

CANFIELD CITY COUNCIL

December 7, 2022-5:30 P.M.

FRANCIS J. McLAUGHLIN MUNICIPAL BUILDING

1. Call to Order.
2. Pledge of Allegiance.
3. Roll Call: Quorum is Present - Meeting is in Session.
4. Proclamations & Presentations.
5. Approval of Minutes.
6. Reading of Communications.
7. Reports of Committees, Boards, Mayor's Report, City Manager, Finance Director, Chief of Police, Zoning Inspector and Public Works Superintendent.
8. Public questions from residents (or representative) related to the above referenced reports. Questions may be limited to three (3) minutes.
9. Recognition of Persons Desiring to Appear Before Council.

10. OLD BUSINESS

Note: After each item is placed on the table for action, public comments from residents (or representative) as to that business item are received. May be limited to three (3) minutes per person and thirty (30) minutes total.

11. NEW BUSINESS

Note: After each item is placed on the table for action, public comments from residents (or representative) as to that business item are received. May be limited to three (3) minutes per person and thirty (30) minutes total

- A. An **Ordinance** Amending Canfield Codified Ordinance Section 541.05.

Description: City Staff has been made aware of "Light Trespass" in our city. This occurs when glaring lights trespass onto your property and keep you from enjoying your own space. This Ordinance addresses this concern.

Action Needed: Approval of Ordinance Amending Canfield Codified Ordinance Section 541.05.

Attachment(s): Ordinance.

Public Comments

- B. An **Ordinance** Authorizing the City Manager to Enter into an Agreement for the Provision of Dispatch Services and Declaring an Emergency.

Description: We are eliminating dispatching services with Coitsville and acquiring dispatching services with Damascus. This Ordinance authorizes a new agreement for dispatching services with Damascus.

Action Needed: Approval of Ordinance.

Attachment(s): Agreement with Damascus.

Public Comments

- C. An **Ordinance** Amending Ordinance 2022-48 Adopting Salary and Benefits for all Full and Part Time Non-Bargaining Unit Employees and Declaring an Emergency.

Description:

The only changes in the proposed salary ordinance as presented are salary increases for the following employees for 2023: Chief of Police 2.5%, Finance Director 2%, Public Works Superintendent 2% and Clerk of Council 2%. Without a City Manager, each listed employee has increased their duties to provide for an effective and efficient operation of city obligations. Further, in an attempt to determine a pay scale for the future City Manager, we have evaluated all like cities in Ohio to include; City Manager form of government, population and staff. These increases are more inline with other similar cities in Ohio.

Action Needed:

Consideration of Ordinance

Attachment(s): Ordinance Amending Ordinance 2022-48 Adopting Salary and Benefits for all Full and Part Time Non-Bargaining Unit Employees and Declaring an Emergency.

Public Comments

- D. A **Resolution** Authorizing the City Manager to Enter into an Agreement with MS Consultants, Inc. in the Form Attached Hereto for Project Management Services Regarding Inspection of Water and Sanitary Sewer Installation (Phase 2) at Millennial Moments and Related Items as Provided Therein and Declaring an Emergency.

Description:

Council wishes to proceed with contracting MS Consultants for Professional Services to inspect water and sanitary sewer installation at Millennial Moments (phase 2). The estimated amount of the inspection is \$25,000.

Action Needed:

Consideration of this Resolution.

Attachment(s):

Resolution and agreement with MS Consultants

Public Comments

- E. A **Motion** Making Appointments to Boards, Commissions & Committees

Description:

There are currently a few positions on our Boards, Commissions and Committees that expire on December 31, 2022. Vacancies exist due to term limits and resignations. Most of the appointments are re-appointments. However, there are also vacancies to be filled on the Civil Service Commission, Design Review and Historical Preservation Committee, and the Parks, Recreation & Cemetery Board.

Staff has reached out to a Kirk Kreuzwieser (an Architect) for the Design Review vacancy as well as Mr. Joe Testa, a builder who lives in the Design Review Area.

Staff has reached out to Thomas Kupec (Doctorate in Psychology) to fulfill the vacancy on the Civil Service Commission.

Betty Aberson expressed interest in the Parks Board and would be happy to serve.

You are reappointing members to the CRA (Community Reinvestment Area Council) tonight. Lori DiRenzo and Chris Vecchione are the Mayor's Appointments and Breanna Fitzgerald and Mark Graham are Council Appointments. Planning & Zoning will reappoint Julio Williams to the CRA Council at their meeting on December 8th.

Action Needed:

Approval of Motion making appointments to Boards, Commissions and Committees to fill expiring terms and vacancies.

Attachment(s): Motion making appointment to Boards, Commissions, and Committees.

Public Comments

12. Council Comments.

13. Adjournment

Introduced by: _____

First Reading: _____

ORDINANCE

AN ORDINANCE AMENDING CANFIELD
CODIFIED ORDINANCE SECTION 541.05

WHEREAS, pursuant to recommendations of the Canfield Police Department and Zoning Inspector, the Council of the City of Canfield desires to amend Canfield Codified Ordinance Section 541.05 "Criminal Trespass" to include a new subsection (a)(6) to prohibit the direct lighting on neighboring property.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Canfield, Mahoning County, Ohio as follows:

Section 1: That Canfield Codified Ordinance Section 541.05 is hereby amended to add new section (a)(6) as follows:

541.05 CRIMINAL TRESPASS:

- (a) No person, without privilege to do so, shall do any of the following:
- (1) Knowingly enter or remain on the land or premises of another;
 - (2) Knowingly enter or remain on the land or premises of another, the use of which is lawfully restricted to certain persons, purposes, modes or hours, when the offender knows the offender is in violation of any such restriction or is reckless in that regard;
 - (3) Recklessly enter or remain on the land or premises of another, as to which notice against unauthorized access or presence is given by actual communication to the offender, or in a manner prescribed by law, or by posting in a manner reasonably calculated to come to the attention of potential intruders, or by fencing or other enclosure manifestly designed to restrict access;
 - (4) Being on the land or premises of another, negligently fail or refuse to leave upon being notified by signage posted in a conspicuous place or otherwise being notified to do so by the owner or occupant, or the agent or servant of either.
 - (5) Knowingly enter or remain on a critical infrastructure facility.
 - (6) Direct lighting with the intent to shine on neighboring property or properties.

Section 2: That this Ordinance and all deliberations relating to the passage of this Resolution were held in open meetings of this Council, all pursuant to Section 121.22 of the Ohio Revised Code and Section 3.11 of the Charter of the Municipality of Canfield.

PASSED IN COUNCIL THIS _____ DAY OF _____, 2022

PRESIDENT OF COUNCIL

ATTEST:

CLERK OF COUNCIL

Certification of Publication

I, the undersigned Clerk of Council of the City of Canfield, Ohio, hereby certify that the foregoing Ordinance was posted in a prominent place at the Municipal Building, Canfield, Ohio for seven continuous days, to wit: _____
_____.

CLERK OF COUNCIL

APPROVED AS TO FORM:

MUNICIPAL ATTORNEY

Introduced By: _____

First Reading: _____

ORDINANCE

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT FOR THE PROVISION OF DISPATCH SERVICES AN DECLARING AN EMERGENCY

WHEREAS, the Chief of Police of the City of Canfield has recommended that the City enter into an agreement in the form and manner attached hereto, pursuant to which the City will provide dispatch services to, Damascus; and

WHEREAS, the Council has determined it to be in the best interests of the City to provide said services,

NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CANFIELD, MAHONING COUNTY, OHIO THAT:

SECTION 1: That the City shall enter into an agreement to provide dispatch services to, Damascus in the form and manner attached hereto.

SECTION 2: That the City Manager is hereby authorized and directed to enter into said agreement, effective January 2, 2023.

SECTION 3: That this Ordinance is hereby declared to be an emergency necessary for the preservation of the public peace, health, safety, and welfare of the citizens of the City of Canfield. Said emergency exists by reason of the fact that the contract takes effect before the thirty days that it takes for this Ordinance to become effective.

SECTION 4: That this Ordinance and all deliberations relating to the passage of this Ordinance were held in open meetings of this Council, all pursuant to Section 121.22 of the Ohio Revised Code and Section 3.11 of the Charter of the Municipality of Canfield.

PASSED IN COUNCIL THIS _____ DAY OF _____ A.D., 2022

PRESIDENT OF COUNCIL

ATTEST:

CLERK OF COUNCIL

Certification of Publication

I, the undersigned Clerk of Council of the City of Canfield, Ohio, hereby certify that the foregoing Ordinance was posted in a prominent place at the Municipal Building, Canfield, Ohio, for seven (7) continuous days, to-wit: _____

CLERK OF COUNCIL

APPROVED AS TO FORM:

MUNICIPAL AT

AGREEMENT FOR DISPATCH SERVICES
DAMASCUS FIRE
1st Amendment

This Agreement is entered into this _____ day of _____ 2022, by and between the **City of Canfield** of 104 Lisbon Street, Canfield, Ohio, 44406 ("Canfield") and **Damascus Fire** of 14860 S. Pricetown Road, Damascus, Ohio, 44619 ("Damascus Fire").

For and in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Term. This Agreement shall be effective January 2, 2023 through December 31, 2026. Damascus Fire has the option to renew this agreement annually for a period of three (3) years by providing Canfield written notice of their intent to renew by November 1st of each year. If Damascus Fire desires to not exercise the renewal option, Damascus Fire shall provide Canfield written notice of their intent not to renew by November 1st of each year.

2. Scope of Services. Canfield agrees to provide dispatching services for fire and emergency medical services for Damascus Fire. The services will be provided in accordance with the policies and procedures adopted by Canfield from time to time with respect to the provision of dispatch services. Canfield shall provide dispatch services twenty-four (24) hours per day for three hundred sixty-five (365) days per year during the term of this Agreement.

3. Record Maintenance. Canfield shall keep and maintain all records of emergency calls received on behalf of Damascus Fire in accordance with the public records laws of the State of Ohio.

4. Policies and Procedures. Canfield is solely responsible for and shall have sole discretion relating to establishing and maintaining policies and procedures in the administration of the dispatch services to be provided pursuant to this Agreement. Canfield will notify Damascus Fire of any material changes to its dispatch policies and procedures.

5. Compensation. In consideration for the services rendered by Canfield herein, Damascus Fire shall compensate Canfield in the amount of Sixteen Thousand Five Hundred (\$16,500) per annum beginning January 2, 2023. Payment shall be made by Damascus in equal monthly installments of One

Thousand One Hundred Thirty-Five Dollars and No Cents (\$16,500) on or before the 15th of each month. In the event Damascus Fire exercises the renewal option, Canfield shall be entitled to an increase in its compensation equal to its increase in personnel wage costs as agreed upon by Canfield in the applicable collective bargaining agreement between the City and its dispatch employees, but in no case shall the increase be greater than two percent (2%)

6. Additional Equipment. In the event that additional equipment is necessary, in the opinion of Canfield, to provide the services as delineated herein, Damascus Fire shall be responsible for the costs of such purchase and installation. Installation of any such equipment shall be approved by and coordinated with Canfield. At the expiration or termination of this Agreement, Damascus Fire shall be entitled to remove such equipment at its own cost, as approved and directed by Canfield if the renewal will not materially affect the operation of Canfield's dispatch services; in which case, such equipment shall not be removed and shall become the property of Canfield.

7. Indemnification. Damascus Fire shall defend, indemnify and hold Canfield, its officers and employees, harmless from and against any costs, claims, losses, damages or liabilities based on or asserted upon any act or omission by Canfield, its employees, officers or agents, occurring in the performance of Canfield's duties hereunder.

8. Dispute Resolution. Any dispute arising between the parties shall attempt to be resolved by mediation with the parties negotiating in good faith. In the event that mediation cannot resolve a dispute within sixty (60) days, then the parties agree to resolve the same by binding arbitration in accordance with the rules of the American Arbitration Association.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio and the party's consent to jurisdiction and venue in courts located in Mahoning County, Ohio.

10. Severability. This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

11. Entire Agreement/Amendment. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto and this Agreement contains all of the covenants and

agreements between the parties. This Agreement may not be altered, amended or modified except in a writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement or caused the same to be executed on their behalf by persons duly authorized thereto as of the day and year first written above.

THE CITY OF CANFIELD

By: _____
Title

DAMASCUS FIRE

By: _____
Title

Introduced by: _____
First Reading: _____

ORDINANCE

AN ORDINANCE AMENDING ORDINANCE 2022-48
ADOPTING SALARY AND BENEFITS FOR ALL FULL
AND PART TIME NON-BARGAINING UNIT EMPLOYEES AND
DECLARING AN EMERGENCY.

WHEREAS, the City of Canfield has established salary and benefits for Full and Part time employees; and

WHEREAS, the Council of the City of Canfield desires to modify the salary and benefits for Full and Part time City employees, and

WHEREAS, the Council of the City of Canfield desires to set the salary for City Manager at \$ _____ for fiscal year 2022.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CANFIELD, OHIO:

Section 1: Employees not covered under a collective bargaining agreement may receive an annual wage adjustment effective with the first pay period beginning January 1st. This annual wage adjustment is contingent upon appropriated funds approved by City Council. The annual wage adjustment percentage will be comparable to the Consumer Price Index (CPI) increase for the twelve (12) month period from December to December and must be approved by Council.

Section 2: Each employee shall receive an annual evaluation. Subject to limitations set forth in a collective bargaining agreement, employees will be eligible to receive a merit payment or a merit increase, based upon a percentage of annual salary and contingent upon appropriated funds approved by City Council. The amount of the merit payment or merit increase shall be based upon performance up to the maximum amount of the position at any time during the year. Persons eligible to receive an additional merit payment or increase of up to 3% of their annual salary shall not exceed the compensation limitations set forth in Section 3.

Section 3: The following compensation limitations shall be in effect for employees from January 1, 2021 through December 31, 2023 or until such time as a successor Ordinance is approved:

A. Full Time Employees

(1) Administrative Employees

Position	Annual Salary		
	2021	2022	2023
City Manager	Set by Council	Set by Council	Set by Council
Police Chief	107,260	111,550	118,912
Finance Director	87,294	90,786	96,306

Public Works Superintendent	87,294	90,786	96,306
Information Technology Mgr.	77,438	80,536	83,757
Zoning Inspector	59,016	61,376	63,831

(2) Non-Administrative Employees

Position	Hourly Rate of Pay		
	2021	2022	2023
Clerk of Council	26.43	27.48	29.15
Deputy Finance Director	34.32	35.69	37.12
Income Tax Administrator	26.86	27.94	29.06
Account Clerk	21.10	22.51	23.64
Utility Laborer	19.94	20.73	21.56
Administrative Clerk A		22.51	23.64
IT Network & Systems Admin.	24.72	25.75	26.78
IT Technician	22.32	23.25	24.18
Sr. Administrative Police Clerk/Clerk of Court	26.43	27.48	28.58
Administrative Police Clerk/Deputy Clerk of Court	21.76	23.07	24.45
Administrative Clerk B	16.97	17.65	18.36
PW Foreman (2)	32.24	33.53	34.87
PW Coordinator	32.24	33.53	34.87

The Annual salary rate of newly hired administrative employees and the hourly rate of all newly hired non-administrative employees shall be determined by the City Manager at the time of their appointment, but in no case shall exceed the rate listed above in Section 1, A, (1), & A, (2).

B. Part Time Hourly Employees

The rate of pay for Part Time Hourly employees shall be determined by the City Manager and may range from the State minimum wage to a maximum of \$20.00 per hour.

Part time Officers scheduled to work on the OVI Task Force, shall be compensated at the Overtime rate based on their current hourly rate. All Client paid details scheduled through the Canfield Police Department shall be paid at a rate of \$30 per hour, excluding the Canfield Fair.

Section 2: Effective January 1, 2021, all the positions, identified in Section 1, A, are not eligible to receive overtime compensation, with the exception of required attendance at City Council meetings, positions identified in Section 1, A, (1) may elect for the required attendance of all scheduled council meetings (a) the rate of one and one-half (1-1/2) times the Employee's regular hourly rate of pay, or (b) by electing "compensatory time off" which is computed at a rate of one and one-half times the overtime hours worked. Effective January 1, 2022, all the positions identified in Section 1, A, shall not receive compensation for their required attendance at City Council meetings. Instead these positions shall receive "compensatory time off" calculated at a rate of one (1) times the number of hours spent at City Council meetings. These same positions may accumulate up to a maximum of 100 hours of Compensatory Time calculated for each hour worked in excess of forty (40) hours per week. Accumulated Compensatory Time may be used as compensatory time off when approved by the City Manager. An accurate record of compensatory time earned and time taken shall be maintained by the Deputy Finance Director. The City shall be under no obligation to pay said employees for unused accumulated Compensatory Time upon termination or expiration of employment.

Employees, employed in positions identified in Section 1,A, (2)that have overtime hours worked, shall have the option of being paid for the overtime hours worked at (a) the rate of one and one-half (1-1/2) times the Employee's regular hourly rate of pay, or (b) by electing "compensatory time off" which is computed at a rate of one and one-half times the overtime hours worked. This election must be approved by the City Manager or designee and "compensatory time off" hours can be accumulated but only up to a maximum of 100 hours.

Section 3: The probationary period of all original and promotional appointments of employees, including provisional appointments, shall be twelve (12) months. No originally or provisionally appointed probationary employee will be eligible for sick leave, vacation or personal leave during the initial ninety (90) days of employment.

Section 4: The City Manager, with City Council approval, may grant additional compensation beyond the limitations set forth, to employees identified in Section 1, A, (1) and Section 1, A, (2).

The Police Chief shall receive holiday compensation, fitness bonus, uniform maintenance and purchase of uniform on the same basis as is provided to members of the Police Department Collective bargaining Unit pursuant to the current Collective bargaining Agreement, effective from the date of appointment as Police Chief. The Police Chief shall also earn overtime at the rate of one and one-half (1-1/2) times the Employee's regular hourly rate of pay on activities that are reimbursed by outside sources.

Section 5: All full time non-administrative employees shall work forty (40) hours per week. The work hours of each Administrative employee shall be scheduled by the City Manager and insofar as possible, shall be five (5) consecutive days of 8 hours each or other scheduled hours as set forth from time to time by the City Manager. The pay of any scheduled full time employee that works less than forty (40) hours per week, excluding absences identified in Sections 7, 8, 9, 10, 11, 12, 13, 14, 15 and Compensatory Time off, will be reduced by the number of hours not worked times(x) that employees' hourly rate of pay or, for Administrative employees, his/hers annual salary divided by 2080 hours.

Section 6: A, Part Time Hourly employees are not eligible to receive any of the benefits identified in Sections 7, 9, 10, 11, 12, 13, 14, 15, 16, and 18 .

B, Seasonal Part Time Hourly employees are not eligible to receive any of the benefits identified in Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 18.

Section 7: Employees shall be entitled to take vacation after completion of initial ninety (90) days of employment. Time off for vacations must be approved by the City Manager or his/her designee. Employees shall accumulate vacation days at the following rates, if the employee is in full pay status for at least (20) days during such month:

Years of Service – After	Accumulative Rate (days)	Accumulative Rate (hours)	Equivalent Total Days per year
1 month through 3 years	5/6 of a day per month	6.66 hours per month	10 days
4 years through 5 years	1 day per month	8.00 hours per month	12 days
6 years though 10 years	1-1/4 days per month	10.00 hours per month	15 days
11 years through 15 years	1-1/2 days per month	12.00 hours per month	18 days
16 years through 20 years	1-3/4 days per month	14.00 hours per month	21 days
21 years through 25 years	2 days per month	16.00 hours per month	24 days
26 years and more	2-1/2 days per month	20.00 hours per month	30 days

Each employee shall take at least five (5) days of vacation per year and may accumulate the unused portion of entitled vacation days up to a maximum of 25 vacation days (200 hours). Vacation days cannot be taken in anticipation of entitlement.

Each non-probationary Employee shall have the option to cash out up to forty (40) hours of accumulated vacation time once per year so long as the employee maintains at least forty (40) hours of vacation time in their vacation leave bank. Employees exercising this cash out must request the cash out by November 1st. The vacation cash out shall not count as taking the minimum required vacation days as outlined above. An employee desiring to resign from employment should give a minimum of two weeks’ notice of resignation to the City Manager or his/her designee. The employee, after the submission of his/her notice of resignation, will then be eligible to receive payment for his/her accumulated vacation pay for up to a maximum of 25 working days.

An employee that qualifies for “Family Leave” to care for a spouse, son, daughter or parent with a “serious health condition” may request in writing a one-year advance on vacation time. Said request may be approved by the Manager after reviewing medical certifications. Said advance shall be granted only once per “serious health condition”. Said vacation advance shall not entitle the employee to payment upon employee’s termination of service, whether voluntary or involuntary. (For the purposes of this Ordinance, the terms “family leave” and “serious health condition” shall be defined as provided in the Family and Medical Leave Act of 1993.)

Section 8: Employees may use sick leave upon approval of the City Manager or his/her designee and may use sick leave segments of one (1) 8 hour day, unless prior approval is granted.

- A. Sick leave shall be defined as an absence with pay necessitated by: (1) illness or injury to the employee or his/her "immediate family" as defined in subsection C below; (2) exposure by the employee to a contagious disease communicable to other employees; or (3) serious illness, injury, childbirth by the employee or the employee's spouse; or (4) medical, dental and optical examinations or treatment which prevents the employee from performing his/her assigned duties.
- B. All full time employees shall earn sick leave at the rate of five (5) hours per pay or ten (10) hours per month or one and one-quarter (1-1/4) days per month and may accumulate such sick leave to a maximum of 2000 hours or two hundred fifty (250) work days; provided, however, that an employee shall not earn sick leave for any month unless he is in full pay status for at least twenty (20) work days during such monthly period.
- C. When the use of sick leave is due to illness or injury in the immediate family, "immediate family" shall be defined to only include the employee's spouse, children or parents.
- D. Upon the death of an Employee who has at least five (5) years of continuous full-time service, or upon the retirement of a full-time employee who has at least ten (10) years of continuous service with the City of Canfield, such employee shall be entitled to receive a cash payment equal to their hourly rate of pay at the time of retirement multiplied by one fourth (1/4) the total number of accumulated but unused sick hours earned by the employee, as certified by the Deputy Finance Director, providing that such resulting number of hours to be paid shall not exceed five hundred (500) hours.
- E. The accumulated sick leave hours of an employee who transfers from one department to another will not be impacted because of his/her transfer.
- F. The City Manager may require an employee to furnish a satisfactory medical excuse, in writing, for absences of three (3) days or greater, that indicates that the absence was the result of one or more of the incidents described in Section 8, A.. Any abuse of sick leave shall be just and sufficient cause for discipline as may be determined by the City Manager or his designee.
- G. An employee that qualifies for "Family Leave" to care for a spouse, son, daughter or parent with a "serious health condition" may request in writing a one-year advance on sick leave. Said request may be approved by the Manager after reviewing medical certifications. Said advance shall be granted only once per "serious health condition". Said sick leave advance shall not entitle the employee to payment upon employee's termination of service, whether voluntary or involuntary. (For the purposes of this Ordinance, the terms "family leave" and "serious health condition" shall be defined as provided in the Family and Medical Leave Act of 1993.)

Section 9: A sick day bonus of six (6) hours of pay per quarter (defined in table below) will be paid on May 30th for the first half and November 30th for the second half of each year to those full time employees who have taken no sick days in the respective quarter. Each quarter will be evaluated independently for use of sick time. For example, if an employee uses sick

leave in the first quarter and no sick leave in the second quarter, they will receive a bonus of six (6) hours of pay on May 30th. Payment will be made by separate check.

Quarter	Begin Date	End Date
1	November 16	February 15
2	February 16	May 15
3	May 16	August 15
4	August 16	November 15

Section 10: Each full time City employee shall be granted two (2) Personal Days per calendar year with the following stipulations:

- A. Each employee identified in Section 1, A, (1), and 1, A, (2), must have their Personal Day approved in advance by the City Manager or his/her designee.
- B. Personal Days must be taken (or lost) by May 30th of the succeeding year.

Section 11: A full time employee shall be granted time off with pay (not to be deducted from the employee’s sick leave) for the purposes of attending the funeral of a member of the employee's immediate family. Immediate family shall be defined to only include the employee's mother, father, spouse, former spouse, child, brother, sister, father-in-law, mother-in-law, grandparents and grandchildren. The employee may request up to a maximum of four (4) work days for each death in the immediate family.

An employee shall be granted time off with pay (not to be deducted from the employee’s sick leave) one (1) day to attend the funeral of an employee’s aunt, uncle, niece, nephew, or other relative living in your household under your care.

Section 12: An employee of the City of Canfield who may be injured in the course of duty in the employment of the City shall, upon filing with the Industrial Commission Workers' Compensation Division, a claim for such injury, receive from the City of Canfield injury leave with pay at their regular salary or hourly rate based on forty (40) hours per week.

Any compensation received in lieu of wages under Workers' Compensation Act or other insurance, the premiums of which were paid by the City, shall be reimbursed to the City or deducted from the employee's pay.

The maximum limit for injury leave with pay shall be ninety (90) days.

In case of an injury to an employee, the City manager or his designee shall cause a report of injury to be made to an appropriate physician within two (2) days. This physician shall be asked to submit a report to the City Manager, within ten (10) days after receiving the City Manager's report, stating what the employees’ disability is, if any, and what action has been or will be taken to correct the cause of any disability and the estimated time the employee will be absent from work, if any. The injured employee shall not return

to duty until a written certified statement from his physician authorizing the return to work is received by the City Manager.

Section 13: The terms and conditions under which a full time City Employee can request a leave of absence without pay will be governed by Section 8.05 of the Civil Service Commission of the Municipality of Canfield, Ohio's Rules and Regulations adopted November 14, 1973 and subsequently amended. For the first three (3) months, any employee granted a leave of absence without pay by the City Manager with the approval of City Council, shall continue to receive all benefits they are entitled to by their employment contract or this Ordinance. In the event that the Civil Service Commission grants a leave of absence to an employee for more than three (3) months, the Council of the City of Canfield will determine on a case-by-case basis if said employee will continue to receive their benefits after the third month of the leave of absence.

Section 14: An Employee who has been employed by the City of Canfield for at least twelve (12) months and has worked 1250 hours during the previous twelve-month period is an "eligible Employee" for family leave.

Family leave is twelve (12) weeks (60 working days), is unpaid and shall be granted to an "eligible employee":

- A. Because of the birth of a son or daughter of the Employee and in order to care for such son or daughter.
- B. Because of the placement of a son or daughter with the Employee for adoption or foster care.
- C. Because of a serious health condition of the Employee that makes the Employee unable to perform the functions of the job.
- D. Because of the need to care for the employee's spouse, son, daughter or parent with a "serious health condition".

An eligible Employee shall be granted, when requested, a total of twelve (12) weeks of family leave within the first twelve (12) months after a baby's birth or placement or for the need to care for the employee's spouse, son, daughter or parent with a "serious health condition".

Said leave may be taken by either parent.

During family leave, the eligible Employee shall first use all accumulated vacation, compensatory time and sick leave. However, the Employee may request to reserve some portion of vacation, compensatory time and sick leave, not exceeding 5 days. Then the Employee shall take the balance of family leave as unpaid leave.

Leave for the birth or placement of a child must be taken in one block of time, unless approved by the Employer.

Leave for the "serious health condition" of the employee's spouse, son, daughter or parent may be intermittent.

An Employee is required to request leave in writing thirty (30) days prior to commencement, if possible.

The Employer may request medical certification regarding the “serious health condition” and the probable duration of care.

If both parents are employed by the same Employer, the total amount of leave provided shall not exceed twelve (12) weeks (60 working days).

During the unpaid leave, all health care and life insurance benefits will be paid by the Employer.

If an Employee elects not to return to work after the expiration of the family leave, the Employer may recover from the Employee the cost of medical premiums paid during the unpaid portion of the leave.

Section 15: Holidays: The following twelve (12) Holidays shall be observed by all full time employees covered by this Ordinance: 1. New Year's Day, 2. Martin Luther King Day, 3. President's Day, 4. Good Friday, 5. Memorial Day, 6. Independence Day, 7. Labor Day, 8. Veteran’s Day, 9. Thanksgiving Day, 10. Day after Thanksgiving Day, 11. Day before Christmas, 12. Christmas Day. When the holiday falls on a Saturday, Friday will be observed as the holiday day. If the holiday falls on a Sunday, Monday will be observed as the holiday day. Only the individuals who are required to work to maintain the minimum service that is necessary shall be scheduled to work the holiday. This schedule shall be determined by the City Manager or his/her designee. Employees identified in Section 1, A, (2) shall be compensated at a rate of time and one half for actual work on a holiday.

Section 16: Insurance: The City of Canfield shall provide and pay a portion of the costs of a group hospitalization, surgical insurance, and major medical plan for all full time employees during their employment with the City except as otherwise excluded in this Ordinance. The employees shall contribute the following amounts toward payment of the premiums as follows:

	<u>2021</u>	<u>2022</u>	<u>2023</u>	
Single	12%	12%	12%	% per pay of the annual premium divided by 24
Employee/Child	12%	12%	12%	% per pay of the annual premium divided by 24
Employee/Spouse	12%	12%	12%	% per pay of the annual premium divided by 24
Family	12%	12%	12%	% per pay of the annual premium divided by 24

The City may elect to provide optional Vision and Dental plans and coverage. All employees desiring the aforementioned insurance shall make proper application with the Deputy Finance Director of the City of Canfield.

The City will also pay the full premium for all full time employees for a convertible term life insurance policy in the face value of Thirty-five Thousand Dollars (\$35,000).

Section 17: Professional Liability: The City of Canfield will provide professional liability coverage for employees whose job may require such coverage as determined by the City Manager.

Section 18: Jury Duty: Any full time employee who is called for jury duty, at either a Federal, County or Municipal Court, shall be paid his/her regular salary or his/her regular hourly rate for this lost time.

Section 19: Compensation for all work performed by City employees is scheduled to be paid semi-monthly on the 15th and 30th of each month, with the exception of February where the second pay shall be made on the last day of the month. If the 15th or 30th falls on a Saturday, Sunday or holiday, the employee will be paid on the last scheduled workday preceding the 15th or 30th or holiday.

Section 20: Mileage reimbursements for use of personal vehicle on City business shall be at the current published rate established by IRS. All expenses conforming to the City Travel Policy will be reimbursed, in a reasonable period of time, when requested and authorized by Purchase Order.

Section 21: Sick/Vacation Leave Cash Buyout Plan. When an employee chooses to retire, he/she will be afforded the opportunity to avail themselves of a pre-retirement Sick/Vacation Leave Buyout Plan as follows;

- A. In addition to the severance pay allowable by this Ordinance, employees who have a minimum of 23 years' service credit with OPERS may request an early payout of their accumulated sick leave and/or vacation leave hours.
- B. This **Sick/Vacation Leave Cash Buyout Plan** shall allow for the early payout of accumulated sick and/or vacation leave and shall be limited to a maximum of two hundred forty (240) hours of sick leave each year prior to retirement or a maximum of two hundred (200) hours of vacation leave each year prior to retirement, or any combination of both up to a maximum combined total of two hundred and forty (240) hours each year prior to retirement. These early payouts will be paid to a retiring employee during a maximum of three (3) years prior to the employees' retirement date. The payment value of these sick/vacation leave hours shall be calculated using the hourly rate in existence at the time the employee gives notice of retirement. Each payment shall be subject to normal payroll deductions. Enrolling in the **sick/vacation leave cash buyout plan** will not interfere with the employees' eligibility to earn a sick leave bonus.
- C. In order to participate in the **Sick/Vacation Leave Cash Buyout Plan** the employee must give written notice to the employer of his/her intention to retire in 3 years or less from the date of the written notice. Within 90 days, following the date of the employee notice, a letter of understanding, that identifies the date of retirement and the payout option listed below, that fits with the retirement date, must be signed by both the employee and the employer.

If the retirement date is:

Option 1:

Three years from the date of the signed letter of agreement, then the accumulated sick and vacation entitlement shall be paid out in equal installments, on scheduled pay dates, over three (3) years and paid at the current value of the entitled hours in existence at the date of the agreement.

Option 2:

Two years from the date of the signed letter of agreement, then the accumulated sick and vacation entitlement shall be paid out in equal installments, on scheduled pay dates, over two (2) years and paid at the current value of the entitled hours in existence at the date of the agreement.

Option 3:

One year from the date of the signed letter of agreement, then the accumulated sick and vacation entitlement shall be paid out in equal installments in one year, on scheduled pay dates and paid at the current value of the entitled hours in existence at the date of the agreement.

All payments of **Sick/Vacation Leave Cash Buyout Plan** benefits will be made on regularly scheduled payroll payment dates.

- D. When the letter of understanding agreement has been signed, - the total buyout hours identified in that agreement will be deducted from the accumulated sick and/or vacation leave hours in effect immediately before the signing of the agreement and only the remaining balance of accumulated sick and/or vacation leave hours shall be available for normal use by the retiring employee during his/hers remaining years of employment before retirement.
- E. If the employee, subsequent to the signing of the letter of understanding agreement, experiences a documented long term or extenuating catastrophic illness, then, but only after a complete review of the circumstances by the Employer together with the approval of the Canfield City Council;
 - the letter of understanding agreement between the employee and the employer shall be suspended and
 - the hours of sick and/or vacation leave, identified in the letter of understanding agreement, shall be added back to the employees current accumulated sick and/or vacation hours and the hours paid to the employee, under the **Sick/Vacation Leave Cash Buyout Plan**, shall be deducted from that same current balance of accumulated sick and/or vacation hours.
- F. A retiring employee may only apply for the benefits under the **Sick/Vacation Leave Cash Buyout Plan** once during his/her employment with the City of Canfield unless his/her participation in the plan was suspended as indicated in Sec. 21 E.

Section 22: Emergency Ordinance. That this Ordinance is hereby declared to be an emergency to retroactively apply changes in the Ordinance to January 1, 2022.

Section 23: This Ordinance and all deliberations relating to the passage of this Ordinance were held in open meetings of this Council, all pursuant to Section 121.22 of the Ohio Revised Code and Section 3.11 of the Charter of the Municipality of Canfield.

PASSED IN COUNCIL THIS ____ DAY OF _____ A.D., 2022.

PRESIDENT OF COUNCIL

ATTEST:

CLERK OF COUNCIL

Certification of Publication

I, the undersigned Clerk of Council of the City of Canfield, Ohio, hereby certify that the foregoing Ordinance was posted in a prominent place at the Municipal Building, Canfield, Ohio for seven continuous days, to-wit: _____
_____.

CLERK OF COUNCIL

APPROVED AS TO FORM:

MUNICIPAL ATTORNEY

Introduced by: _____
First Reading: _____

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AN AGREEMENT WITH
MS CONSULTANTS, INC. IN THE FORM ATTACHED
HERETO FOR PROJECT MANAGEMENT SERVICES
REGARDING INSPECTION OF WATER AND SANITARY
SEWER INSTALLATION (PHASE 2) AT MILLENNIAL MOMENTS
AND RELATED ITEMS AS PROVIDED THEREIN AND
DECLARING AN EMERGENCY**

WHEREAS, the City of Canfield hereby desires to engage MS Consultants, Inc. with regards for project management for services regarding inspection of water and sanitary sewer installation Phase 2 at Millennial Moments development as provided therein,

NOW THEREFORE, BE IT ORDAINED, BY THE COUNCIL OF THE CITY OF CANFIELD, COUNTY OF MAHONING, AND STATE OF OHIO;

Section 1. That the City Manager is hereby authorized and directed to enter into the attached agreement with MS Consultants, Inc. for the provision of certain services as provided therein.

Section 2. That this Resolution is hereby declared to be an emergency necessary for the preservation of the public peace, health, safety, and welfare of the Citizens of the City of Canfield. Said emergency exists by reason of the fact that it is necessary to commence project services immediately.

Section 3. That this Resolution and all deliberations relating to the passage of this Resolution were held in open meetings of this Council, all pursuant to Section 121.22 of the Ohio Revised Code and Section 3.11 of the Charter of the Municipality of Canfield.

PASSED IN COUNCIL THIS _____ day of _____, 2022.

PRESIDENT OF COUNCIL

ATTEST:

CLERK OF COUNCIL

Certification of Publication

I, the undersigned Clerk of Council of the City of Canfield, Ohio, hereby certify that the foregoing Resolution was posted in a prominent place at the Municipal Building, Canfield, Ohio for seven continuous days, to wit: _____

CLERK OF COUNCIL

APPROVED TO FORM:

MUNICIPAL ATTORNEY

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT ("Agreement") effective as of _____, 2022 ("Effective Date") between City of Canfield, 104 Lisbon Street, Canfield, Ohio 44406 ("Owner") and ms consultants, inc., 333 East Federal Street, Youngstown, Ohio 44503 ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: Water and sanitary sewer infrastructure will be installed by FJA Development for Phase 2 of the Millennial Moments development. The water and sanitary sewer infrastructure will be owned and maintained by the City of Canfield upon Council acceptance.

Engineer's services under this Agreement are generally identified as follows: Inspection of the water and sanitary sewer installation for Phase 2 of the Millennial Moments development.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein.
- B. Owner shall pay Engineer as set forth in this Agreement.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer's services;
 - 2. the presence at the Site of any Constituent of Concern; or

3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time and, in any event, no later than the dates set forth in any exhibit or amendment to this Agreement.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of this Agreement. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 1. amounts due Engineer will be increased at the rate of 2.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has 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.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of this Agreement.

4.03 Compensation

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, as follows:
 1. Labor costs shall be billed at the actual direct salary times a multiplier of 3.105 (2.76 multiplier for resident project representatives).
 2. **The total compensation for services under this Agreement is estimated to be \$25,000.00 in accordance with the assumptions outlined in Exhibit A.**
 3. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved by Owner.
 4. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in this Paragraph incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer's Consultants' charges.
 5. The amounts billed for Engineer's services under this Paragraph will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges.
 6. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of December 31st) to reflect equitable changes in the compensation payable to Engineer.
- B. Compensation for Reimbursable Expenses
 1. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in this Agreement.

2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.0.

C. Other Provisions

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.0.
2. The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

4.04 *Resident Project Representative*

- A. As applicable, Engineer shall be compensated for Resident Project Representative services in accordance with Exhibit C to this Agreement.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in an exhibit to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* 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 any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, 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.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;

- c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless both parties mutually agree to use other general conditions.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor'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 Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner 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 due and owing 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; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in this paragraph. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
 - 1. Commercial General Liability. Commercial General Liability Insurance with a minimum combined single limit of liability of \$1,000,000 per occurrence for bodily injury and / or property damage with a \$1,000,000 annual aggregate. This shall include products / completed operations coverage and shall also include Broad Form Contractual Insurance specifically covering this Agreement.
 - 2. Business Automobile Liability. Business Automobile Liability Insurance covering all owned, hired and non-owned vehicles and equipment used by Consultant with a minimum combined single limit of liability of \$1,000,000 for bodily injury, death and / or property damage.
 - 3. Workers' Compensation / Employers' Liability. Workers' Compensation Insurance which shall fully comply with the statutory requirements of all applicable state and federal laws.
 - 4. Professional Liability. Professional Liability Insurance in an amount not less than \$2,000,000 per claim / annual aggregate on a claims-made basis.
- B. Owner shall procure and maintain policies of property and liability insurance for the Project. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.

- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in the Agreement. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in the Agreement. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and the Agreement will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

- 1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
- 2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services 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 terms hereof through no fault of the terminating party.
 - 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 or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.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 thereof; 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 notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, 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.
- D. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.06, 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. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with

Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in this Agreement.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *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 6.08.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, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated 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 in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 - 2. 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.
 - 3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking other dispute resolution procedures.
- B. All disputes between the parties arising out of this Agreement that are not resolved by negotiation shall be subject to arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. In no event shall a demand for arbitration be made after the date when the institution of

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legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then 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 such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors,

members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.

- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in this Agreement.
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, 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 this Agreement or the Project, from any cause or causes.

6.12 Records Retention

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.
- F. *Confidential and Proprietary Information:* Owner agrees that the technical methods, design details, techniques and pricing data contained in any material submitted by the Engineer pertaining to this Project or this Agreement shall be considered confidential and proprietary, and shall not be released or otherwise made available by Owner to any third-party without the express written consent of the Engineer unless such information (a) was known by the Owner prior to receiving the confidential information from the Engineer; (b) becomes rightfully known to the Owner from a third-party source not under an obligation to the Engineer to maintain confidentiality; (c) is or becomes publicly available through no fault of or failure to act by the Owner in breach of this Agreement; or (d) is required to be disclosed in a judicial or administrative proceeding, or is otherwise requested or required to be disclosed by law or regulation.
- G. *Construction:* The parties acknowledge that each party has reviewed this Agreement and voluntarily entered into this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement, or any amendments or exhibits to it
- H. *Counterparts:* This Agreement may be executed in any number of counterparts each of which when so executed and delivered will be an original hereof, and it will not be necessary in making proof of this Agreement to produce or account for more than one counterpart hereof. This Agreement may be executed and delivered by facsimile or via electronic mail.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer beyond those identified as Basic Services in Exhibit A of this Agreement.
 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with of Exhibit A of this Agreement.
 6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
 7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
 8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance,

Exhibit K – Amendment to Owner-Engineer Agreement.

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- resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
 10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
 11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
 12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
 13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
 14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
 15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
 16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
 17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
 18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in an exhibit to this Agreement.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.

30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*:

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A- Engineer's Services.

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) 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 written instrument duly executed by both parties.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

[THE BOTTOM OF THIS PAGE IS INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS ON NEXT PAGE]

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

Owner: City of Canfield

Engineer: ms consultants, inc.

By: _____
Print name: Chuck Colucci
Title: Acting City Manager/Police Chief
Date Signed: _____

By: Steve Preston
Print name: Steve Preston, P.E.
Title: Project Manager
Date Signed: November 11, 2022

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

104 Lisbon Street
Canfield, Ohio 44406
Designated Representative (Paragraph 8.03.A):
Chuck Colucci
Title: Acting City Manager/Police Chief
Phone Number: 330-533-1101

333 East Federal Street
Youngstown, Ohio 44503
Designated Representative (Paragraph 8.03.A):
Steve Preston, P.E.
Title: Project Manager
Phone Number: 330-744-5321

EXHIBIT A

SCOPE OF SERVICES

**City of Canfield
Millennial Moments Phase Two
Water and Sanitary Sewer Inspection Services**

November 11, 2022

Project Understanding

ms consultants, inc. (Engineer) understands that the City of Canfield (Owner) intends to enter into an agreement for the inspection of the installation of the water and sanitary sewer associated with Phase Two of the Millennial Moments development. This development is part of a Joint Economic Development District (JEDD).

The Scope of Services for the project consists of the following:

1. Construction Inspection

- A. Engineer shall coordinate with the Contractor regarding project schedule and provide inspection services when notified by Contractor of a start date. Engineer shall not be responsible for the inspection or approval of any water or sanitary infrastructure installed prior to execution of this agreement with the Owner.
- B. Engineer shall provide a project representative (PR) totaling a maximum of 160 hours of full-time inspection for one inspector. Full time inspection is quantified as 8 hours per day, Monday-Friday. In the event that funds run out and more work is required, the Engineer and Owner shall negotiate a modification to this agreement for additional inspection. The inspector shall observe, as an experienced professional, the progress of the various aspects of the Contractor(s) work. 32 hours of time is provided for a project engineer for coordination with the City.
- C. Based on information obtained during such visits and on such observations, Engineer shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and Engineer shall keep the Owner informed of the progress of the work.
- D. The purpose of Engineer's visits to the site will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by exercise of Engineer efforts to provide for the Owner a greater degree of confidence that the completed work of the Contractor(s) will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by Contractor(s). On the other hand, Engineer shall not, during such visits or as a result of such observations of Contractor(s) work in progress, supervise, direct or have control over Contractor(s) work. Also Engineer shall not have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s), for safety precautions and programs incident to the work of Contractor(s)', or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor(s) furnishing and performing their work. Accordingly, Engineer can neither guarantee the performance of the

construction contracts by Contractor(s) nor assume responsibility for Contractor(s) failure to furnish and perform their work in accordance with the Contract Documents.

- E. During such visits and on the basis of such observations, Engineer may advise the Owner to disapprove or reject Contractor(s) work while it is in progress if Engineer believes that such work will not produce a completed project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the project as reflected in the Contract Documents.
- F. Engineer shall not be responsible for the acts or omissions of any Contractor(s), or of any subcontractor or supplier, or any of the Contractor(s) or subcontractors' or supplier's agents or employees or any other persons (except Engineer's own employees and agents) at the site or otherwise furnishing or performing any of the Contractor(s) work; however, nothing shall be construed to release Engineer from liability for failure to properly perform duties and responsibilities assumed by Engineer in the Contract Documents.

2. Additional Services of Engineer

- A. If authorized in writing by the Owner, Engineer shall furnish or obtain from others Additional Services that are not included as part of Basic Services; these will be paid for by the Owner as a negotiated extra to the proposed work.
 - 1. Services resulting from significant changes in the general scope, extent or character of the project or its design including, but not limited to, changes in size, complexity, Owner's schedule, character in construction or method of financing; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond Engineer's control.
 - 2. Preparing to serve or serving as a Engineer or witness for the Owner in any litigation, arbitration or other legal or administrative proceeding involving the project.

3. Owner's Responsibilities

- A. Designate in writing a person to act as Owner's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the Owner's policies and decisions with respect to Engineer's services for the project.
- B. Assist Engineer by placing at Engineer's disposal all available information pertinent to the project including previous reports and any other data relative to design or construction of the project.
- C. Arrange for access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under this Agreement.
- D. Furnish approvals, pay for and secure all permits from all governmental authorities having jurisdiction over the project and such approvals and consents from others as may be necessary for completion of the project.
- E. If the Owner designates a person to represent the Owner at the site who is not Engineer or Engineer's agent or employee, the duties, responsibilities and limitations of authority of such other person and the affect thereof on the duties and responsibilities and limitations of authority of such other person and the affect thereof on the duties and responsibilities of

Engineer will be set forth in an exhibit that is to be identified, attached to and made part of this Agreement before such services begin.

- F. Attend the preconstruction conferences, construction progress and other job related meetings and substantial completion inspections and final payment inspections.
- G. Give prompt written notice to Engineer whenever the Owner observes or otherwise becomes aware of any development that affects the scope or timing of Engineer's services, or any defect or non-conformance in the work of any Contractor.
- H. Furnish, or direct Engineer to provide additional services as stipulated in this Agreement or other services as required in a timely manner.
- I. Bear all costs incidental to compliance with the requirements of this Section.

4. Assumptions/Exclusions

- A. Construction administration services are not included.
- B. Shop drawing review is not included.
- C. The Engineer is not responsible for the inspection or approval of any water or sanitary infrastructure installed prior to the mutually agreed upon date when Engineer's services are first required.
- D. The Engineer did not prepare the construction drawings, and therefore, cannot act as an agent of the Design Engineer, WallacePancher Group, when it comes to clarifying design intent.

5. Period of Service

- A. The Engineer agrees to provide full-time inspection services as described in section 1 until the completion of construction or until such time as the budget provided under this agreement is fully utilized without modification.

Introduced by: _____

Motion No. _____

A MOTION MAKING APPOINTMENTS TO
BOARDS, COMMISSIONS & COMMITTEES

WHEREAS, the terms of several individuals serving on Boards, Commissions and Committees expire December 31, 2022; and

WHEREAS, City Council is empowered by the Charter to appoint members to said Boards, Commissions and Committees; and

WHEREAS, Council desires to make these appointments.

NOW, THEREFORE IT IS HEREBY MOVED BY COUNCIL OF THE CITY OF CANFIELD, OHIO:

Section 1: The following individuals are hereby appointed/reappointed to fill the positions on the designated Boards, Commissions or Committees for the term as indicated:

NAME	COMMITTEE	TERM EXPIRES
Louis Zarlenga	Planning & Zoning Commission	12/31/2025
Stephen Decapua	Planning & Zoning Commission	12/31/2025
Debra Roman	Design Review/Historical Preservation Committee	12/31/2025
Kirk Kreuzwieser	Design Review/Historical Preservation Committee	12/31/2025
Joseph Testa	Design Review/Historical Preservation Committee	12/31/2025
Thomas Kupec	Civil Service Commission	12/31/2025
Betty Aberson	Parks, Recreation & Cemetery Board	12/31/2025
Kathryn Young	Parks, Recreation & Cemetery Board	12/31/2025
Charles Tieche	Parks, Recreation & Cemetery Board	12/31/2025
Blaise Karlovic	Parks, Recreation & Cemetery Board	12/31/2025
John Morvay	Cardinal Joint Fire District	12/31/2023
Denise Harlan	Cardinal Joint Fire District	12/31/2023
Lori DiRenzo	Community Reinvestment Area Council- Mayor's Appointment	12/31/2025
Breanna Fitzgerald	Community Reinvestment Area Council- Council Appointment	12/31/2025
Mark Graham	Community Reinvestment Area Council-Council Appointment	12/31/2025
Julio Williams	Accepting Planning & Zoning Appointment to the Community Reinvestment Area Council	12/31/2025
Chris Vecchione	Community Reinvestment Area Council- Mayor's Appointment	12/31/2025

Section 2: That this Motion and all deliberations relating to the passage of this Motion were held in open meetings of this Council, all pursuant to Section 121.22 of the Ohio Revised Code and Section 3.11 of the Charter of the Municipality of Canfield.

PASSED IN COUNCIL THIS _____ DAY OF _____ A.D., 2022

CLERK OF COUNCIL

Certification of Publication

I, the undersigned Clerk of Council of the City of Canfield, Ohio, hereby certify that the foregoing Motion was posted in a prominent place at the Municipal Building, Canfield, Ohio for seven continuous days, to-wit: _____

CLERK OF COUNCIL

APPROVED AS TO FORM:

MUNICIPAL ATTORNEY

MINUTES

CANFIELD CITY COUNCIL **REGULAR MEETING** NOVEMBER 16, 2022- 5:30 P.M.

The meeting was called to order by Anthony Nacarato, Acting President of Council, followed by the Pledge of Allegiance. The Clerk called the roll to which a quorum responded as follows: Mr. Dragish, Mr. Nacarato, Mr. Neff and Mr. Tieche.

Absent: Mr. Morvay.

Staff present: Charles Colucci, Chief of Police; Christine Stack-Clayton, Finance Director; Mike Cook, Zoning Inspector and John Rapp, Public Works Superintendent.

Under **MINUTES**, the Minutes of the Regular Meeting on November 2, 2022 were approved as presented.

Under **PROCLAMATIONS & PRESENTATIONS**, there were none.

Under **READING OF COMMUNICATIONS**:

MR. TIECHE: I have nothing.

MR. NEFF: I had communications with an individual that asked me about the status of Wi-Fi on the Green. We don't need to discuss that right now but I'd like to bring it up sometime during the session to discuss the feasibility and whether we might do that early next year, if not this year.

MR. DRAGISH: I have nothing.

MR. NACARATO: I've had a few communications. I've had a couple people that were complaining about leaf pick up and how it was going. Then I had several people that commend John and his team. Those that complained, I explained to them that we're working in quadrants. We lost a machine for almost a complete day. I explained that to them. But for the most part, I had more people that were grateful and thankful for the job that you guys are doing. I just wanted to recognize you and your crew and the wonderful job that they're doing on the leaf pick-up. That was really the only thing that I had. Actually, John I had received a few calls the same way, so we were discussing that. I'll move on to our Acting City Manager.

CHIEF OF POLICE: Thank you. We attended the Veteran's Day Plaza Dedication last week on Veteran's Day. It rained. It was muddy. I still didn't clean my boots. It was a great event, a great turn-out considering the weather. It was heartfelt. Mike forwarded us a program that

Armstrong Cable put together Greg Roden believe. We posted it on social media, if it hasn't been posted yet, it will be there. I think it's 30 minutes of the entire service.

I'll just go right into the leaf topic. Most of you seen that brief memo I put out to residents. You can't control Mother Nature. Over the years, leaves come down at different rates every year, depending upon rain and heat. This year, they all came down at once. It put a firm grip on the leaf hoses and the two that we have. People make comments wanting to contest John's simple request not to put grass with the leaves, it's because we end up sucking up things, such as softballs, sticks, branches, grass and it ruins and damages our machines. We lost a machine for a day. That's why he asked something simple like that. So, what we've also done in the past is, we've had outside companies, subcontractors come in and do leaf pick-up. Part of my responsibility from a police perspective is to make sure that I got a grip on the community and a pulse on the community and what they expect and what they want. When we were preparing for our policy levy, leaves were of contention because there were some threats put out there that we weren't going to pick up leaves anymore, if we didn't pass income tax or police levy's. Not by me, not by anybody from my department. I understand this community loves their leaf pick-up and wants it. They want it from now and well into the future. Decisions were made over time to do away with the subcontractors, the decision was made to put everything on our street department with 2 trucks. I didn't agree with it then, I don't agree with it now. I'm going to highly suggest to members of council that during budget hearings next year, we put that money back in there, so we can bid out supplemental leaf pick-up or leaf pick-up and have our crews available for supplemental pick-up. One thing that wasn't taken into consideration when that decision was made was that, we have 2 crews out there, that's all of our street department employees, if an emergency happens, such as a water break that we had 2 weeks ago on Friday, and burials, it takes our crews right off of leaf pick-up. If we have damage because people are putting things in leaves that they're not supposed to, it takes our crews off of leaf pick-up. It's John's goal, it's my goal, to bring that back, I think its money well spent. I can't imagine putting that pressure, strain, burden on our 8 or 10 people.

PUBLIC WORKS SUPERINTENDENT: We had 6 up until last week. We're at 8 now.

CHIEF OF POLICE: We just added two more. John is out there sucking up leaves. He's out there driving the truck. So, everybody gets pulled away from what we're supposed to do. So, it's inefficient. It was a bad move. I'm going to highly recommend that next year we consider that and give our residents what they want and deserve. It's a simple process. On that note, we did get emails, we did deal with some calls. I actually had one (I'll just say it) delusional person call and tell me the Colorado River was rolling through the backyard because the leaves were blocking the catch basins and there was nowhere for the water to go. The Colorado River, okay. All in all, I'm getting the same thing back, positive. I know they work hard to get the leaves in a pile and we're not there in time and they blow all over the place. We all deal with that. We all have homes. His crew deserves to have that help. That pressure should not be on them. Last year the leaves were staggered. This year they were all at once. It worked last year because they were spread out. We can't dial it in, like we do the thermostat. It's just going to happen. I

think it's something we need to seriously consider. I think I made my point clear and speaking for myself, John and anyone else that represents the city.

Also, one last bit of communication, this is more of a personal note, there are two local football teams that are advanced to the regional finals, the Ohio State High School Athletic Association Football Tournament, one is Canfield, I wish them and Coach Pavlansky the best of luck. The other one is recognized as Canfield South Range. We know it as South Range and yes, Kathryn it's not in the City of Canfield and yes, my son goes there. It's recognized throughout the State of Ohio as Canfield South Range. Two of our Canfield teams are in the finals and I wish Coach Yeagley at South Range the best of luck, as well. I just thought that was pretty cool, if you don't follow football, if you don't follow high school sports, two Canfield Schools are in the finals. That's it for communications.

MR. NACARATO: Thank you.

Under **REPORTS** of Committees, Boards, Mayor's Report, City Manager, Finance Director, Chief of Police, Zoning Inspector and Public Works Superintendent.

MR. TIECHE: I have no report.

MR. NEFF: We had Planning & Zoning, I'm going to leave most of the details to Mike. We're asking for approval from stuff from Cocca's Development. We replatted one or two of Charlie Master's lots at Stonebridge. We set several dates for prelim for public hearings. So, I'll let Mike announce those.

MR. DRAGISH: I have the Mayor's Monthly Statement to Council. For purposes received from costs and fine and everything, at the end of the day, our net collections to the city was \$775.01.

MR. NACARATO: Design Review didn't have a meeting since our last City Council Meeting, so I have no report. John did not give me any report about the Fire Board. So, we'll go over to Mr. Rapp.

PUBLIC WORKS SUPERINTENDENT: Good evening. Leaves. I'm super proud of these guys. They're working all weekend, 8 hours a day doing this stuff, getting pulled in different directions, getting this stuff done. I know everybody is working hard to get their leaves out there. I appreciate the support from Chuck and Mike even helped us. We had a water break one day and we had to pull off and he comes out and helps flag traffic on Fairground Blvd for us, so we can keep a truck out. I appreciate all that, working with Christine and hopefully we can get this remedied. The support is great and you guys too, for your understanding and the residents. Also, taking the phone calls, the front desk, explaining to them what our situation is and what we're doing. To put it into a little bit of perspective. We keep daily logs and one of those requirements for being a Tree City is the number of loads that we do annually. I give that to Patty at the end of the year and she reports it. As of November 16th, of last year, with a full crew, all 8 guys, we picked up 242 loads. Right now, as of 11-16-2022, we're at 417 loads. We

are picking up so much more right now. The reason for that, every single house has a pile out. Everybody is taking advantage of it. We have 1,100-man hours so far, picking leaves up and that's counting Mr. Snovak and myself out raking or driving truck and having to pull on and off when we have to, to get emergencies taken care of. I'm so proud of them and the work that they're putting in to get these leaves picked up. They don't want to be picking them up in the snow. The only thing that would help us, once again we touched on the grass, we're still getting complete solid piles of grass out there. We may end up just leaving them because we don't want to break down and affect everybody. People just have to understand that. The leaf piles are supposed to be 6 feet away from the curb, in. We're getting piles that are 20 feet back. We're leaving a door hanger, warning them that next time when we come through, we're not going to pick them up. We pick them up on the first pass. I think they've been doing it on the second and third passes too. It's something to keep in mind, it helps us move quicker. If we have to spend 20 minutes at a house, that takes from your neighbors or somebody down the street that's not getting them picked up because we're spending so much time there. Just know we're out there trying to get them picked up before it gets even worse with this weather. It's coming. I appreciate all the support and kind words. People have been really nice and understanding, bringing us donuts and coffee on Saturday. I think the majority understand. Thank you.

FINANCE DIRECTOR: We started the interview process for the new Income Tax Administrator. We interviewed 3 people and we're going to be moving forward with more interviews. Chuck and I met with Care Factor our insurance company today for our 2023 rates. We've got an increase of 18% but the fees from them dropped 4.8%, so we net a 16.3% increase. It's about \$26,000 for the year. We're doing pretty good in claims. We had one very large claim. We've had \$799,000 in medical claims so far this year and one claim was over \$600,000. Other than that, one claim we're doing pretty good. Lastly, there is a proposed House Bill 512, asking for an increase in the contribution amount for full time police officers in Ohio Police & Fire Pension Fund. They want to increase the employer's contribution from 19.5% to 26.5% over a period of 5 years.

MR. TIECHE: Incremental over that 5 years?

FINANCE DIRECTOR: Yes. Still not pretty. That's all I have.

ZONING INSPECTOR: For the month of November, we issued 7 permits for a total valuation of \$92,136.00. At our planning meeting the other day, we granted an adjustment for Jeff Tach on 485 W. Main Street for an additional building on a lot. He's planning on putting a drive-thru carry-out on that property. You have a couple of replats, 530 W. Main on your agenda tonight. They're replatting 2 lots into 1. Charlie Masters is replatting 3 lots on Lake Wobegon. Mr. Cocca is here for Villa Theresa we passed that last week at Planning & Zoning. He has a few things that he has to clean-up and he'll be ready to build houses. We're working on accessory building ordinance that will be coming at you. We're accepting a PUD Ordinance that we have on the agenda tonight. We have a busy planning agenda next month, we have 3 public hearings. That's all.

MR. TIECHE: If he's talking about a drive-thru, wouldn't they have to have liquor license approval before we can grant that? Which goes first?

ZONING INSPECTOR: We just granted the additional building on the lot. It's up to him to come up with the license.

ATTY. FORTUNATO: Correct. We don't wait for the license.

MR. TIECHE: Okay.

ZONING INSPECTOR: He has to come to Design Review for approval of the building.

MR. NACARATO: I'm going to have you put your police chief hat on first, Chuck.

CHIEF OF POLICE: I talked to John Morvay via text and he wanted me to pass along the same thing, he's received more compliments than anything negative. Going back to communications real quick, I did speak to a few of you last week and I just wanted the community to know that council was involved with concerns about the leaves and we talked about things, such as overtime. John tried to do some overtime after hours but the guys were just done with leaves. But we were able to get some crews on overtime this weekend.

PUBLIC WORKS SUPERINTENDENT: Saturday and Sunday.

CHIEF OF POLICE: I appreciate the ideas. I wanted them to know that council was directly involved with what was going on. Back to the police issues.

Police Report: A quick discussion on the car thefts. I was talking a lot the last two months about making sure people lock their cars and don't leave their keys in their unlocked cars. We got such a talented crew of investigators at our place. Without getting into all the intricacies of what they were doing, we were able to pin point, this group reaches out as far west as Cleveland and Portage Counties, east to Sharon, south as far as I'm aware of Columbiana. Our Canfield Police were working together with all the local agencies but we took it personal because we were the one's chasing people, we had two pursuits out of our town, that ended up in crashes. They took the lead on this case and they were able to predict and pin-point where these guys were going to hit next. The end of last week or the week before, they were able to catch 2 of the 6 in action. One fled on foot and one has already plead guilty to everything. They were able to catch them in the act, in Youngstown. That didn't end in a crash or injury or anything like that. That was my main concern. Their willingness to evade us and crash. Sgt. Josh Wells, Scott Bennett and Dom Rozzo, these guys are amazing investigators that we have. They were able to solve a lot of crimes in outside communities as well. There are a few more running around out there but the case is far from closed. We hope to bring them all in soon. Police cruiser update: This is more informational than anything else. The fleet and lease

vehicles, government vehicles, it's really hard to get your hands on any because the shortages in computer chips and parts.

The supply chain has impacted all of that. The majority of the manufactures have been focusing on retail, where they're going to make their money. It's been a struggle for the government to get vehicles. Several police agencies, I would assume across the country but for sure in Ohio ordered 4 police cars and it's been going back to 13 months. Nobody got any of these cruisers, they were all cancelled. The prices were going to increase by \$9,000 next year on the Ford product. Dodge is the same thing, hard to get. We ordered our cars in March, we planned ahead, we ordered 4 for the next two years. We haven't had any cars this year because of the supply chain. Fortunately for us, ours are coming in, in January. Part of the decision we made was an economical decision. Now these Chevy Tahoe police packages, contrary to everybody's belief will now soon be one of the cheaper police package vehicles. We're lucky that we had that to get new cruisers. Those departments that are 12 cars behind, that's expensive as can be repairing those cars. They're looking to take action. The State of Ohio, Attorney General's Office are investigating it and looking to take action against certain manufacturers for not fulfilling their end of a contract obligation. We're not going to be involved with that.

City Manager Report: Christine, Scott Weamer and Kristin Dahlberg have done their best to weed through all of the Income Tax Administrator applicants. They've got that narrowed down to two. I'll be taking over from there. We'll be interviewing these two people. I'll paraphrase but she's right here, I think she's very happy with both and we're excited that we have qualified, capable applicants to do the job.

Pump Track update: I put this under reports because I think we're going to have to make a decision. Council at some point or the Parks Board. We did receive the grant, however similar to most grants that we receive anymore, it wasn't for the full amount. They were asking for \$89,000, they funded the grant up to \$29,000. I've been in contact with both sides, the supplier of the materials and the planners and they're pretty confident that it's going to take another \$30,000 to get a product that's going to be able to get the bare minimum done. Up to that \$89,000 will give you more options with ramps. I'm not too familiar with it because I haven't looked at it too closely, but they're thinking \$60,000 is what we're going to need to be able to implement it, do it right, and have a product that we can build on. Right now, that grant is only going to fund \$29,000. The decision is going to have to be made, ultimately with you 5; if we're going to fund that. We could phase it. We can always go back next year and try again for additional money. That's where it's at. It was approved for \$29,000. I talked to the people on the Parks Board dealt with originally and they think we got to add another \$30,000.

MR. TIECHE: How long does that \$29,000 available for?

CHIEF OF POLICE: I think the money that were not used last time was about 3 years. That sounds like a long time but they're telling me we have time.

MR. TIECHE: Three years to come up with the additional money.

CHIEF OF POLICE: The last project, the monies that weren't utilized were 3-year-old project. I'll confirm that and get back to you guys. You're going to need to know that.

MR. TIECHE: Is there any chance, in that 3-year period, that \$29,000 amount may increase?

CHIEF OF POLICE: I will look into that. Hopefully by budget time.

MR. TIECHE: Whatever we're short, that's something that we have to come up with.

CHIEF OF POLICE: I'll have the answers by the time we make a budgetary decision.

FINANCE DIRECTOR: The grant does require a minimum of a 25% match from the city.

MR. TIECHE: Okay, 25% match on the 89 or 25% match on the 29?

FINANCE DIRECTOR: On the 29.

MR. TIECHE: Thank you.

CHIEF OF POLICE: That is the most recent update on the pump track. That's it.

MR. TIECHE: What is the mileage on our vehicles? Do we have 100,000 miles?

CHIEF OF POLICE: Over 100,000 miles. The ones that are getting turned over, yes.

MR. TIECHE: Okay. We're not trading in 40,000 miles cars.

CHIEF OF POLICE: No. Going back, when we were first bought the Tahoe's, the agencies that were using those were getting more miles out of them than the Fords or the Dodges, so that's the hope, that we can get 140,000-150,000 before we turn them over without large service fees.

MR. TIECHE: We're turning in our vehicles and they're buying them back from us on the lease deal.

CHIEF OF POLICE: The cruisers aren't part of that lease package. Wade decided to give them the old cruisers, Enterprise because they were giving the most amount of money than any dealership locally would have given us.

MR. TIECHE: Very good. Thank you.

MR. NACARATO: Council any other questions for these reports?

Under **QUESTIONS** from the public on reports

KATHRYN YOUNG: Kathryn Young, 570 Barbcliff. I just wanted to say, good job with the leaves. The information about having more loads, myself, I live in a forest, so I realize that usually my leaves aren't down until Christmas and they are all down. So, everybody's leaves are all down, for whatever reason. The thing about putting them within 6 feet, when you live in a forest, which is pretty much the neighborhood behind the high school, they end up in the street because people are pushing them out in the street to get that 6 feet. When you have this ice, rain, and snow and your trucks hit them, it's horrible, especially coming around corners.

The other question I wanted to ask, originally, we did away with using the outside source for leaves because we bought a lot of fixed assets to do that. The extra truck.

PUBLIC WORKS SUPERINTENDENT: No, we did not buy an extra truck.

KATHRYN YOUNG: Didn't we buy an extra truck?

CHIEF OF POLICE: No.

KATHRYN YOUNG: The reasoning for doing it all in house was because.....

PUBLIC WORKS SUPERINTENDENT: To save money.

CHIEF OF POLICE: To save money. We did buy an extra truck but it was because there was one available and we knew looking forward that they weren't going to be available.

PUBLIC WORKS SUPERINTENDENT: It was just a replacement for a truck that needed replaced.

KATHRYN YOUNG: If we go down to one crew and you hire another crew, you have that whatever goes into the truck for the leaves. Can that be sold to offset?

CHIEF OF POLICE: No. Not at all. If you want to discuss that, we can do that.

KATHRYN YOUNG: I'm just saying to save money to balance things out for next year. If you need more money, you could have, if you're not using it and it's sitting in storage because you only have one crew. You know what I'm talking about, the thing that goes inside the truck to suck up all the leaves.

PUBLIC WORKS SUPERINTENDENT: There may be times where we have one crew out and there may be times where we have two crews out. I assure you, we could rotate those and if we have a machine break, we can always have that back-up. This year, we were fortunate that we actually stocked the major part that actually broke. We pulled it off the shelf and it took us a day to get it back in service. If you try to order something like that, we may be 6 weeks or 6 months out for replacement parts. I would highly advise keeping a back-up in our fleet.

KATHRYN YOUNG: The last thing I wanted to mention was Veteran's Day. I thought it went really well. It had rained and partial snow, the turn-out was great. It was brought up about a ramp, on that side so the veterans can go and sit. I will mention it at Park Board for maybe one of the things for next year, put it on the purchase of assets, perhaps.

MR. NACARATO: Anyone else? Hearing none, we'll move forward.

Under Recognition of Persons Desiring to Appear Before Council:

FRANK MICCHIA: Good evening, Frank Micchia, 220 Glenview. A couple of items. Number one, on the city website, there is a button to push for Agendas but if you want the packet, you have to dig to find it. May I suggest that it be placed on the same button as you go to, to find the agenda. Maybe it's more difficult for me but it's hard to find the packet. Number two, leaf pick-up. Nobody is more grateful than me. Compared to the last couple of years, this year, it appears that we're a little bit overloaded. I appreciate what Chief Colucci said and the possible plans for next year. With the two crews, work went on a whole lot better. My leaves have been sitting for two weeks and driving down Callahan, I see places where the leaves were and the grass is yellow. Maybe it will come back. The guys are doing a good job given the facilities that they have. I don't think anyone should knock them for the work that they're doing. We apparently overloaded them this year and hopefully next year we'll revert back to where we've been. Thank you.

KATHRYN YOUNG: Kathryn Young, 570 Barbcliff. I just wanted to mention on November 6th of this year, there was something in the Vindicator and it had to do with seeking a grant for self defense classes; which I think I mentioned earlier this year, maybe something on the Green. It says, the office is applying for Federal American Rescue Plan Funds to the Ohio Department of Public Safety. This is Youngstown doing this but if these funds are available maybe we can do something on the Green or do something at the high school for citizens. So, people are prepared, if they need it. You have your sword but you keep it sheathed. Thank you.

MR. NACARATO: Anyone else before we move forward? Hearing none, we'll move on.

Under **OLD BUSINESS**, there was none.

Under **NEW BUSINESS**:

ITEM A: An Ordinance Approving the Replat of Canfield City Lot 929 and Lot 6873 at 530 W. Main Street by Ken Cerimele.

MR. NACARATO: As per the provisions of Section 4.05 of the Charter of the City of Canfield, I move that Council dispense with the requirement of two readings of the proposed Ordinance and authorize adoption of the same upon its first reading.

MR. TIECHE: Second.

ROLL CALL ON MOTION:

4 Votes-Yes

0 Votes-No

Motion passes.

MR. NACARATO: As per the provisions of Section 4.05 of the Charter of the City of Canfield, I move that Council dispense with the requirement of a full reading of the proposed Ordinance and authorize reading by title only.

MR. DRAGISH: Second.

ROLL CALL ON MOTION:

4 Votes-Yes

0 Votes-No

Motion passes.

MR. TIECHE: Mr. President, I have an Ordinance approving the replat of Canfield City Lot 929 and Lot 6873 at 530 West Main Street by Ken Cerimele. I move for passage.

MR. NEFF: Second.

MR. NACARATO: Chuck what's going on here?

CHIEF OF POLICE: City staff was approached by the owners of City Lot Number 929 and Lot 6873 on W. Main Street regarding his desire to replat lot 929 and lot 6873 into one parcel. They are opening a daycare on the front half of the lot and they need to fence in the yard. There are future plans for inside storage buildings on the lot. The Planning & Zoning Commission approved the replat at their November 10th meeting. They recommend approval. This Ordinance provides for final approval of the replat of Canfield City Lot 929 and Lot 6873 at 530 W. Main Street by Ken Cerimele.

MR. NACARATO: Council question?

MR. NEFF: Was this replatted into two lots?

ZONING INSPECTOR: In 2014.

MR. NEFF: Now it's going to go back to one.

ZONING INSPECTOR: Yes.

MR. NEFF: Does that jive with having storage units?

ZONING INSPECTOR: He would have to come in for an adjustment for putting more than one building on a lot.

MR. NEFF: Thank you.

MR. NACARATO: Citizens any questions on this? Hearing none, can we have the vote.

ROLL CALL ON ORDINANCE	4 Votes-Yes
	0 Votes-No
	Ordinance passes
	Ordinance 2022-52.

ITEM B: An Ordinance Approving the Replat of Canfield City Lots 6903, Creating Lots 6905, 6906, and 6907 on Lake Wobegon Drive by Charles Masters.

MR. NACARATO: As per the provisions of Section 4.05 of the Charter of the City of Canfield, I move that Council dispense with the requirement of two readings of the proposed Ordinance and authorize adoption of the same upon its first reading.

MR. DRAGISH: Second.

ROLL CALL ON MOTION:	4 Votes-Yes
	0 Votes-No
	Motion passes.

MR. NACARATO: As per the provisions of Section 4.05 of the Charter of the City of Canfield, I move that Council dispense with the requirement of a full reading of the proposed Ordinance and authorize reading by title only.

MR. NEFF: Second.

ROLL CALL ON MOTION:	4 Votes-Yes
	0 Votes-No
	Motion passes.

MR. NEFF: We have an Ordinance approving the replat of Canfield City Lots 6903, Creating Lots 6905, 6906, and 6907 on Lake Wobegon Drive by Charles Masters. We move for passage.

MR. TIECHE: Second.

MR. NACARATO: Chuck.

CHIEF OF POLICE: City staff was approached by Charles Masters regarding a replat of Canfield City Lot 6903 and creating lots 6905, 6906, and 6907 on Lake Wobegon Drive. Planning & Zoning Commission approved the replat at their November 10, 2022 regular meeting and recommended approval.

MR. NACARATO: Questions from Council? Hearing none. Questions from citizens? Hearing none. Can we have the vote.

ROLL CALL ON ORDINANCE:	4 Votes-Yes
	0 Votes-No
	Ordinance passes.
	Ordinance 2022-53.

ITEM C: An Ordinance Adopting a New Section 1155.24 of the Codified Ordinances of the City of Canfield

MR. NACARATO: As per the provisions of Section 4.05 of the Charter of the City of Canfield, I move that Council dispense with the requirement of a full reading of the proposed Ordinance and authorize reading by title only.

MR. TIECHE: Second.

ROLL CALL ON MOTION:	4 Votes-Yes
	0 Votes-No
	Motion passes.

MR. DRAGISH: I have an Ordinance Adopting a New Section 1155.24 of the Codified Ordinances of the City of Canfield. This constitutes first reading.

CLERK: Public Hearing is set for December 21st at 5:20pm

ITEM D: A Resolution Authorizing the City Manager to Submit Applications, and to Execute Contracts and Act as Chief Executive Officer for the Ohio Public Works Commission, Round 37 OPWC Funded Project; Namely the 2023 Resurfacing Project, and to Designate the Finance Director as Chief Fiscal Officer for all Grant Documents for the Project and to Designate the MS Consultants, Inc. as the Project Manager, and Declaring an Emergency.

MR. NACARATO: As per the provisions of Section 4.05 of the Charter of the City of Canfield, I move that Council dispense with the requirement of two readings of the proposed Resolution and authorize adoption of the same upon its first reading.

MR. DRAGISH: Second.

ROLL CALL ON MOTION:	4 Votes-Yes
	0 Votes-No
	Motion passes.

MR. NACARATO: As per the provisions of Section 4.05 of the Charter of the City of Canfield, I move that Council dispense with the requirement of a full reading of the proposed Resolution and authorize reading by title only.

MR. NEFF: Second.

ROLL CALL ON MOTION:

4 Votes-Yes

0 Votes-No

Motion passes.

MR. TIECHE: Mr. President, I have a Resolution Authorizing the City Manager to Submit Applications, and to Execute Contracts and Act as Chief Executive Officer for the Ohio Public Works Commission, Round 37 OPWC Funded Project; Namely the 2023 Resurfacing Project, and to Designate the Finance Director as Chief Fiscal Officer for all Grant Documents for the Project and to Designate the MS Consultants, Inc. as the Project Manager, and Declaring an Emergency. I move for passage.

MR. NEFF: Second.

MR. NACARATO: Chuck.

CHIEF OF POLICE: As part of the requirements for the Ohio Public Works Commission applications for funding, the legislative body of the recipient of the grant/loan funds must pass a Resolution authorizing the application, executing the contracts and making appropriate designations. This resolution is for the funding related to the 2023 street resurfacing project for an OPWC grant in the amount of \$203,778.00 with a local commitment of \$320,074.00 that will be funded from the Street CM&R Fund.

MR. NACARATO: Questions?

MR. TIECHE: What streets are we doing? I think I saw it in one of the memos.

CHIEF OF POLICE: Greenmont, Sleepy Hollow and Millbrook. A total of 3.

MR. NACARATO: Citizen questions?

MR. MICCHIA: Frank Micchia, 220 Glenview. The amount of money that is being spent next year is it \$500,000 or is it \$300,000?

CHIEF OF POLICE: 5.

MR. MICCHIA: Of which \$300,000 comes from the city and \$200,000 is a grant. So, it's \$500,000 for the streets we've identified.

CHIEF OF POLICE: Yes.

MR. MICCHIA: Okay, thank you. Happy Thanksgiving.

CHIEF OF POLICE: Same to you.

MR. NACARATO: Anyone else? Hearing none. Patty can we have a vote.

ROLL CALL ON RESOLUTION:	4 Votes-Yes
	0 Votes-No
	Resolution passes.
	Resolution 2022-10.

ITEM E: A Motion Approving the Final Plat of Villa Theresa R-PUD at Villa Theresa Lane by Steve Cocca.

MR. NACARATO: As per the provisions of Section 4.05 of the Charter of the City of Canfield, I move that Council dispense with the requirement of a full reading of the proposed Motion and authorize reading by title only.

MR. DRAGISH: Second.

ROLL CALL ON MOTION:	4 Votes-Yes
	0 Votes-No
	Motion passes.

MR. NEFF: We have a Motion approving the final plat of Villa Theresa R-PUD at Villa Theresa Lane by Steve Cocca. We move for passage.

MR. TIECHE: Second.

MR. NACARATO: Chuck what are we doing?

CHIEF OF POLICE: The City of Canfield accepts Villa Theresa (PUD) and accepts all sanitary, water, and associated easements within the Planned Unit Development. The Subdivider shall post a two-year maintenance bond in the amount of 10% of the actual construction costs of the improvements installed.

MR. NACARATO: Questions from council? Hearing none. Citizens? Hearing none. Can we have the vote.

ROLL CALL ON MOTION:

4 Votes-Yes
0 Votes-No
Motion passes.
Motion 2022-21.

ITEM F: A Motion to Waive a Portion of Utility Charges.

MR. NACARATO: As per the provisions of Section 4.05 of the Charter of the City of Canfield, I move that Council dispense with the requirement of a full reading of the proposed Motion and authorize reading by title only.

MR. TIECHE: Second.

ROLL CALL ON MOTION:

4 Votes-Yes
0 Votes-No
Motion passes.

MR. DRAGISH: Mr. President, I have a Motion to Waive a Portion of Utility Charges. I move for passage.

MR. TIECHE: Second.

MR. NACARATO: Chuck what's going on here.

CHIEF OF POLICE: Staff was contacted by the resident at 214 Sleepy Hollow regarding abnormal consumption as a result of finding a hose running, in a flower bed, that is on a timer; while he was out of town. Based on the individual consideration of the circumstances presented, staff has calculated the appropriate adjustments to the sanitary sewer portion of this consumer's utility bill. This adjustment is contingent upon receiving the credit from our wastewater treatment provider, who will allow and grant monthly bill credits upon request from the City of Canfield.

MR. NEFF: Do we have an amount?

MR. TIECHE: It's \$135.00. A clarification, we will only grant the sewer side of that bill if Mahoning County doesn't charge the city for the sewer side. We could grant credit for the water portion but then all the residents in the city are paying for the water usage. Normal procedure has been that they have to pay the water side of the bill.

ATTY. FORTUNATO: There are some other requirements imposed by the Ordinance to satisfy.

MR. TIECHE: Yes.

MR. NACARATO: Any other questions? Hearing none. Can we have the vote.

ROLL CALL ON MOTION:

4 Votes-Yes
0 Votes-No
Motion passes.
Motion 2022-22.

MR. NACARATO: I apologize, I forgot to mention this early on. We do have one more item to get us into executive session. We will not be taking any action following our executive session. You're more than welcome to stay. If not, we'll just be closing the meeting afterwards. I'm going to ask Mr. Tieche to get us into Executive Session.

MR. TIECHE: Mr. President, I have a Motion to adjourn into Executive Session pursuant to Ohio Revised Code Section 121.22 (g)(1) to consider the employment of a public employee and appointment of a public official. I move for passage.

MR. DRAGISH: Second.

ROLL CALL ON MOTION:

4 Votes-Yes
0 Votes-No
Motion passes.

MR. NACARATO: Like I said, we will not be taking any action. You're more than welcome to stay.

Council convened into Executive Session at 6:25pm.

Council reconvened from Executive Session at 7:13PM.

Mr. Neff made a Motion to adjourn.

Mr. Tieche seconded the motion.

The meeting was adjourned at 7:14PM.

PRESIDENT OF COUNCIL

ATTEST:

CLERK OF COUNCIL