project, has made available non-federal funds through its Jobs & Commerce Economic Development Program ("JCED") in not-to-exceed sums of \$100,000.00 and a second round of \$200,000.00 (the actual amount(s) of any reimbursements are the lower of those sums or 6% of the total project cost).

WHEREAS, ODOT is aware that the Project is to be privately funded and constructed.

WHEREAS, ODOT officials have represented that the Project is eligible for JCED funds, notwithstanding that it is to be privately funded and constructed.

WHEREAS, JCED funds are not guaranteed, are subject to General Assembly appropriation, and are further subject to the terms and conditions of the "Jobs and Commerce Economic Development Agreement Between the State of Ohio, Department of Transportation and Village of Madison" (the "ODOT Agreement") which agreement is attached hereto as Exhibit 2 and incorporated herein by this reference as if fully re-written for notice purposes only and not to obligate the Village in any manner to the terms and conditions contained therein as and between the Village and Developer.

WHEREAS, Developer has requested the Village's assistance in obtaining the JCED funds to reimburse some of its Project costs.

WHEREAS, the parties enter into this Agreement to create clarity with respect to the Village's assistance in obtaining the JCED funds and to clarify the Village's limited role as a "pass through entity" related to the Project and the JCED funds.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. No Public Improvement.

1.1 Notwithstanding the Village's obligations to ODNR entered into pursuant to the ODNR Agreement, it is the parties' explicit intent that the Project is not and shall not be a "public improvement" within the meaning of R.C. § 4115.03(C) insofar as (i) the Village will not be performing any work or contracting with any party for construction of the Project, (ii) the Village shall have no oversight of the Project except solely in regard to inspection and compliance with all applicable codes of a general and special nature, and, that construction occur in accordance with the approved subdivision plat (and conditions imposed thereon), (iii) no Village or other public funds will be expended on the Project excepting solely for the future possible availability of the JCED funds, (iv) the Project has not been initiated at the request of the Village, and (v) the Developer is under no contractual requirement with the Village to proceed with construction or/and to dedicate Great Lakes Way to the Village.

1.2 The Village has offered no opinion, representation and/or warranty to Developer, express or implied, in regard to the applicability or non-applicability of Ohio prevailing wage law, R.C. § 4115.03 to § 4115.16, to the Project in the event compliance with the prevailing wage laws is later determined to be a condition for receipt or retention of the JCED funds. Developer therefore is and shall rely solely on its own independent factual and legal analysis and judgment

related to the issue of payment of prevailing wages as a condition of qualification for the JCED funds and proceeds assuming all risk associated with its decision(s) related to prevailing wages.

1.3 In the event Developer accepts JCED funds and a future determination is made by a court or administrative agency of competent jurisdiction that the Project was a "public improvement" within the meaning of R.C. § 4115.03(C) due to the acceptance of the JCED funds such that the prevailing wage and other substantive requirements of R.C. § 4115.03 to § 4115.16 were required to have been met, then, Developer understands and agrees that it shall be solely responsible for any and all resulting liabilities, expenses, fines and penalties related to such non-compliance and shall fully defend and indemnify the Village, its officer, employees, and agents and hold them harmless from any and all losses, claims, fines, penalties, demands, or obligations incurred or suffered by them arising out of or related to any non-compliance with the prevailing wage laws.

1.4 Developer acknowledges that the ODOT Agreement may be interpreted as having required the Project be awarded by competitive bid in compliance with R.C. § 735.05 and that failure to follow statutory bid procedures may cause a disqualification for JCED funds eligibility.

## 2. No Inducement or Reliance and Waiver of Claims and Damages.

2.1 Developer represents that its commencement and completion of the Project has not been and is not dependent, contingent, induced by, or in any other manner whatsoever causally connected to the JCED funds and that Developer would have proceeded with the Project to full completion regardless of the availability of the JCED funds.

2.2 Developer accepts and acknowledges that this Agreement and the Village's entry into the ODOT Agreement are solely due to the claimed availability of the JCED funds as and for Project reimbursement pursuant to the terms of the ODOT Agreement and, accordingly, that the Village is solely acting as a "pass through entity" for those funds. For this reason and for the reasons stated elsewhere in this Agreement including but not necessarily to those set forth in section 2.1, Developer does hereby agree, acknowledge and stipulate that the Village would not have entered into this Agreement but for Developer's representation(s) that if for whatever reason(s), whether knowable or not, a claim of any nature whatsoever for damages against the Village for any act, omission, or other occurrence alleged against it and/or against any of its officers, employees and/or agents could or would be asserted by Developer against them related to the subject matter of this Agreement and/or the Project, then, the Village would have refused and not entered into this Agreement. In consideration of the foregoing and the Village's willingness to enter into the ODOT Agreement solely for the sake of the Developer, Developer does hereby covenant and promise for itself and all past and future owners, agents, representatives, trustees, insurers, reinsurers, attorneys, successors in interest, predecessors, transferees and assigns, and any other party who may claim under or through them, to hereby fully, finally, and completely release, remise, and forever discharge the Village and its officers, employees, agents, insurers, attorneys, and assigns from any and all claims, actions, demands, debts, liabilities, and causes of action, whether known or unknown, suspected or unsuspected, contingent or matured, accrued or unaccrued, legal or equitable, past, present, or future, that relate in any way to or arise out of the this Agreement and/or the ODOT Agreement.

## 3. Non-Discrimination.

3.1 Developer shall comply with the Village's "Non-Discriminatory Hiring Policy" enacted by Resolution No. 23 - 2012 in conformity with R.C. § 5709.832 as an ongoing

condition of this Agreement. By executing this Agreement, Developer commits to not discriminate in hiring on the basis of race, religion, sex, disability, color, national origin, ancestry, or such other protected classes as the law may now or in the future recognize while this Agreement remains in effect.

3.2 Developer shall also comply with all non-discrimination requirements set forth in the ODOT Agreement as a condition of receipt of JCED funds including the requirement set forth in section 7.8 of the ODOT Agreement that Developer ensure the provisions of sections 7.1 through 7.6 of the ODOT Agreement are included in every contract and subcontract, including procurements of materials and leases of equipment, unless exempt by law, related to the Project.

4. Disclosure of Governmental Liabilities.

Developer shall comply with the Village's policy titled "Disclosure of Liabilities Owed to Governmental Entities and Authorization for Inspection" enacted by Resolution No. 22 - 2012 in conformity with R.C. § 9.66(B) as an ongoing condition of this Agreement, and, does represent that at the time of execution of this Agreement the Developer has no outstanding liabilities owed to the state, a state agency, or a political subdivision. "Liability" means and includes any of the following:

- (a) Any delinquent tax owed the state or a political subdivision of the state;
- (b) Any moneys owed the state or a state agency for the administration or enforcement of the environmental laws of the state; and
- (c) Any other moneys owed the state, a state agency, or a political subdivision of the state that are past due.

5. Other Laws.

Developer, in accordance with section 1.5 of the ODOT Agreement, shall comply with all applicable Federal and State laws, regulations, and applicable executive orders in regard to the Project in addition to those laws specified in this Agreement and specified in the ODOT Agreement. Developer hereby agrees and stipulates that, notwithstanding the parties' good faith efforts to ascertain the applicability of all laws, regulations, and executive orders implicated by the ODOT Agreement upon which eligibility for the JCED funds may be dependent, Developer (i) is relying solely on its own independent judgment in regard to all matters of legal compliance, (ii) expressly disclaims any reliance of any nature whatsoever on the part of the Village, its officers, employees and/or agents in reaching its independent judgment as stated in (i), (iii) agrees that it shall be solely responsible for all costs, expenses, and/or findings for recovery associated with any determination by any court or agency with jurisdiction which may find that JCED funds were not a proper reimbursement, and (iv) enters into this Agreement agreeing to assume all risk as set forth in (iii) and shall not be entitled to any offset or contribution from Village whatsoever or for any reason whatsoever.

6. Cooperation and Compliance with All Program Requirements.

To enable the Village to obtain the reimbursement of Project expenses through the ODOT Agreement, Developer shall timely upon demand provide the Village all information, data, records, and such other assurances as ODOT may require and, in particular, in regard to sections 2.3 and 2.4 of the ODOT Agreement shall assure that Project records are in a final

form acceptable to ODOT. The Village shall be under no duty to compile, organize, or in any manner prepare such information in a form acceptable to ODOT, that being at all times the sole obligation of Developer.

7. Performance Period.

Pursuant to the ODOT Agreement, the deadline for final reimbursement requests is March 19, 2023. It shall be Developer's sole responsibility to have the Project complete and all requirements of the ODOT Agreement satisfied in order to meet that deadline.

8. Representations of Developer.

8.1 No Bankruptcy. No petition in bankruptcy (voluntary or otherwise), attachment, execution proceeding, assignment for the benefit of creditors, or petition seeking reorganization or insolvency, arrangement or other action or proceeding under federal or state bankruptcy law is pending against or contemplated (or, to the best of Developer's knowledge, threatened) by or against Developer.

8.2 Non-Foreign Status. Developer is not a foreign person, foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in (a) the Internal Revenue Code and the corresponding income tax regulations, and (b) similar provisions of state and local law.

8.3 Litigation. There is no litigation pending or, to the best of Developer's knowledge, threatened that in any manner adversely affects the Membership Interests or the legal capacity or right of Developer to consummate the transactions contemplated by this Agreement.

9. Record Keeping and Monitoring.

9.1 Developer shall maintain and make available upon request by the Village or any other agency with jurisdiction all documents and financial records sufficient to establish compliance with the terms of the ODOT Agreement and shall so maintain and make those records available for a minimum three-year period or longer in conformity with section 8.1 of the ODOT Agreement.

9.2 Developer accepts JCED funds subject to and on the express condition that all Project records shall be subject to future audits as detailed in the ODOT Agreement to ensure their appropriate receipt and that the JCED funds are subject to ultimate recapture by ODOT.

10. Payment.

The Village shall pay to the Developer such of the JCED funds it receives from ODOT upon satisfaction of all terms and conditions required of the Village by the terms of the ODOT Agreement as same are by virtue of this Agreement being assumed by Developer, and, provided there is not then (i) any threatened or pending controversy raised by ODOT or another agency with jurisdiction related to compliance with any of the terms of the ODOT Agreement (including but not limited all applicable laws), (ii) any threatened or pending controversy raised by any of Developer's contractors, subcontractors or material providers related to the Project, or (iii) any other legal controversies that call into question Developer's willingness or ability to abide by any requirements of this Agreement and/or the ODOT Agreement.



11. No Personal Interest.

No member, officer, or employee of the Village or their designees or agents who exercises any function or responsibilities with respect to this Agreement during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof assisted under this Agreement.

12. Termination of Agreement.

The Village may terminate this Agreement and may recover any funds at its discretion if the Developer:

- (a) Violates any provision of this Agreement; or
- (b) Violates any applicable terms or conditions which the ODOT Agreement requires; or
- (c) Fails to perform in a timely manner.

13. Notices

All notices, requests and communications permitted or required in this Agreement shall be in writing and (i) hand-delivered or (ii) mailed by regular United States mail and concurrent email transmission to the designated officers at their respective addresses listed herein above.

14. Miscellaneous.

14.1 Amendments. This Agreement may be amended only by a writing signed by the parties hereto. No course of dealing between the parties or any delay in exercising any rights hereunder shall operate as a waiver of any rights of any party. As used herein, the term "this Agreement" and references thereto shall mean this Agreement as it may from time to time be amended or supplemented.

14.2 No Assignment. This Agreement is not transferable or assignable without the express, legislative approval of the Village.

14.3 Entire Agreement. This Agreement embodies the entire agreement and understanding among and between Village and Developer and supersedes all prior agreements and understandings relating to the subject matter hereof.

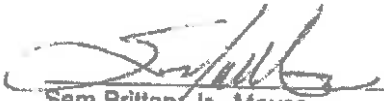
14.4 Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of Ohio.

14.5 Severability. The provisions of this Agreement are distinct and severable and if any provision is held to be invalid or unenforceable, such invalidity or unenforceability will not affect the validity or enforceability of any other provision of this Agreement.

THIS AGREEMENT is entered into as of the date first above written by the Village of Madison (Village) and the Madison Interstate Properties, LLC (Developer).

**VILLAGE OF MADISON**

**MADISON INTERSTATE PROPERTIES,  
LLC**

  
\_\_\_\_\_  
Sam Britton, Jr., Mayor

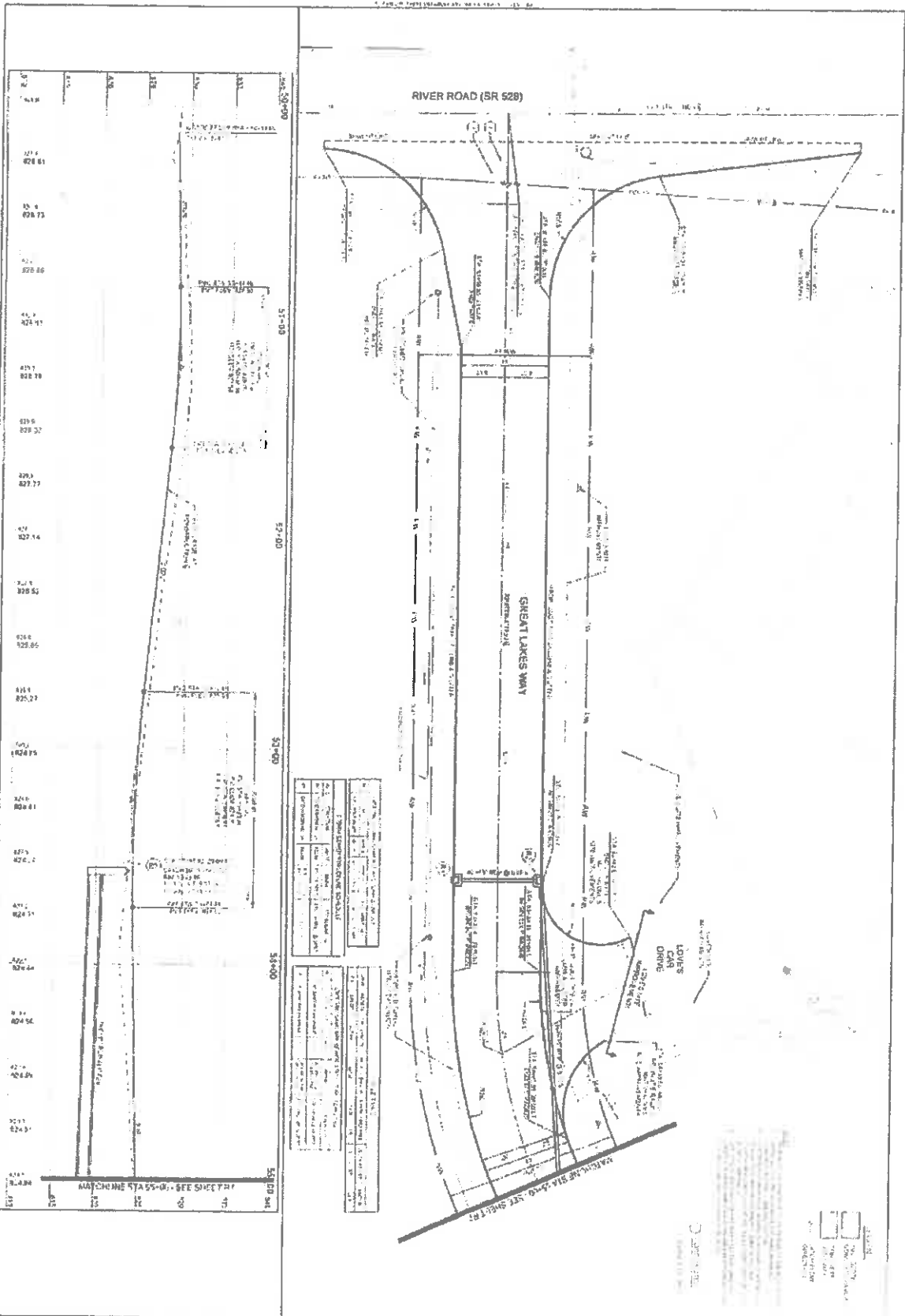
  
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Harry Allen, III, Member

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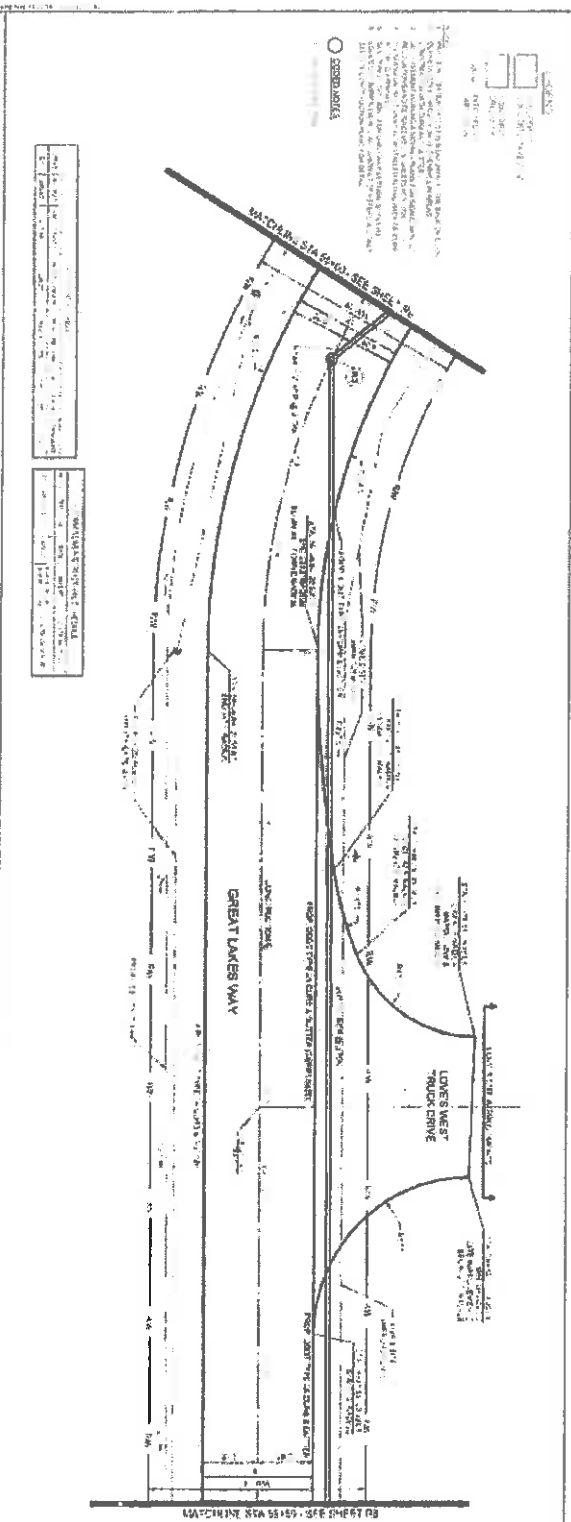
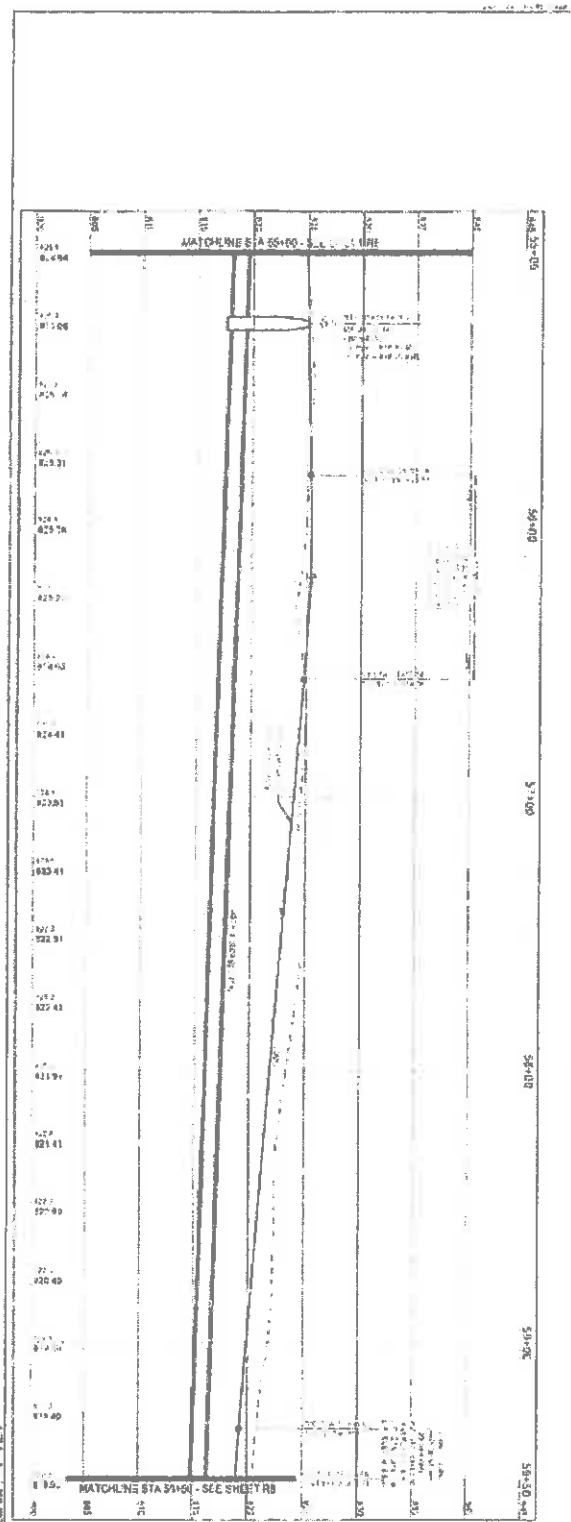
Approved as to form:

  
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Joseph P. Szeman  
Law Director, Village of Madison



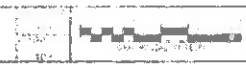
Station	Elevation	Notes
0+00	428.61	
1+00	428.73	
2+00	428.86	
3+00	429.11	
4+00	429.78	
5+00	429.27	
6+00	429.72	
7+00	429.14	
8+00	428.52	
9+00	428.95	
10+00	429.22	
11+00	428.75	
12+00	428.41	
13+00	427.2	
14+00	426.51	
15+00	426.4	
16+00	424.54	
17+00	424.24	
18+00	424.3	
19+00	424.24	
20+00	424.1	

Station	Grade (%)	Vertical Curve Data
0+00	0.00	
1+00	0.00	
2+00	0.00	
3+00	0.00	
4+00	0.00	
5+00	0.00	
6+00	0.00	
7+00	0.00	
8+00	0.00	
9+00	0.00	
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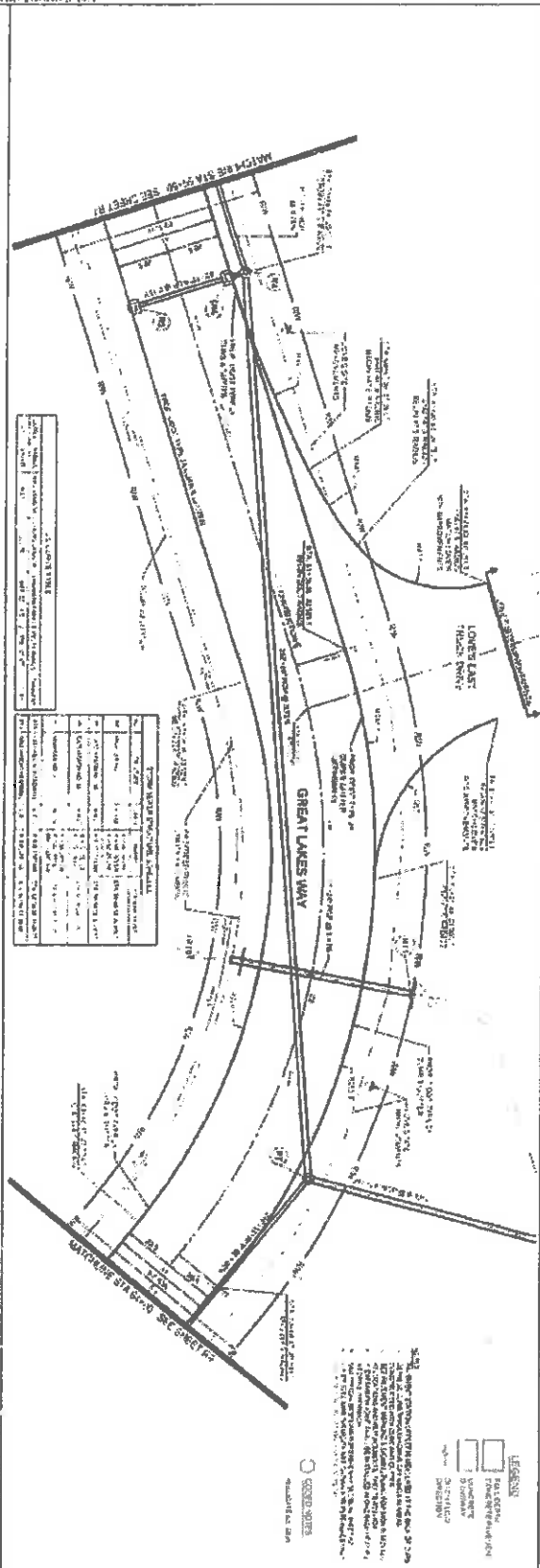
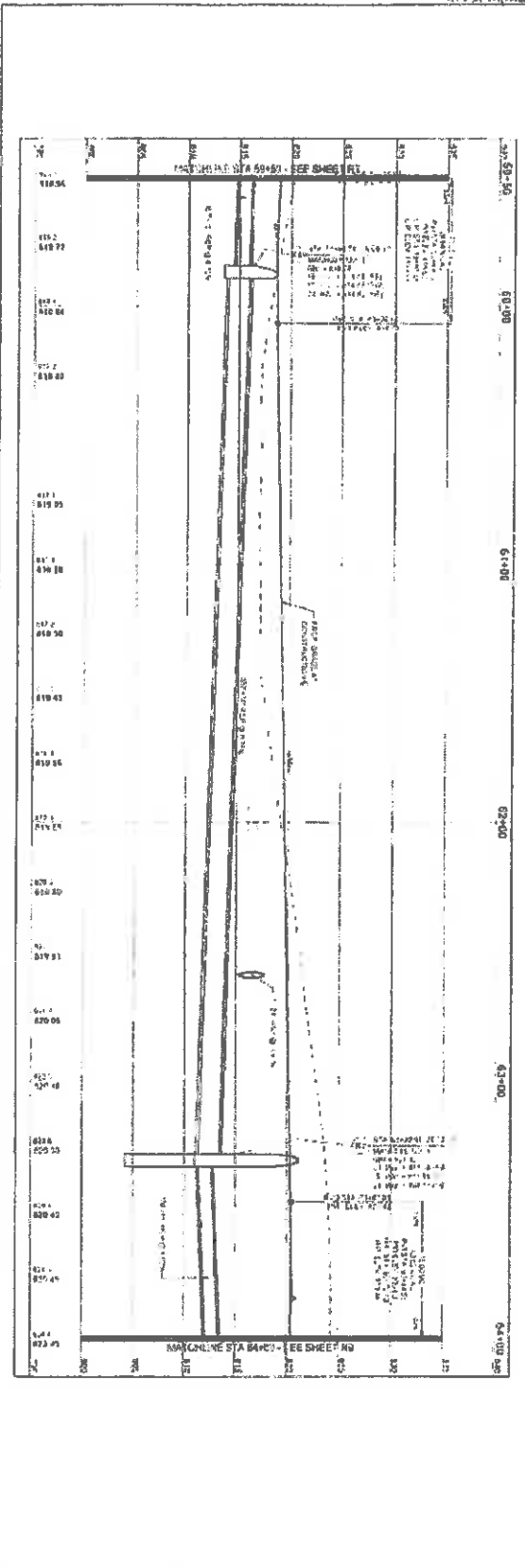


LOVE'S TRAVEL STOPS  
MADISON, OH

PLAN & PROFILE  
GREAT LAKES WAY



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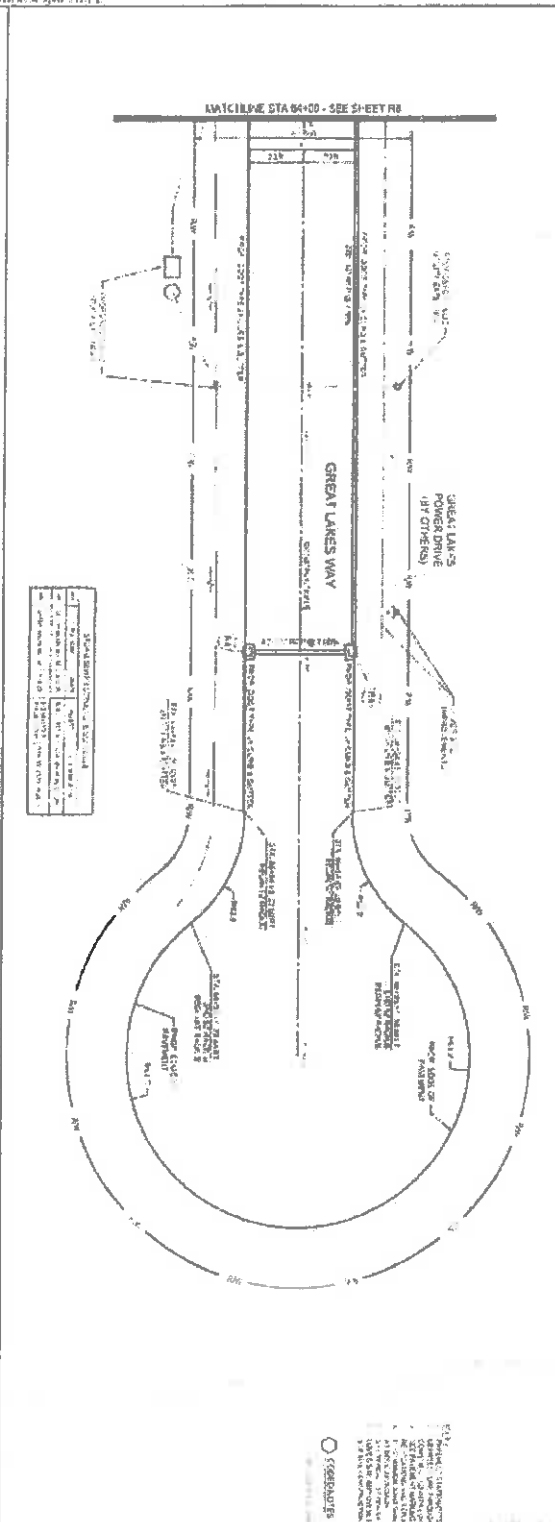
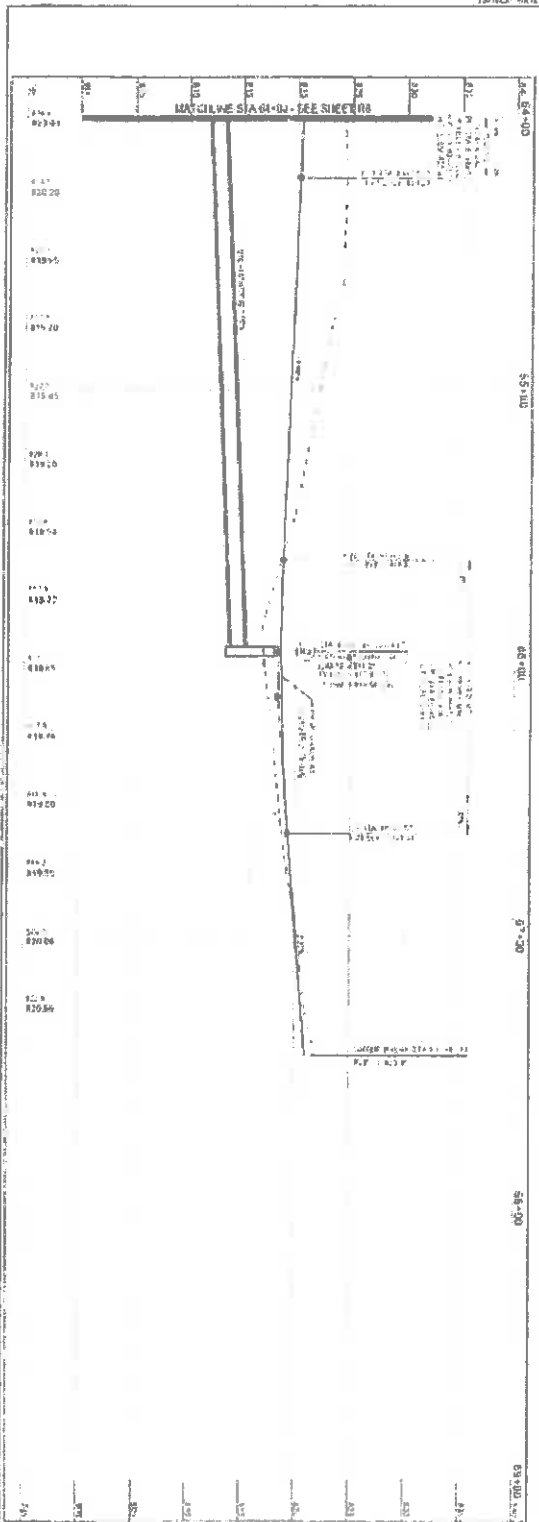
LOVE'S TRAVEL STOPS  
MADISON, OH

PLAN & PROFILE  
GREAT LAKES WAY

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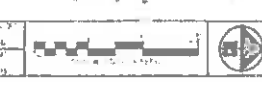


LOVE'S TRAVEL STOPS  
MADISON, OH

PLAN & PROFILE  
GREAT LAKES WAY

LEGEND

- Proposed 12" HDPE Water Main
- Proposed 12" HDPE Sewer Main
- Proposed 12" HDPE Gas Main
- Proposed 12" HDPE Storm Sewer
- Proposed 12" HDPE Electric Conduit
- Proposed 12" HDPE Fiber Optic Conduit
- Proposed 12" HDPE Fire Main
- Proposed 12" HDPE Water Service
- Proposed 12" HDPE Sewer Service
- Proposed 12" HDPE Gas Service
- Proposed 12" HDPE Storm Sewer Service
- Proposed 12" HDPE Electric Service
- Proposed 12" HDPE Fiber Optic Service
- Proposed 12" HDPE Fire Service
- Proposed 12" HDPE Water
- Proposed 12" HDPE Sewer
- Proposed 12" HDPE Gas
- Proposed 12" HDPE Storm Sewer
- Proposed 12" HDPE Electric
- Proposed 12" HDPE Fiber Optic
- Proposed 12" HDPE Fire



**JOBS AND COMMERCE ECONOMIC DEVELOPMENT AGREEMENT  
BETWEEN THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION AND  
VILLAGE OF MADISON**

**THIS AGREEMENT** is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 W. Broad Street, Columbus, Ohio 43223 and, the Village of Madison, 33 E Main St, Madison, OH 44057 (hereinafter referred to as the VILLAGE).

**1. PURPOSE**

- 1.1 Section 5501.03(A)(3) of the Ohio Revised Code (ORC) provides that ODOT may coordinate its activities with those of other appropriate state departments, public agencies, and authorities, and enter into any contracts and agreements with such departments, agencies, and authorities as may be necessary to carry out its duties, powers, and functions.
- 1.2 ORC § 5501.11(A)(4) states the department of transportation with respect to highways shall cooperate with the counties, municipal corporations, townships, and other subdivisions of the state in the establishment, construction, reconstruction, maintenance, repair, and improvement of the public roads and bridges.
- 1.3 The VILLAGE will construct a new 1,300 foot road east off of SR 528. This new road will be called Great Lakes Parkway and will be to the south of I-90 and north of Warner Road. (hereinafter referred to as the PROJECT).
- 1.4 The purpose of this Agreement is to set forth the responsibilities of the parties associated with the Jobs & Commerce Economic Development Program ("JCED") funding (SAC 4JC7) that is being made available for the PROJECT by ODOT.
- 1.5 The VILLAGE shall comply with all applicable Federal and State laws, regulations, and applicable executive orders in regards to the PROJECT. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

**2. FUNDING AND PAYMENT**

- 2.1 The total cost for the PROJECT is estimated to be \$1,808,978 as set forth below. Funds provided through ODOT shall be applied only to the eligible costs associated with the actual construction of the PROJECT improvements and construction engineering/inspection activities.

ODOT JCED Funds - SAC 4JC7	\$100,000
ODSA 629	\$200,000
PRIVATE SECTOR	\$1,508,978
<b>TOTAL</b>	<b>\$1,808,978</b>

- 2.2 Funds provided by ODOT shall not exceed \$100,000 or 6 percent of the total project cost, whichever is the lesser amount. The VILLAGE shall provide all other financial resources necessary to fully complete the PROJECT, including all cost overruns and VILLAGE claims.
- 2.3 All funding from ODOT under this Agreement operates on a reimbursement basis. The VILLAGE shall review and approve all invoices for materials, equipment and labor prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT.
- 2.4 The VILLAGE shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The VILLAGE must submit to ODOT a written request for reimbursement of the state share of the expenses involved, attaching copies of all source documentation associated with invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted. The VILLAGE may submit a maximum of two requests for reimbursement. The deadline for the final reimbursement request is March 19, 2023. The VILLAGE may ask for an extension of this agreement before February 14, 2023 if adequate funds have been appropriated.

- 2.5 Reimbursement to the VILLAGE shall be submitted to:

Village of Madison  
Dwayne Bailey, Administrator  
33 E Main St  
Madison, OH 44057  
(440) 428-7526  
dbailey@madisonvillage.org

3. PROJECT DEVELOPMENT AND DESIGN

- 3.1 The VILLAGE is administering this PROJECT and is responsible for all aspects of the project, including but not limited to: environmental responsibilities, permit requirements, right of way or utility reimbursement, and construction contract administration.
- 3.2 Any right, claim, interest, and/or right of action, whether contingent or vested, of the VILLAGE, arising out of or related to any contract entered into by the VILLAGE for the work to be performed by the VILLAGE on this PROJECT is the responsibility of the VILLAGE. ODOT expressly rejects any liability for the PROJECT and any claims arising from the PROJECT.

4. CERTIFICATION AND RECAPTURE OF FUNDS

- 4.1 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 Ohio Revised Code section 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.
- 4.2 If for any reason the PROJECT is found to not be in compliance with all applicable local, state, or federal rules and processes the VILLAGE shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT.



5. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

5.1 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 section 126.30 of the Revised Code.

5.2 The VILLAGE 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 VILLAGE's obligations made or agreed to herein.

6. NOTICE

6.1 Notice under this Agreement shall be directed as follows:

If to the VILLAGE:

Village of Madison  
Dwayne Bailey, Administrator  
33 E Main St  
Madison, OH 44057  
(440) 428-7526  
dbailey@madisonvillage.org

If to ODOT:

Christina Wagner Schepis, Regional Manager  
Office of Jobs & Commerce  
Ohio Department of Transportation  
2088 S Arlington Rd  
Akron, OH 44306  
(330) 786-3122  
Christina.Wagner@dot.ohio.gov

7. FEDERAL REQUIREMENTS

During the performance of this Agreement, the VILLAGE, for itself, its assignees, and successors in interest agrees as follows:

7.1 The VILLAGE will ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin (ancestry), disability, genetic information, age (40 years or older), sexual orientation, or military status (past, present, or future). 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.

7.2 The VILLAGE agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The VILLAGE will, in all solicitations or advertisements for employees placed by or on behalf of the VILLAGE, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin (ancestry), disability, genetic information, age (40 years or older), sexual orientation, or military status (past, present, or future).

7.3 Compliance with Regulations: The VILLAGE (hereinafter includes consultants) will comply with the Acts and Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

- 7.4 **Nondiscrimination:** The VILLAGE, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, national origin (ancestry), sex, age (40 years or older), disability, low-income status, or limited English proficiency in the selection and retention of the VILLAGE, including procurements of materials and leases of equipment. The VILLAGE will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix E, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- 7.5 **Solicitations for the VILLAGE, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the VILLAGE for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential contractor or supplier will be notified by the VILLAGE of the VILLAGE's obligations under this contract and the Acts and the Regulations relative to nondiscrimination on the grounds of race, color, national origin (ancestry), sex, age (40 years or older), disability, low-income status, or limited English proficiency.
- 7.6 **Information and Reports:** The VILLAGE will provide all information and reports required by the Acts, the Regulations, and 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 ODOT or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the VILLAGE will so certify to ODOT or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- 7.7 **Sanctions for Noncompliance:** In the event of the VILLAGE's noncompliance with the nondiscrimination provisions of this Agreement, ODOT will impose such sanctions as it or FHWA may determine to be appropriate, including, but not limited to:
- a) Withholding of payments to the VILLAGE under the Agreement until the VILLAGE complies, and/or
  - b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- 7.8 **Incorporation of Provisions:** The VILLAGE will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The VILLAGE will take action with respect to any subcontract or procurement as ODOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the VILLAGE becomes involved in, or is threatened with litigation by a contractor, or supplier because of such direction, the VILLAGE may request ODOT to enter into any litigation to protect the interests of ODOT. In addition, the VILLAGE may request the United States to enter into the litigation to protect the interests of the United States.
- 7.9 **During the performance of this Agreement, the VILLAGE, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:**

**Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-Aid programs and projects)
- Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 et seq.) (prohibits discrimination on the basis of sex)

- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability) and 49 CFR Part 27
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age)
- Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex)
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of Federal-Aid recipients, sub-recipients, and VILLAGE (or other)s, whether such programs or activities are Federally funded or not)
- Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§ 12131-12189), as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38 (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities)
- The Federal Aviation Administration's Non-Discrimination Statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex)
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations)
- Executive Order 13166, Improving Access to Services for People with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100)
- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended (prohibits discrimination in the sale, rental, and financing of dwellings on the basis of race, color, religion, sex, national origin, disability, or familial status (presence of child under the age of 18 and pregnant women))
- Title IX of the Education Amendments Act of 1972, as amended (20 U.S.C. 1681 et seq.) (prohibits discrimination on the basis of sex in education programs or activities)
- Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA 38 U.S.C. 4301-4335) (prohibits discrimination on the basis of present, past or future military service)
- Genetic Information Nondiscrimination Act (GINA) (29 CFR Part 1635, 42 U.S.C. 2000ff)

## 8. GENERAL PROVISIONS

- 8.1 *Record Retention:* The VILLAGE 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 books, documents, and records relating to the VILLAGE's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three years. 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.
- 8.2 *Ohio Ethics Laws:* The VILLAGE agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.
- 8.3 *Governing Law:* This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. 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 VILLAGE (or other) 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.

- 8.4 *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.
- 8.5 *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.
- 8.6 *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.
- 8.7 *Term of Agreement:* This Agreement shall be in effect from the last day executed by the parties through the date which is three (3) years after the Project Completion Date. The VILLAGE acknowledges that the Term extends beyond the Project Completion Date for purposes of reporting by the VILLAGE and monitoring by Grantor of the results of the award of Grant Funds.
- 8.8 *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. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. 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 of 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.

**VILLAGE OF MADISON MAYOR  
OR AUTHORIZED REPRESENTATIVE**

By:



Title:

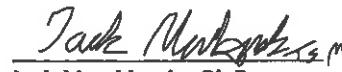
Mayor

Date:

4-26-2021

**STATE OF OHIO  
OHIO DEPARTMENT OF TRANSPORTATION**

By:

  
Jack Marchbanks, Ph.D.  
Director

Date:

5/7/2021