

CANFIELD CITY COUNCIL
REGULAR MEETING
April 16, 2025-5:30 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** authorizing the City Manager to enter into an Agreement with MS Consultants, Inc. in the form attached hereto for professional services related to the 2025 street improvement project.

Description: This agreement is for the Design/Bidding and Construction Admin/Inspection.

Action Needed: Passage of this Ordinance.

Attachment(s): Agreement for Professional Services

Public Comments.

12. Council Comments.

13. Adjournment

Introduced by: _____
First Reading: _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER
TO ENTER INTO AN AGREEMENT WITH MS CONSULTANTS, INC.
IN THE FORM ATTACHED HERETO FOR PROFESSIONAL SERVICES
RELATED TO THE 2025 STREET IMPROVEMENT PROJECT

WHEREAS, the City of Canfield hereby desires to engage MS Consultants, Inc. for professional services related to the 2025 Street Improvement Project.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CANFIELD, COUNTY OF MAHONING COUNTY, 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 professional services described therein, for an amount not to exceed \$35,000.00 (Thirty-Five Thousand and zero cents).

Section 2: That this Ordinance and all deliberations relating to the passage of this Ordinance were held in open meeting 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 _____, 2025.

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

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

THIS IS AN AGREEMENT ("Agreement") effective as of _____, 2025 ("Effective Date") between the 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: 1.5" mill and fill resurfacing project of various City streets as identified in Exhibit A.

Engineer's services under this Agreement are generally identified as follows: Engineer shall provide design, bidding, and construction administration/inspection services for the Owner's Project.

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 and in Exhibit B.
- 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 for in Exhibit A, except for services of Engineer's Resident Project Representative, if any, as follows:
 1. A Lump Sum amount of \$35,000.00 based on the following estimated distribution of compensation in accordance with the funding amounts secured as part of the Ohio Public Works Commission agreement:
 - a. Design/Bidding \$9,500.00
 - b. Construction Admin/Inspection \$25,500.00
 2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.
 3. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
 4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.
- B. *Period of Service:* The compensation amount stipulated in this Agreement is conditioned on a period of service not exceeding the Time for Completion set forth in Paragraph 3.02. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

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

Exhibit K – Amendment to Owner-Engineer Agreement.

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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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.

Exhibit K – Amendment to Owner-Engineer Agreement.

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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- 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 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, 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

Exhibit K – Amendment to Owner-Engineer Agreement.

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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Page

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:

Exhibit K – Amendment to Owner-Engineer Agreement.

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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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: _____

By: Steve Preston

Print name: David A. D'Apolito

Print name: Steve Preston, P.E.

Title: City Manager

Title: Project Manager

Date Signed: _____

Date Signed: March 13, 2025

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

City of Canfield
104 Lisbon Street
Canfield, Ohio 44406

ms consultants, inc.
333 East Federal Street
Youngstown, Ohio 44503

Designated Representative (Paragraph 8.03.A):

Designated Representative (Paragraph 8.03.A):

David A. D'Apolito

Steve Preston, P.E.

Title: City Manager

Title: Project Manager

Phone Number: 330-533-1101

Phone Number: 330-744-5321

E-Mail Address: ddapolito@canfield.gov

E-Mail Address: spreston@msconsultants.com

EXHIBIT A
SCOPE OF SERVICES

City of Canfield
2025 Street Improvement Project

March 13, 2025

Project Understanding

ms consultants, inc. (Engineer) understands that the City of Canfield (Owner) intends to enter into an agreement with an Engineer for the 2025 Street Improvement Project. The Scope of Services for the project consists of the following:

1. Design/Bidding

- A. Prepare resurfacing specifications for a standard 1.5 inch "mill and fill" pavement project. The specifications shall include pavement planing, tack coat, and asphalt surface course for the following streets:
 - i. *Base Bid*
 - Colonial (Entire Street)
 - Court (Entire Street)
 - Dartmouth (Entire Street)
- B. Construction drawings showing the location of the roadway section to be resurfaced or repaired shall be provided in the contract documents. A standard cross section detail will be provided. Specifications will follow ODOT Construction & Material Specifications.
- C. Produce a set of contract documents that will include construction drawings, notices to Contractors, general and special conditions and construction specifications.
- D. Provide a detailed construction cost estimate based on current prices calculated from items of work to be performed.
- E. Prepare the necessary documents and submit the final set of construction drawings and specifications to the Owner for final approval.
- F. Engineer shall assist Owner in bidding of the project by assisting in the distribution of plans and contract documents, answering all questions during the bidding procedure, preparing and issuing all addenda (one addenda assumed), assistance in the receipt of bids, review of all bids including reference checks, preparation of a bid tabulation and recommendation of award letter.

2. Construction Administration/Inspection

- A. General Administration of Construction Contract
 - i. Engineer shall consult and advise the Owner. All of the Owner's instructions to Contractor(s) will be issued through Engineer who will have authority to act on behalf of the Owner to the extent provided in said Standard General Conditions except as otherwise provided in writing.

B. Visits to Site and Observation of Construction

- i. Engineer shall provide a project representative (PR) totaling no more than 100 hours of full-time inspection for one inspector for the scheduled duration of the project to observe as an experienced and qualified design professional the progress and quality of the various aspects of the Contractor(s) work. The work will be based on the Contractor's schedule. 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.
- ii. 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.

C. Defective Work

- i. 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.

D. Interpretations and Clarifications

- i. Engineer shall issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare work directive changes and change orders as required.

E. Shop Drawings

- i. Engineer shall review and approve (or take other appropriate action in respect of) Shop Drawings, samples and other data which Contractor(s) are required to submit, but only for conformance with the design concept of the

project and compliance with the information given in the Contract Documents. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

F. Substitutes

- i. Engineer shall evaluate and determine the acceptability of substitute materials and equipment proposed by Contractor(s).

G. Inspections and Tests

- i. Engineer shall as the Owner's representative, require special inspection or testing of the work, and shall receive and review all certifications of inspection, testings and approvals required by laws, rules, regulations, ordinances, codes, or orders of the Contract Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents).

H. Disputes between the Owner and Contractor

- i. Engineer shall act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of the Owner and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of work. Engineer shall not be liable for the results of any such interpretations or decisions rendered in good faith.

I. Application of Payment

- i. Based on Engineer's onsite observations as an experienced and qualified design professional, and on review of applications for payments and the accompanying data and schedules:
- ii. Engineer shall determine the amount owing to Contractor(s) is such amount. Such recommendations of payment will constitute a representation to the Owner, based on such observations and review, that the work has progressed to the point indicated, and that, to the best of Engineer's knowledge, information and belief, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendations).
- iii. By recommending any payment, Engineer will not hereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made by Engineer to check the quality or quantity of Contractor(s) work as it is furnished and performed beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Engineer's review of Contractor(s) work for the purposes of recommending payments will not impose on Engineer responsibility to supervise, direct or control such work for the means, methods, techniques, sequences, or

procedures of construction or safety precautions or programs incident thereto or Contractor(s) compliance with laws, rules, regulations, ordinances, codes or orders applicable to their furnishing and performing the work. It will also not impose responsibility on Engineer to make any examinations to ascertain how or for what purposes any Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials, or equipment has passed to the City free and clear of any lien, claims, security interests or encumbrances, or that there may not be other matters at issue between the Owner and the Contractor that might affect the amount that should be paid.

J. Contractor(s) Completion Documents

- i. Engineer shall receive and review schedules, guarantees, bonds and certificates of inspection, tests and approvals which are to be assembled by Contractor(s) in accordance with the Contract Documents (but such review will only be to determine that their content complies with the requirements of, and in the case of certificates of inspection, test and approvals the results certified indicate compliance with, the Contract Documents); and shall transmit them to the Owner with written comments.

K. Inspections

- i. 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.

3. Additional Services of Engineer

A. Services Requiring Authorization in Advance

- i. 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.
- ii. 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.
- iii. 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.

4. 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.
 - i. 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.
 - ii. 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.
 - iii. 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.
 - iv. 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.
 - v. Attend the preconstruction conferences, construction progress and other job related meetings and substantial completion inspections and final payment inspections.
 - vi. 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.
 - vii. Furnish, or direct Engineer to provide additional services as stipulated in this Agreement or other services as required in a timely manner.
 - viii. Bear all costs incidental to compliance with the requirements of this Section.

5. Assumptions/Exclusions

- A. The scope of work does not include any field survey services.
- B. Asphalt core samples and geotechnical investigation will not be performed for this project.
- C. The Engineer assumes that work to be performed will be a standard 1.5" "mill and fill" resurfacing. If additional Engineering is required outside of a standard "mill and fill" project, Engineer and Owner shall negotiate a modification to this agreement.

6. Period of Service

- A. The Engineer agrees to commence work within ten (10) days after written authorization to proceed and to be prepared to bid within sixty (60) calendar days of the Notice to Proceed.

MINUTES
CANFIELD CITY COUNCIL
REGULAR MEETING
APRIL 2, 2025-5:30 P.M.

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

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

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

Under **MINUTES**, the Minutes of the Public Hearing and the Regular Meeting on March 19, 2025 were approved as presented.

Under **READING OF COMMUNICATIONS**:

MR. NEFF: I had a resident ask about street signs that were crooked around the Green. I haven't had a chance to see what he was talking about.

MR. TIECHE: What were they saying as far as crooked, vertical?

MR. NEFF: Well, actually a couple of them were the historical plaques. As you know, Jim Sabo installed those and he was meticulous about keeping them square. But he was talking about street signs. I just wanted to bring that up. We'll have to look at that.

PUBLIC WORKS SUPERINTENDENT: Those historical signs are concreted like 3 feet into the ground.

MRS. OLIVER: F5 winds.

PUBLIC WORKS SUPERINTENDENT: I'll make a note of it.

MRS. OLIVER: Thank you. I did have somebody ask me a question. It's kind of funny because I really never paid attention to it. Where our Welcome to the City of Canfield, the no soliciting sign. Someone asked me about that. We know that people go visit businesses. They were asking about repercussions of that.

ATTY. FORTUNATO: We have an ordinance for solicitors. They have to register. There are requirements that are imposed upon them, if they're soliciting. A sign saying, no solicitors might be a little bit inaccurate.

MRS. OLIVER: That's why I wanted to bring it up because it says, no soliciting right on it.

ATTY. FORTUNATO: I would say it accurate to the extent that there is no solicitors unless you are properly registered, etc.

MRS. OLIVER: Thank you. I appreciate it. Anyone else?

MR. DRAGISH: No. I just wanted to give a shout out to the crew again for doing such a good job with the properties and everything going on. I was almost worried, I thought we'd have to put the plows back on. I thought snow was coming but I think we should be out of the woods. I'm hoping that we're out of the woods.

MR. TIECHE: I didn't think we were allowed to say 4 letter words here. Snow is a 4-letter word.

MR. DRAGISH: It might happen next week.

MR. TIECHE: That's solid rain.

MRS. OLIVER: Remember, April showers bring May flowers.

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

MR. TIECHE: We had a Parks Board Meeting but I don't think we have the minutes yet. So, we'll have to wait on those.

MRS. OLIVER: Thank you. Mr. Neff.

MR. NEFF: We don't have Planning & Zoning until next week.

MRS. OLIVER: Mayor Dragish.

MR. DRAGISH: I don't have a report. I won't have a report until next meeting.

MRS. OLIVER: Mr. Graham.

MR. GRAHAM: Design Review met last evening. I haven't seen the minutes yet. I don't know if they've been posted. There were a couple of items related to the historic district. There were a couple of new decks approved. The Hercules car wash made an application for a dog wash. That is to be located behind the car wash. We asked that they provide some greenery (Arborvitae) that will grow to protect visual from the street.

MR. TIECHE: Is that a permitted use? Car washes are.

ATTY. FORTUNATO: I've seen dog washes, a lot of times with the car washes. It's an associated use.

ZONING INSPECTOR: They consider it a piece of equipment.

ATTY. FORTUNATO: Yes, it is. You'll see it more and more, if you look. A lot of those car washes with bays.

MR. TIECHE: Could it be a standalone facility?

MR. GRAHAM: It is.

MR. TIECHE: No, I mean a standalone facility as just a dog wash.

ATTY. FORTUNATO: I'll have to look at that.

ZONING INSPECTOR: It's only 8x12. It's just a drop down and they connect it to water.

MR. TIECHE: I understand what you're saying. I guess I'm playing semantics with the way that the ordinance reads.

MR. D'APOLITO: At staff meeting we equated it to a vacuum. When you pull in and vacuum out your car. A piece of equipment similar to that.

MR. NEFF: Is Hercules the new car wash?

ATTY. FORTUNATO: Yes.

MRS. OLIVER: For the Fire Board, I do not have an update from Chief Hutchison for March yet. We did get to see our two new ambulances that came in. They are state-of-the-art, absolutely wonderful. I wanted to share that. We're very, very blessed in our community to have the equipment that we do at our fire department. That's all I have to share for that. Let's move onto our Public Works Superintendent, Mr. John Rapp.

PUBLIC WORKS SUPERINTENDENT: Good evening. I'll start off with a reminder about the Limb and Stick Pick-Up. It will be starting Monday, April 7th, that will start in quadrant 1. That will go all week. Quadrant 2 will start April 14th. Quadrant 3 will start April 21st and Quadrant 4 will start April 28th. Each quadrant will have 1 week of limb and stick pick-up. All of the information including a map and the listing of streets in each quadrant will be listed on the city website. Crews have been out fixing miscellaneous drains and catch basins. They're doing a lot of work in Fair Park. They just planted 15 new trees for the K9 Memorial. They also did a lot of trimming over there and removal of some older trees that were dead. Another crew is out fixing up flower beds and spreading mulch. That's about it for now.

MRS. OLIVER: Thank you. Our Finance Director, Mrs. Clayton.

FINANCE DIRECTOR: I'm currently working on receivable spreadsheets and capital assets spreadsheets for our 2024 GAAP Report. All of the other spreadsheets for 2024 have been sent out to Julian & Grubb, the CPA firm that completes our GAAP Report. The March check register was posted today on the website. Last but not least, we are busy processing income tax returns. The filing deadline is April 15th.

MRS. OLIVER: Thank you. Our Zoning Inspector, Mr. Thorn.

ZONING INSPECTOR: For the month of March, we issued 2 bee keeping permits, 1 demolition permit and 9 zoning permits. Last night, we had Design Review, we had 4 permits issued there, like you said, 2 decks and 1 was the dog wash and the other one slipped my mind.

MR. GRAHAM: The new signage. Wes Banco that acquired Premier Bank.

ZONING INSPECTOR: Yes, it will now have Wes Banco Signs. Next week, we have Planning & Zoning on Thursday at 5:30. At 5:15, there will be a public hearing for conditional use for DQ's drive thru. We're still working on getting everything approved for them, so they can move forward. That's all I have.

MRS. OLIVER: Thank you. I was going to say, I understand the home on Pine Cone is completed and sold, I believe for \$819,000, that's a nice plus for our community.

MR. TIECHE: Where are the beekeeping permits located?

ZONING INSPECTOR: One on W. Main and one on S. Broad. The same guys does both properties. One is at his home and one at his buddy's home.

MR. TIECHE: In any discussion, was there anything about neighbors or anything like that?

ZONING INSPECTOR: I didn't have any discussion with him. He's had the same permits every year for the last 6 years.

MR. TIECHE: So, he's had permits before?

ZONING INSPECTOR: Yes. He's had permits for the last 6 years now.

MR. TIECHE: Thank you.

MR. DRAGISH: With the bees, that's a yearly reoccurrence?

ZONINIG INSPECTOR: Yes, once a year. I checked the permits from the past years and he pretty much does it the same couple of days apart each year.

MRS. OLIVER: Do you still have one near you?

MR. DRAGISH: Well, the unit is there but I'm not sure if there are any bees left in it. I was just making sure it wasn't that one.

MRS. OLIVER: Mrs. Bernat.

CLERK OF COUNCIL: The Arbor Day celebration is going at CH Campbell on Friday, May 2nd at 10:00am. We usually hold it on Arbor Day; which is April 25th but the school is on spring break. Civic Day will be May 9th this year, here in council chambers. Concerts on the Green, I sent the schedule to the printer and it will be on our website soon.

MRS. OLIVER: Our City Manager, Mr. D'Apolito.

MR. D'APOLITO: Thank you, Mrs. Oliver. A couple of things to report. The city, as far as I know, held our first surplus auction. Our IT Department did a great job in finding a program for us with a timer, bid by a certain time and then everyone else is shut out. We sold a 2008 Ford Focus, a 2009 Explorer and a 1999 dump truck. Everybody has already paid and they've been picked up. It was very successful and no auction fees. It all goes to the city.

MR. DRAGISH: Beautiful.

MR. D'APOLITO: I also want to draw attention to Fair Park. I wanted to give some accolades to our Public Works Department. They cleaned it up so well. The Police Dog Memorial looks fantastic. We have some of the nameplates already there. I also want to get a couple of statues made of police dogs, so people understand exactly what they're looking at.

Yesterday, I along with our Public Works Superintendent and our Zoning Inspector, paid a visit to MSC. I didn't want our citizens to think that we've lost sight of that. We paid some impromptu visit yesterday. I spoke to the project manager today on the phone. They're telling me that everything is progressing well. Everything is being captured.

Finally, I want to put out an announcement that we're looking for some part time summer help, for weed whacking, grass cutting, for Public Works. If there are any high school or college students, anybody that's interested contact me at the city bldg.. We'd love to have some city residents working for us. They would be our preference but everyone is eligible. That's all I have.

MRS. OLIVER: Very nice. Our Police Chief, Chief Colucci.

CHIEF OF POLICE: A couple of things, we received word last week that we received a JAG Grant for a total of \$15,500. The JAG Grant is Federal money through the state. Our officer who just left to go to Colorado, he was the one that initiated this grant. It's for breaching tools. So, we won't have to call the fire department, we will have tools in the cruiser that will allow us to make entry into the house without damage, thanks to Tim Coler. Tim Coler worked his last shift two weeks ago. We had a little going away party for him. We wish him the best. He did an amazing job. I encourage all of the new officers that we have to follow his lead. He took initiative and proactive steps, he's responsible for the setup of the back of our cruisers. A lot of forward thinking and we appreciated that. I found out yesterday, after the city manager saw it in the Vindicator, we also received a body worn camera grant. We applied for that grant through the State of Ohio. Several agencies applied for that grant, it's very competitive. A lot of agencies that received the grant were agencies that never had body cameras before. We applied for it. Our cameras are already approaching 5 years old. We approached it from an upgrade standpoint. We submitted a grant for \$129,000, we were approved for \$30,000. IT, I spoke to them this afternoon and they're looking at options, we can slowly transition to it. We might not be able to get all the cameras at once but we might be able to do it slowly over time. It was a grant that we received. Also, yesterday, April 1st, Officer Chad Debarr was promoted to Sgt. He has his first shift as Sergeant. The department, Chadd and his family are very excited. Hopefully, we can swear him in here soon. Thank you.

MRS. OLIVER: Thank you. Last but certainly not least, Atty. Fortunato. I had a request for an executive session. We probably should go into that before we conduct any business.

I can state the content of a motion, if somebody wants to then, so move. It would be to adjourn into executive session pursuant to Ohio Revised Code Section 121.22 (g) (1) to consider the compensation of a public employee.

MR. NEFF: So, moved.

MRS. OLIVER: Do I have a second?

MR. TIECHE: Second.

ROLL CALL ON MOTION:

3 Votes-No
2 Votes-Yes
Motion fails.

Under **PERSONS DESIRING TO APPEAR BEFORE COUNCIL**: there were none.

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

Under **NEW BUSINESS**:

ITEM A: An Ordinance Declaring Surplus Property and Authorizing its Disposal

MRS. OLIVER: 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:	5 Votes-Yes
	0 Votes-No
	Motion passes.

MRS. OLIVER: 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:	5 Votes-Yes
	0 Votes-No
	Motion passes.

MR. DRAGISH: Madam President, I have an Ordinance Declaring Surplus Property and Authorizing its Disposal. I move for passage.

MR. GRAHAM: Second.

MRS. OLIVER: What surplus property do we have this time?

MR. D'APOLITO: Zero turn mowers, backhoe/loader and another tractor

MRS. OLIVER: Any questions from Council?

MR. GRAHAM: I had a question. Do you know what a normal fee we would pay, if we were to have an auctioneer auction this property off? It made me think about it when you were talking about the other property.

MR. D'APOLITO: I don't know definitively but I believe it's around 10%. I'm sure it's negotiable.

MR. GRAHAM: It's something we're avoiding paying.

MRS. OLIVER: Any other questions?

MR. NEFF: Is this going to be auctioned the same way as the vehicles?

MR. D'APOLITO: I'm talking to Public Works about it. They seem to think that there is a municipal auction.

PUBLIC WORKS SUPERINTENDENT: Which one are we talking about?

MR. D'APOLITO: The loader.

PUBLIC WORKS SUPERINTENDENT: The 3 John Deere's are being traded in on new zero turns. The New Holland will be determined whether we do the auction ourselves or take it somewhere to have it auctioned. It's actually a backhoe. It should bring some pretty good money.

MRS. OLIVER: Any other questions? Hearing none.

ROLL CALL ON ORDINANCE:	5 Votes-Yes
	0 Votes-No
	Ordinance passes
	Ordinance 2025-11.

ITEM B: An Ordinance Requesting Participation in Purchase Contracts of the State for Sodium Chloride (Road Salt) and Declaring an Emergency.

MRS. OLIVER: 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:	5 Votes-Yes
	0 Votes-No
	Motion passes.

MRS. OLIVER: 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:	5 Votes-Yes
	0 Votes-No
	Motion passes.

MR. GRAHAM: Madam President, I have an Ordinance Requesting Participation in Purchase Contracts of the State for Sodium Chloride (Road Salt) and Declaring an Emergency. I move for passage.

MR. DRAGISH: Second.

MRS. OLIVER: Any questions? Hearing none. Residents, any questions? Hearing none.

ROLL CALL ON ORDINANCE:

5 Votes-Yes
0 Votes-No
Ordinance passes
Ordinance 2025-12.

ITEM C: A Motion to Authorize the City Manager to Apply for F-1 and F-2 Permits as applicable from the Ohio Department of Commerce/Division of Liquor Control for Family Fun Night on August 4, 2025 and Fall Fest on October 4, 2025.

MRS. OLIVER: 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:

5 Votes-Yes
0 Votes-No
Motion passes.

MR. TIECHE: Madam President, I have a motion to Authorize the City Manager to Apply for F-1 and F-2 Permits as applicable from the Ohio Department of Commerce/Division of Liquor Control for Family Fun Night on August 4, 2025 and Fall Fest on October 4, 2025. I will not be moving for passage. If somebody else wants to.

MR. DRAGISH: I'll move for passage.

MR. GRAHAM: Second.

MRS. OLIVER: Questions?

MR. TIECHE: For these permits, will our police officers be selling liquor? Are they the one's that are going to be selling it?

MRS. OLIVER: We as council.....

MR. TIECHE: We are authorizing an organization to participate and sell the liquor on the village green.

MR. D'APOLITO: Last year, we had members of council. I didn't want any police officers to be involved in that. I know that has happened in the past but last year, I did not want that to happen. I thought that was a bad look.

MR. TIECHE: That is my concern.

MR. DRAGISH: We didn't even actually sell the liquor. We sold tickets and the people took the tickets and went to purchase it.

MR. D'APOLITO: It's not liquor, it's beer.

ATTY. FORTUNATO: Spirits.

MRS. OLIVER: Donny, Mark and I, sold tickets and they took them over to, I think it was Birdfish and they purchased it from them.

MR. TIECHE: Okay. My other issue related to that is, how close you are to a couple of churches; which is contrary to liquor control standards as well.

MR. D'APOLITO: They receive a map.

MR. TIECHE: I understand.

MR. D'APOLITO: It includes the business and churches. They are aware of it. They approve it. We don't hold it without the states permission.

MR. TIECHE: I understand what the state is doing. I've been in this situation before. I just don't approve of it.

MR. D'APOLITO: I appreciate that and I respect that. But don't think that we do it without the states approval.

MR. TIECHE: I understand.

MRS. OLIVER: Any other questions? Hearing none. Public comments? Hearing none.

ROLL CALL ON MOTION:

4 Votes-Yes
1 Vote-No (Mr. Tieche)
Motion passes.
Motion 2025-03.

ITEM D: A Motion Amending the Employment Agreement of the City Manager.

MRS. OLIVER: 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:

5 Votes-Yes

0 Votes-No

Motion passes.

MR. NEFF: Madam President, I have a Motion Amending the Employment Agreement of the City Manager. I'm not going to be voting for this, so I'd like someone else to move for passage.

MR. DRAGISH: I'll move for passage.

MR. GRAHAM: Second.

MRS. OLIVER: Any questions from council?

MR. NEFF: I would like to state my position on this. This is why I wanted to go into executive session. It would have made this a little more private. I'm not for, at this point, without discussing it more with council in executive session, allowing for holiday pay. Most people know, we had to come up and extend the salary range for our new city manager, who is doing an excellent job. We're paying him significantly more than we had in our budget. I think that, even though he's doing a good job, there are several things that I object to or that I've asked for that haven't happened. That is the ability to attend city manager meetings, staff meetings, for someone on council to observe. I think that would be a great thing for us to do. I think there are additional efforts that could be made for the Red Gate Project. Specifically, a lot better communication to council, without having to call and ask what's going on. There should be, I feel, be a written memo twice a month. That is why I'm going to be not voting for the holiday pay for our city manager.

MRS. OLIVER: I'd like to also address this and I'd like to rebut Mr. Neff. First of all, it's not appropriate for city council members to attend the city staff meetings. We are not W2 employees and we shouldn't be present at staff meetings. It has never been that way. Nor should it be. Second of all, with Red Gate, we have no interest in Red Gate. We have had so many times where Mr. D'Apolito has tried to promote Red Gate but we don't have developers that want to pay to develop it, there is nothing more that can be done there. Third, council communications, Mr. D'Apolito always communicates with us when there is anything new going on. He does update us twice a month. We are updated here at council as well. I believe when you have memos go out then those become part of a public record. It depends on what's in the memos. You're not going to send out a memo to people, like you would an email. Our emails

are all subject for the public to see. There isn't anything that we have to hide in those and anybody can see them. I do not believe that Mr. D'Apolito is compensated outside the realm of other city managers, when you do comparisons around Ohio, he definitely is not. Mr. Calhoun, our previous city manager was compensated quite well, just like Mr. D'Apolito. Also, I remember, Police Chief Colucci, at one time, had to pick up those duties and he was compensated on top of his chief's pay for that. I do not see anything out to the ordinary there. When it comes to holiday pay, from what I understand, any job that I've ever been in, somebody who is a salary employee does get holiday pay like everybody else. That is my position on it. Does anybody else have any comments that they'd like to make?

MR. DRAGISH: I agree with you Christine. It was an oversight in the original contract and I think that putting it in there is well deserved. I think he's doing a fantastic job as city manager.

MRS. OLIVER: He was gracious enough that it should have went retroactive to 2024 and he has said, I don't want it to go back to 2024, only 2025. For that we thank you, for the oversight and you were gracious enough to do that. Second of all, the job that he's doing, I have never seen more participation on our green by our residents, than I have since he's taken the reigns. I believe we had like 1,000 people out there for one show with exotic animals. The magic shows and all of the other things that he has done. This man is out at 3:00am with our Public Works Department and he doesn't have to do this. He does, because he cares about our city, he cares about our residents. I want to applaud you. I think you have done a fantastic job. Thank you, very much for your service to our city.

MR. GRAHAM: I would agree with that. In my opinion, historically that's always been in the city manager's contract. I echo the same thing. I believe that he's done an outstanding job to date.

MRS. OLIVER: We thank you. You have not embarrassed our city. You have done a fantastic job. If I don't have any other comments, do I have any comments from the public? Hearing none.

ROLL CALL ON MOTION:

4 Votes-Yes
1 Vote-No (Mr. Neff)
Motion passes.
Motion 2025-04.

Under **COUNCIL COMMENTS:**

MR. TIECHE: I'd like to make a comment to Mr. Rapp and the City Manager for a good job as far as the dog memorial at Fair Park. It looks nice. You mentioned it at Parks Board. I went over and took a look and it looks sharp. Nice job, on maintaining all the stuff there.

MRS. OLIVER: I'd like to say thank you for indulging me because I didn't write anything down, I just went with what I think. So, thank you, very much, to all of you. We appreciate everything that all of you do.

MR. DRAGISH: The only thing I want to say is, I think you're doing an outstanding job, I really, really, do. I have to say, I've been on Council since 2014 and we have went through a couple of different city managers. I have never seen the City of Canfield humming like it's humming right now. I hold that to you because I think you're doing such a great job. We have a great team and we have to keep that going.

MRS. OLIVER: I'd like to thank you for giving up the bench to come here.

MR. DRAGISH: I'll motion to adjourn.

MR. GRAHAM: Second.

MRS. OLIVER: We are adjourned.

PRESIDENT OF COUNCIL

ATTEST:

CLERK OF COUNCIL