

## AGENDA

### CANFIELD CITY COUNCIL

March 3, 2021 -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.

- A. An **Ordinance** Amending Canfield Codified Ordinance §1127.03 (d) (3) to Provide for a Depiction of Certain Adjustment Requests.

##### **Description:**

The Planning and Zoning Commission has discussed amending section 1127.03 (d) to allow for more content to be included in an application for an adjustment. More specifically when the adjustment includes construction of a structure, to require a depiction or schematic of the finished product in order for the Commission to better understand what is being proposed as part of the adjustment request.

At their January 14, 2021 meeting the Planning and Zoning Commission voted unanimously to recommend approval of amending section 1127.02(d)(3).

This Ordinance would amend section 1127.03(d)(3) as delineated below:

**Current:** *Plat layout drawn to scale, showing the actual shape and dimension of the lot or parcel and all lots and parcels within 200 feet thereof which shall be attached to each application;*

**Amended:** *Plat layout drawn to scale, showing the actual shape and dimension of the lot or parcel and the proposed construction location, if any. If the requested adjustment includes the construction of a structure, the applicant shall submit a depiction or schematic of the proposed construction showing the finished appearance and vertical height dimensions of each side of the structure to be constructed.*

All other sections of 1127.03 remain unchanged.

**Action Needed:**

Approval of Ordinance amending Canfield Codified Ordinance 1127.03(d)(3) to provide for a depiction of certain adjustment requests.

**Attachment(s):**

Ordinance amending Canfield Codified Ordinance 1127.03(d)(3) to provide for a depiction of certain adjustment requests.

Recommendation letter from Planning & Zoning Commission

B. A **Motion** Accepting An Appointment to the Community Reinvestment Area Housing Council

**Description:**

Mr. Stephen DeCapua has formally resigned from the Community Reinvestment Area Housing Council ("CRA Housing Council"). Per Ohio Revised Code ("ORC") Section 3735.69 appointments to the CRA Housing Council are made in the following manner; two (2) members are appointed by the Mayor, two (2) members are appointed by City Council, one (1) member is appointed by the Planning and Zoning Commission. These five (5) members then appoint two (2) additional members.

Mr. DeCapua was one of the two Mayoral appointments to the CRA Housing Council, and therefore the replacement of Mr. DeCapua is done through Mayoral appointment. Mayor Duffett has communicated with Mr. Steve Kristan and has appointed Steve Kristan to the CRA Housing Council for the City of Canfield.

This Motion will accept the appointment of Mr. Steve Kristan to the CRA Housing Council by Mayor Duffett.

**Action Needed:**

Approval of motion appointing Steve Kristan to the CRA Housing Council by Mayor Duffett.

**Attachment(s):**

Motion appointing Steve Kristan to the CRA Housing Council by Mayor Duffett.

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 Engineering Services Related to Storm Sewer Infrastructure.

**Description:**

The City of Canfield has been awarded a Federal Emergency Management Agency (FEMA) Grant administered through the Ohio Emergency Management Agency (EMA) Hazard Mitigation Grant. Beginning in 2018 MS Consultants, Inc. through their general engineering contract has provided engineering and consulting services related to the analysis and study of flood mitigation, as well as application assistance for the FEMA, and OPWC Grants that will fund the "Sawmill Creek Improvement Project".

As per the Ohio Revised Code Section 153.69 and upon review of the RFQ respondents from the City of Canfield 2019 RFQ for Engineering Services, MS Consultants, Inc. was selected to perform services specific to the Sawmill Creek Stormwater Improvement Project.

This Ordinance authorizes the City Manager to enter into an agreement with MS Consultants, Inc. for engineering services related to project management, final design, and bidding services for the Sawmill Creek Improvement Project for an amount not to exceed \$268,600.

**Action Needed:**

Approval of Ordinance authorizing the City Manager to enter into an agreement with MS Consultants, Inc. for engineering services related to storm water infrastructure.

**Attachment(s):**

Ordinance authorizing the City Manager to enter into an agreement with MS Consultants, Inc. for engineering services related to storm water infrastructure.

Sawmill Creek Improvement Engineering Services Agreement

Public Comments.

- B. An **Ordinance** Authorizing The City Manager To Enter Into An Agreement With S.E.T., Inc. To Extend A Waterline to Millennial Moments.

**Description:**

In September 2020 the City of Canfield entered into an agreement with Wallace Pancher Group for engineering services related to the Millennial Moments Waterline Extension Project. The project design was completed in 2020. Wallace Pancher, as part of the agreement conducted the bid administration of this project in February 2021. The advertisement for bids were published on February 9, 2021 and February 16, 2021 with bid award taking place on February 24, 2021.

There was a total of eight (8) respondents to the advertisement for bids, with the apparent low bidder on this project being S.E.T., Inc. with a bid of \$100,672.60.

This Ordinance authorizes the City Manager to enter into an agreement with S.E.T., Inc. for the Millennial Moments Waterline Extension Project.

**Action Needed:**

Approval of Ordinance authorizing the City Manager to enter into an agreement with S.E.T., Inc. for the Millennial Moments Waterline Extension Project.

**Attachment(s):**

Ordinance authorizing the City Manager to enter into an agreement with S.E.T., Inc. for the Millennial Moments Waterline Extension Project

WallacePancher Group Recommendation Letter

Public Comments.

- C. A **Resolution** Authorizing the City Manager and City Engineer to File Application and To Execute Contracts and Act as Chief Executive Officers for the Federal Emergency Management Agency ("FEMA") Funded Project; Namely The Sawmill Creek Improvement Project, And To Designate The Finance Director As Chief Fiscal Officer For All Grant Documents For The Project And To Designate MS Consultants, Inc. As the Project Manager.

**Description:**

The City of Canfield has been awarded a Federal Emergency Management Agency (FEMA) Grant administered through the Ohio Emergency Management Agency (EMA) Hazard Mitigation Grant. Before the City of Canfield can start the project, and prior to any of the funds being disbursed there is a requirement for the governing body to pass a resolution designating the person(s) and/or organization responsible for implementing the mitigation project.

This resolution authorizes the City Manager, the City Engineer and the Finance Director as the designated individuals to manage, administer, and implement the Sawmill Creek Stormwater Improvement Project.

**Action Needed:**

Approval of resolution authorizing the City Manager, City Engineer, and City Finance Director to act as agents of the City of Canfield in the implementation of the FEMA Funding of the Sawmill Creek Stormwater Improvement Project.

**Attachment(s):**

Resolution authorizing the City Manager and City Engineer to File Application and To Execute Contracts and Act as Chief Executive Officers for the Federal Emergency Management Agency (“FEMA”) Funded Project; Namely the Sawmill Creek Improvement Project, And to Designate the Finance Director as Chief Fiscal Officer for All Grant Documents for The Project and To Designate MS Consultants, Inc. As the Project Manager.

Ohio EMA Grant Agreement Cover Letter

Public Comments

D. A **Motion** to Waive A Portion of Utility Charges.

**Description:**

Staff was contacted by the building owner located at 584 E. Main Street regarding abnormal consumption as a result of a leak that spanned over two of the most recent billing cycles.

Based on the individual considerations of the circumstances presented, staff has calculated the appropriate adjustment to the sanitary sewer portion of this consumer’s utility bill. This adjustment is contingent upon receiving the credit from our wastewater treatment provider, who will allow and grant monthly bill credits upon request from the City of Canfield.

This motion authorizes the waiver of a portion of the utility bill for the owner at 584 E. Main Street as outlined below and in the accompanying adjustment analysis:

| Adjustment Consideration #1 |             |            |               |
|-----------------------------|-------------|------------|---------------|
| Adjustments Summary         | Consumption | \$ per/Gal | Total Charges |
| FIXED CAPITAL CHG           | 0           | -          | \$ 9.00       |
| STORM WA                    | 0           | -          | \$ -          |
| SW                          | 5,000       | \$ 0.00633 | \$ 31.64      |
| SW SURCHARGE                | 39,815      | \$ 0.00026 | \$ 10.35      |
| WA                          | 39,815      | \$ 0.01112 | \$ 442.74     |
|                             |             |            | \$ 493.73     |

|                           |             |
|---------------------------|-------------|
| Total Adjustments Summary | \$ (353.77) |
| Penalty Adjustment        | \$ (83.84)  |

| Adjustment Consideration #2 |             |            |               |
|-----------------------------|-------------|------------|---------------|
| Adjustments Summary         | Consumption | \$ per/Gal | Total Charges |
| FIXED CAPITAL CHG           | 0           | -          | \$ 9.00       |
| STORM WA                    | 0           | -          | \$ -          |
| SW                          | 5,000       | \$ 0.00633 | \$ 31.64      |
| SW SURCHARGE                | 35,150      | \$ 0.00026 | \$ 7.03       |
| WA                          | 35,150      | \$ 0.01112 | \$ 390.87     |
|                             |             |            | \$ 438.54     |

|                           |             |
|---------------------------|-------------|
| Total Adjustments Summary | \$ (308.61) |
|---------------------------|-------------|

**Action Needed:**

Consideration of motion waiving a portion of the utility bill at 584 E. Main Street based on the circumstances presented.

**Attachment(s):**

Motion to Waive a Portion of Utility Charges

584 E. Main St. Adjustment Request

584 E. Main St. Adjustment Calculation & Bill History

Public Comments.

12. Council Comments.

13. Adjournment

Introduced by: \_\_\_\_\_

First Reading: \_\_\_\_\_

## ORDINANCE

### AMENDING CANFIELD CODIFIED ORDINANCE §1127.03 (D)(3) TO PROVIDE FOR A DEPICTION OF CERTAIN ADJUSTMENT REQUESTS

WHEREAS, the Council of the City of Canfield upon recommendation by the Planning and Zoning Commission desires to amend ordinance section 1127.03 to require depictions of structures to be constructed pursuant to a request for an adjustment.

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

Section 1: That Canfield Codified Ordinance Section 1127.03(d)(3) shall be amended to read:

(3) Plat layout drawn to scale, showing the actual shape and dimension of the lot or parcel and the proposed construction location, if any. If the requested adjustment includes the construction of a structure, the applicant shall submit a depiction or schematic of the proposed construction showing the finished appearance and vertical height dimensions of each side of the structure to be constructed.

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

PASSED IN COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D., 2021.

\_\_\_\_\_  
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



## City of Canfield

104 LISBON STREET  
CANFIELD, OHIO 44406-1416

Phone: 330-533-1101  
Admin. Fax: 330-533-4415  
Finance Fax: 330-533-2668  
[www.ci.canfield.oh.us](http://www.ci.canfield.oh.us)



**DATE: FEBRUARY 11, 2021**

**TO: MEMBERS OF COUNCIL**

**FROM: MIKE COOK, SECRETARY  
PLANNING AND ZONING COMMISSION**

**SUBJECT: A RECOMMENDATION TO COUNCIL TO AMMEND CANFIELD  
CODIFIED ORDINANCE SECTION 1127.03 (D)(3) TO PROVIDE FOR A  
DEPICTION OF CERTAIN ADJUSTMENT REQUEST**

At the regular meeting of the Planning and Zoning Commission on January 14, 2021, the following motion was made:

Mr. Decapua made a motion to recommend Council ammend Canfield Codified Ordinance Section 1127.03 (d)(3).

The motion was seconded by Mr. Neff.

This motion passed 5 - 0





## City of Canfield

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**DATE: JANUARY 14, 2021**

**TO: MEMBERS OF COUNCIL**

**FROM: MIKE COOK, SECRETARY  
PLANNING AND ZONING COMMISSION**

**SUBJECT: A RECOMMENDATION TO COUNCIL TO AMMEND CANFIELD  
CODIFIED ORDINANCE SECTION 1127.03 (D)(3) TO PROVIDE FOR A  
DEPICTION OF CERTAIN ADJUSTMENT REQUEST**

At the regular meeting of the Planning and Zoning Commission on January 14, 2021, the following motion was made:

Mr. Decapua made a motion to recommend Council ammend Canfield Codified Ordinance Section 1127.03 (d)(3).

The motion was seconded by Mr. Neff.

This motion passed 5 - 0

Introduced by: \_\_\_\_\_

Motion No. \_\_\_\_\_

A MOTION ACCEPTING AN APPOINTMENT TO  
THE COMMUNITY REINVESTMENT AREA HOUSING COUNCIL

WHEREAS, Ohio Revised Code Section 3735.69 established the requirements of a Community Reinvestment Area Housing Council; and

WHEREAS, the Mayor is required to appoint two members to the Community Reinvestment Area Housing Council; and

WHEREAS, Council is required to appoint two members to the Community Reinvestment Area Housing Council; and

WHEREAS, the Planning & Zoning Commission is required to appoint one member to the Community Reinvestment Area Housing Council.

WHEREAS, a vacancy exists on the Community Reinvestment Area Housing Council.

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

**Section 1:** The following individual is hereby selected to fill the position on the Community Reinvestment Area Housing Board:

| NAME | COMMITTEE                                   | APPOINTED BY: |
|------|---|---------------|
|      | Community Reinvestment Area Housing Council | Mayor Duffett |

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

PASSED IN COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D, 2021

\_\_\_\_\_  
CLERK OF COUNCIL

Certification of Publication

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

\_\_\_\_\_

\_\_\_\_\_  
CLERK OF COUNCIL

APPROVED AS TO FORM:

\_\_\_\_\_  
MUNICIPAL ATTORNEY

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 ENGINEERING SERVICES  
RELATED TO STORM SEWER INFRASTRUCTURE.**

**WHEREAS**, the City of Canfield hereby desires to engage MS Consultants, Inc. with regards for project management for engineering services related to improvements to the existing storm sewer infrastructure along South Briarcliff, Bradford, and Verdant Lane by upsizing storm infrastructure to meet current design regulations based upon the Mahoning County stormwater regulations and the construction of offline overflow detention areas along Sawmill Creek to store water during heavy rain events.

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

**Section 1.** That the City Manager is hereby authorized and directed to enter into the attached agreement with MS Consultants, Inc. for the provision of certain services as described therein, for an amount not to exceed \$268,600.00

**Section 2.** That per Ohio Revised Code Section 153.69 and upon review of the RFQ respondents from the City of Canfield 2019 RFQ for Engineering Services, MS Consultants, Inc. was selected to perform services related to the Sawmill Creek Stormwater Improvement Project.

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

PASSED IN COUNCIL THIS \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
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 TO FORM:

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MUNICIPAL ATTORNEY

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

THIS IS AN AGREEMENT ("Agreement") effective as of \_\_\_\_\_, 2021 ("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: Improvements to the existing storm sewer infrastructure along South Briarcliff, Bradford, and Verdant Lane by upsizing storm infrastructure to meet current design regulations based upon the Mahoning County stormwater regulations and the construction of offline overflow detention areas along Sawmill Creek to store water during heavy rain events. The improvements are based upon a study performed by ms consultants in 2018. The project is funded through a FEMA Hazard Mitigation Grant and Ohio Public Works Commission Grant.

Engineer's services under this Agreement are generally identified as follows: Design and bidding services for the above referenced improvements to Sawmill Creek and the infrastructure in the area.

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 forth in Exhibit A, except for services of Engineer's Resident Project Representative, if any, as follows:
1. Labor costs shall be billed at the actual Direct Salary Expense (DSE) times a multiplier of 3.27 plus Reimbursable Expenses and Engineer's Consultants' charges, if any.
  2. The total compensation for services under this Agreement is estimated to be \$268,600 based on the following estimated distribution of compensation:
 

|  |              |
|--|--------------|
| a. FEMA Sub-Recipient Project Management | \$43,600.00  |
| b. Final Design Phase                    | \$214,050.00 |
| c. Bidding or Negotiating Phase          | \$10,950.00  |
  3. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved by Owner.
  4. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in this Paragraph incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer's Consultants' charges.
  5. The amounts billed for Engineer's services under this Paragraph will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges.



6. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of December 31st) to reflect equitable changes in the compensation payable to Engineer.
- B. Compensation for Reimbursable Expenses
1. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in this Agreement.
  2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
  3. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.
- C. Other Provisions
1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.05.
  2. The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

#### 4.04 *Resident Project Representative*

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

### **ARTICLE 5 – OPINIONS OF COST**

#### 5.01 *Opinions of Probable Construction Cost*

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

## 5.02 *Designing to Construction Cost Limit*

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

## 5.03 *Opinions of Total Project Costs*

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

# ARTICLE 6 – GENERAL CONSIDERATIONS

## 6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
  - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
  - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for

modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:

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

municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.

- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

#### 6.02 *Design Without Construction Phase Services*

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

#### 6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of

the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

#### 6.04 *Electronic Transmittals*

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

#### 6.05 *Insurance*

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

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

#### 6.06 *Suspension and Termination*

##### A. *Suspension:*

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

- B. *Termination:* The obligation to provide further services under this Agreement may be terminated:
1. For cause,
    - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
    - b. by Engineer:
      - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
      - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
      - 3) Engineer shall have no liability to Owner on account of such termination.
    - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
  2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.

2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in this Agreement.

#### 6.07 *Controlling Law*

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

#### 6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
  1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
  2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
  3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

#### 6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking other dispute resolution procedures.
- B. All disputes between the parties arising out of this Agreement that are not resolved by negotiation shall be subject to arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the

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Exhibit K – Amendment to Owner-Engineer Agreement.

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

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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 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, Scope of Work and Owner's Responsibilities.

### **8.02 *Total Agreement***

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties.

### **8.03 *Designated Representatives***

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

### **8.04 *Engineer's Certifications***

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

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

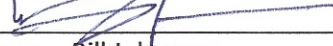


IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: City of Canfield

Engineer: ms consultants, inc.

By: \_\_\_\_\_  
Print name: Wade Calhoun  
Title: City Manager  
Date Signed: \_\_\_\_\_

By:  \_\_\_\_\_  
Print name: Bill Johngrass  
Title: Vice President  
Date Signed: 1/18/21

Address for Owner's receipt of notices:

104 Lisbon Street  
Canfield, Ohio 44406  
Designated Representative (Paragraph 8.03.A):  
Wade Calhoun  
Title: City Manager  
Phone Number: 330-533-1101  
E-Mail Address: wcalhoun@canfield.gov

Address for Engineer's receipt of notices:

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

Exhibit K – Amendment to Owner-Engineer Agreement.

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

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## **EXHIBIT A**

### **SCOPE OF SERVICES**

#### **City of Canfield Sawmill Creek Drainage Improvements Project**

January 18, 2021

##### **Project Understanding**

**ms consultants, inc.** (ENGINEER) understands that the City of Canfield (OWNER) intends to install approximately 3,800 linear feet of 24" storm sewer, as well as the installation of four dry detention basins along Sawmill Creek. The ENGINEER performed a hydrologic and hydraulic analysis study in 2019 and found that this area of the City was prone to surface flooding as part of a larger planning exercise. The improvements are anticipated to bring the infrastructure into compliance with current Mahoning County Stormwater Regulations. The project's design and construction is funded through the Ohio Public Works Commission (OPWC) and FEMA Hazard Mitigation Grant (HMGP).

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

##### **A. Task #1- Design Services**

###### **1. Survey Services**

- i. Provide necessary surveying services to adequately provide for the design of the storm sewer installation and detention basin construction. Basic survey services, excluding if-authorized tasks, shall consist of the following:
  1. Establish Primary Project Control for the project. The Horizontal datum will be referenced to the Ohio State Plane, North Zone, coordinate grid as per NAD 83 (2011). The Vertical datum will be established on NAVD 88. ENGINEER anticipates setting three (3) project control points.
  2. Perform a detailed survey of observable features along the project corridor within 100 feet of the proposed sewer alignment. The survey will include drainage, utilities (contact Ohio Utilities Protection Services for field locations), and all observable site features including driveways, mailboxes, signs, any other relevant items necessary for the design along the sanitary sewer;
  3. Topographic survey for the location of the proposed detention basins adjacent to Sawmill Creek.
  4. Establish the existing Right-of-Way, property lines, and sewer easements within the project limits in accordance with OAC Chapter 4733-37;
  5. Prepare existing ground base map for design.

6. Prepare a Notice of Survey letter to homeowners along the existing sanitary sewer alignment regarding upcoming survey. ENGINEER assumes OWNER will notify residents.

2. *Waterway Permit Study & Application*

- i. Conduct a site visit, prepare a map, and a brief report of the potentially jurisdictional wetlands in the corridor. The locations and boundaries of any potentially jurisdictional wetlands will also be provided as GIS files. Special attention will be given to the areas along either side of Sawmill Creek, which may meet regulated wetland criteria. The preliminary report will summarize the type of quality of the wetlands, but will not be a complete Waters of the United States (Wetland Delineation) Report suitable for review by the U.S. Army Corps of Engineers. If jurisdictional wetlands cannot be avoided by the proposed improvements or if construction is required within Sawmill Creek, additional technical studies and a waterway permit from the U.S. Army Corps of Engineers will be required. Wetland impact mitigation is not included and cannot be determined until field analysis and design is finalized. OEPA review fees for waterway permits are not included and not anticipated.
- ii. Using information collected during the Preliminary Investigation, the ENGINEER will prepare a Waters of the United States (Wetland Delineation) Report suitable for review and approval by the U.S. Army Corps of Engineers. Potentially jurisdictional wetlands will be documented using the "Routine On-Site Determination" method as defined by the ACOE Wetland Delineation Manual. The three-parameter approach (vegetation, soils and hydrology) will be utilized. Representative data points and wetland boundaries will be mapped using Global Positioning System (GPS). Identified wetlands will be scored and categorized using the Ohio Rapid Assessment Methodology (ORAM v. 5.0) to make a provisional determination of the appropriate wetland categories. Sawmill Creek and any other watercourses in the corridor will be mapped and evaluated using the Headwaters Habitat Evaluation Index (HHEI).
- iii. In order to expedite the waterway permit application review, the ENGINEER will also coordinate with U.S. Fish and Wildlife Service (USFWS) regarding potential endangered species and the Ohio Historic Preservation Office (OHPO) regarding potential archaeological resources that may be present in the corridor. If USFWS determines more detailed bat species studies are required, an

additional fee will be required. If OHPO requests archaeological studies, an additional fee will be required.

- iv. Because the Army Corps Pittsburgh District routinely requests on-site meetings to review the potentially jurisdictional wetlands and streams, it is assumed the ENGINEER will attend one on-site meeting. The ENGINEER will be prepared to explain the resource boundaries and evaluations included in Waters of the United States (Wetland Delineation) Report. It is assumed a conceptual overview of the proposed improvements will be available for the meeting, but detailed plans and impact calculations will not be final. The findings from the coordination with USFWS and OHPO will also be provided at the on-site meeting.
- v. It is assumed the project will meet the criteria for a Section 404 Nationwide Permit # 43 -- Stormwater Management Facilities which includes construction of stormwater detention and retention basins. The ENGINEER will prepare and submit the permit application to the U.S. Army Corps of Engineers, including all required graphics and attachments. If impacts are greater than ½ acre, an Individual Section 404 Permit and Section 401 Water Quality Certification will be required. The cost of preparing an Individual 404 and 401 applications, the cost of mitigation, and the cost of permit review fees cannot be estimated at this time.

3. *Additional Permitting*

- i. ENGINEER shall coordinate with the applicable regulatory agencies for permitting and submit permit applications on behalf of the OWNER. ENGINEER assumes that the following permits will be required:
  - 1. Mahoning County Soil & Water Conservation District (SWP3)
  - 2. Ohio EPA General Construction Permit (NOI)

4. *Geotechnical Investigation*

- i. Five (5) soil borings will be completed near the location of the proposed detention basin by PSI, to determine the soil composition, water table elevation, and infiltration rates to determine if the site will be suitable for a large detention basin, or if the basin will require some form of liner. For the purposes of this proposal, \$5,733 has been budgeted for the soil borings.
- ii. ENGINEER shall review the findings of the soil boring report and incorporate said findings into the final design.

5. *Subsurface Utility Engineering*
  - i. Level A test holes for Subsurface Utility Engineering will be completed where needed by Surveying and Mapping, LLC (SAM) to identify potential utility conflicts. For the purposes of this proposal, \$12,075 has been budgeted for these services. If this item is not needed as design progresses, the budgeted amount may be used towards completion of final design.
6. *Public Engagement*
  - i. ENGINEER shall hold one virtual, public education meeting at project kickoff to discuss the project with City staff and residents.
  - ii. ENGINEER shall hold one public education meeting at project conclusion to discuss the final design with City staff and residents.
7. *Final Design*
  - i. Provide OWNER with drawings in PDF format at the 60/90/100% design stage for review and final drawings at the time of bid in PDF format as 22"x34" Plan Sheets. The ENGINEER assumes that the plan set will include:
    1. Title Sheet
    2. General Notes
    3. General Summary
    4. Plan Details
    5. Site Plan
    6. Sewer Plan and Profile (500 LF per sheet)
    7. Detention Basin Plan and Profile
    8. Stormwater Pollution Prevention Plan, Notes and Details
  - ii. Provide detailed hydraulic calculations and a Stormwater Management Report that includes:
    1. A narrative summarizing the storm sewer and detention basin design.
    2. Storm sewer capacity calculations
    3. Detention basin sizing calculations
    4. Post construction stormwater management calculations and narrative
    5. Updated information from the planning study with the detailed design.
  - iii. Provide a detailed construction cost estimate at each design stage for the Owner's review.
  - iv. ENGINEER will develop all technical specifications for the project.

- v. ENGINEER shall provide project management and client coordination throughout the design process.

8. *Bidding Services*

- i. ENGINEER will prepare all required bidding documents and attend bid opening.
- ii. ENGINEER shall prepare the bid advertisement for OWNERs submittal for publication. OWNER shall cover all associated costs.
- iii. ENGINEER will conduct a pre-bid meeting either in person at the City's facilities or virtually.
- iv.
- v. ENGINEER assumes preparation of one addendum during bidding in scope of work.
- vi. ENGINEER shall prepare the bid tabulation and review all bids for accuracy and completeness. Up to three (3) references will be contacted for the apparent low bidder, if required.
- vii. ENGINEER shall prepare a recommendation of award letter and provide to the OWNER.
- viii. Engineer will prepare Conformed Documents, incorporating changes made to the Plan Drawings and Specifications during bidding, if any, and issue up to three (3) hard copies to the Contractor for construction.
- ix. ENGINEER will prepare contract documents upon award of the project by the OWNER.

9. *As-Built Drawings*

- i. As a requirement of the FEMA Hazard Mitigation Grant, ENGINEER shall prepare as-built drawings and submit to the appropriate regulatory agency.
- ii. As-built drawings shall be prepared based upon mark-ups to construction documents provided by the OWNER and/or others that were prepared during the course of construction by the contractor or OWNER's agent. ENGINEER shall not be responsible for errors or omissions in preparation of record drawings due to errors or omissions on the part of the OWNER or others in preparing the mark-up drawing sets.

**B. Task #2- FEMA Sub-Recipient Project Management**

- 1. The ENGINEER shall provide project management and coordination activities related to the FEMA Hazard Mitigation Grant.

**C. Additional Services of Engineer**

**1. Services Requiring Authorization in Advance**

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

**D. OWNER's Responsibilities**

1. 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.
2. 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.
3. 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.
4. 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.
5. Attend design phase progress meetings and provide timely comments.
6. Give prompt written notice to ENGINEER whenever the OWNER observes or becomes aware of any development that affects the scope or timing of ENGINEER's services.
7. Furnish, or direct ENGINEER to provide additional services as stipulated in this agreement or other services as required in a timely manner.

8. Bear all costs incidental to compliance with the requirements of this Section D.

**E. Assumptions/Exclusions**

1. The project scope does not include Right-of-Way or easement acquisition and/or preparation of easement documents as the locations of acquisition cannot be identified until design begins. These services shall be a modification to this agreement.
2. ENGINEER assumes that the OWNER will coordinate work with all affected homeowners.
3. Construction administration, inspection, and post-construction services (other than as-built drawing preparation) are not included within this agreement.
4. It is assumed that as-built markups provided by the Owner, contractor, and/or Owner's agent will be provided to ms consultants and will be accurate, complete and legible. No field survey or site inspection time is included for verification of accuracy of as-built markups provided.

**F. Period of Service**

1. The ENGINEER agrees to commence work within ten (10) days after written authorization to proceed and to complete the design work within twelve (12) months, dependent upon review times. Right-of-way acquisition, if required as a modification, could extend the duration of the design work.



Introduced by: \_\_\_\_\_

First Reading: \_\_\_\_\_

## ORDINANCE

### AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH S.E.T. INC. TO EXTEND A WATERLINE TO MILLENNIAL MOMENTS.

WHEREAS, the Council of the City of Canfield feels that it's in the best interest of the City of Canfield to extend a waterline to the Millennial Moments JEDD for future development; and

WHEREAS, bids were received for this project; and

WHEREAS, Council desires to proceed with this project and award a contract.

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

Section 1: The City Manager is hereby authorized to enter into an agreement with S.E.T. Inc. to extend a waterline to the Millennial Moments JEDD, pursuant to the bid proposal.

Section 2: The cost of said service shall not exceed \$100,672.60.

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

PASSED IN COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D., 2021.

\_\_\_\_\_  
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

February 25, 2021

Mr. Wade Calhoun  
City Manager  
City of Canfield  
104 Lisbon Street  
Canfield, Ohio 44406

Dear Mr. Calhoun:

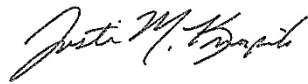
Based upon the review of the bids received on February 24, 2021 for the City of Canfield's Millennial Moments Waterline Extension Project, the apparent low bidder, **Woodford Excavating LLC**, has provided an incomplete, non-responsive bid package in accordance with Article 14 of Specification Section 00 21 13 Instruction to Bidders for the following reasons:

1. Incomplete Hold Harmless Agreement.
2. Incomplete Tax Affidavit #1 or #2.
3. No Equal Employment Opportunity (EEO) Certification Provided.

As such, the recommendation is to award the project to the apparent second low bidder, **S.E.T. inc.**, with a Base Bid Amount of **Ninety Thousand Eight Hundred Seventy-Six Dollars and 80/100 (\$90,876.80)** and Bid Option 2 of **Nine Thousand Seven Hundred Ninety-Five Dollars and 80/100 (\$9,795.80)** for a Total Bid Amount of **One Hundred Thousand Six Hundred Seventy-Two Dollars and 60/100 (\$100,672.60)**. A bid tabulation is attached for your files.

If you have any questions or need additional information, please contact our office.

Sincerely,  
WallacePancher Group



Justin M. Knapik, P.E.  
Senior Engineer/Project Manager

Enclosures  
JMK:dpw

Millennial Moments Waterline Extension  
Canfield Township, Mahoning County, Ohio  
Bid Tabulation for City of Canfield, Ohio

| BASE BID                                   |   |          |      |                         |               |             |               |                           |               |                          |               |                          |               |                              |               |                         |               |  |               |
|--|---|----------|------|-------------------------|---------------|-------------|---------------|---------------------------|---------------|--------------------------|---------------|--------------------------|---------------|------------------------------|---------------|-------------------------|---------------|--|---------------|
| ITEM NO.                                   | DESCRIPTION   | QUANTITY | UNIT | Woodford Excavating LLC |               | S.E.T. inc. |               | Utility Contracting, Inc. |               | X-Press Underground Inc. |               | J.S. Bova Excavating LLC |               | Yarian Brothers Construction |               | Rudzik Excavating, Inc. |               | Northeast Ohio Trenching Services Inc. |               |
|  |   |          |      | UNIT COST               | CONTRACT COST | UNIT COST   | CONTRACT COST | UNIT COST                 | CONTRACT COST | UNIT COST                | CONTRACT COST | UNIT COST                | CONTRACT COST | UNIT COST                    | CONTRACT COST | UNIT COST               | CONTRACT COST | UNIT COST                              | CONTRACT COST |
| 252  | Full Depth Pavement Sawing  | 65       | LF   | \$7.70                  | \$500.50      | \$2.00      | \$130.00      | \$3.00                    | \$195.00      | \$3.00                   | \$195.00      | \$3.00                   | \$195.00      | \$10.00                      | \$650.00      | \$3.00                  | \$195.00      | \$9.00                                 | \$585.00      |
| 407  | Tack Coat, 0.10 Gallons/SY  | 5        | GAL  | \$5.50                  | \$27.50       | \$10.00     | \$50.00       | \$28.00                   | \$140.00      | \$10.00                  | \$50.00       | \$4.00                   | \$20.00       | \$50.00                      | \$250.00      | \$10.00                 | \$50.00       | \$10.00                                | \$50.00       |
| 441  | 1-1/4" Asphaltic Concrete Surface Course, PG 64-22, 448, Type 1   | 2        | CY   | \$660.00                | \$1,320.00    | \$600.00    | \$1,200.00    | \$560.00                  | \$1,120.00    | \$400.00                 | \$800.00      | \$347.00                 | \$694.00      | \$600.00                     | \$1,200.00    | \$750.00                | \$1,500.00    | \$500.00                               | \$1,000.00    |
| 441  | 2" Asphaltic Concrete Intermediate Course, PG 64-22, 448, Type 2  | 3        | CY   | \$660.00                | \$1,980.00    | \$600.00    | \$1,800.00    | \$560.00                  | \$1,680.00    | \$300.00                 | \$900.00      | \$276.00                 | \$828.00      | \$600.00                     | \$1,800.00    | \$750.00                | \$2,250.00    | \$500.00                               | \$1,500.00    |
| 604  | Maintaining Traffic   | 1        | LS   | \$1,650.00              | \$1,650.00    | \$5,800.00  | \$5,800.00    | \$2,000.00                | \$2,000.00    | \$1,200.00               | \$1,200.00    | \$15,000.00              | \$15,000.00   | \$12,000.00                  | \$12,000.00   | \$7,000.00              | \$7,000.00    | \$2,000.00                             | \$2,000.00    |
| 613  | Low Strength Mortar Backfill Beneath Pavement Areas   | 100      | CY   | \$87.00                 | \$8,700.00    | \$119.50    | \$11,950.00   | \$115.00                  | \$11,500.00   | \$110.00                 | \$11,000.00   | \$130.00                 | \$13,000.00   | \$125.00                     | \$12,500.00   | \$105.00                | \$10,500.00   | \$120.00                               | \$12,000.00   |
| 623  | Construction Layout Stakes  | 1        | LS   | \$1,320.00              | \$1,320.00    | \$2,700.00  | \$2,700.00    | \$1,700.00                | \$1,700.00    | \$550.00                 | \$550.00      | \$1,030.00               | \$1,030.00    | \$1,000.00                   | \$1,000.00    | \$1,000.00              | \$1,000.00    | \$1,500.00                             | \$1,500.00    |
| 624  | Mobilization  | 1        | LS   | \$5,775.00              | \$5,775.00    | \$9,010.00  | \$9,010.00    | \$3,000.00                | \$3,000.00    | \$6,500.00               | \$6,500.00    | \$11,760.00              | \$11,760.00   | \$3,000.00                   | \$3,000.00    | \$6,000.00              | \$6,000.00    | \$2,000.00                             | \$2,000.00    |
| 638  | Connection to Existing Water System   | 1        | LS   | \$1,600.00              | \$1,600.00    | \$1,025.00  | \$1,025.00    | \$1,000.00                | \$1,000.00    | \$2,600.00               | \$2,600.00    | \$3,020.00               | \$3,020.00    | \$6,570.00                   | \$6,570.00    | \$6,000.00              | \$6,000.00    | \$3,200.00                             | \$3,200.00    |
| 638  | 8" Gate Valve and Valve Box, Push-On Joints, Mechanical Restraints  | 2        | EA   | \$1,837.00              | \$3,674.00    | \$1,644.00  | \$3,288.00    | \$1,400.00                | \$2,800.00    | \$1,850.00               | \$3,700.00    | \$1,644.00               | \$3,288.00    | \$2,100.00                   | \$4,200.00    | \$1,650.00              | \$3,300.00    | \$3,600.00                             | \$7,200.00    |
| 638  | 12" Gate Valve and Valve Box, Push-On Joints, Mechanical Restraints   | 1        | EA   | \$3,420.00              | \$3,420.00    | \$2,745.45  | \$2,745.45    | \$2,500.00                | \$2,500.00    | \$2,750.00               | \$2,750.00    | \$2,846.00               | \$2,846.00    | \$3,820.00                   | \$3,820.00    | \$3,000.00              | \$3,000.00    | \$4,200.00                             | \$4,200.00    |
| 638  | 8" Ductile Iron Plug, AWWA C153, Push-On Fitting, Mechanical Restraints   | 2        | EA   | \$345.00                | \$690.00      | \$367.05    | \$734.10      | \$140.00                  | \$280.00      | \$250.00                 | \$500.00      | \$363.00                 | \$726.00      | \$750.00                     | \$1,500.00    | \$300.00                | \$600.00      | \$800.00                               | \$1,600.00    |
| 638  | 8" X 12" Ductile Iron Concentric Reducer, AWWA C153, Push-On Fitting Mechanical Restraints  | 2        | EA   | \$863.00                | \$1,726.00    | \$720.00    | \$1,440.00    | \$360.00                  | \$720.00      | \$900.00                 | \$1,800.00    | \$715.00                 | \$1,430.00    | \$1,005.00                   | \$2,010.00    | \$500.00                | \$1,000.00    | \$1,200.00                             | \$2,400.00    |
| 638  | 12" Ductile Iron Tee, AWWA C153, Push-On Fitting, Mechanical Restraints, Thrust Block   | 1        | EA   | \$1,850.00              | \$1,850.00    | \$1,407.90  | \$1,407.90    | \$990.00                  | \$990.00      | \$1,200.00               | \$1,200.00    | \$1,385.00               | \$1,385.00    | \$3,200.00                   | \$3,200.00    | \$925.00                | \$925.00      | \$2,200.00                             | \$2,200.00    |
| 638  | 12" 45-Degree Ductile Iron Bend, AWWA C153, Push-On Fitting, Mechanical Restraints, Thrust Block  | 2        | EA   | \$1,084.00              | \$2,168.00    | \$1,064.55  | \$2,129.10    | \$500.00                  | \$1,000.00    | \$800.00                 | \$1,600.00    | \$1,090.00               | \$2,180.00    | \$1,307.00                   | \$2,614.00    | \$650.00                | \$1,300.00    | \$1,200.00                             | \$2,400.00    |
| 638  | Bore Pit Excavation (10'-0" X 30'-0" Min.)  | 180      | CY   | \$22.00                 | \$3,960.00    | \$53.40     | \$9,612.00    | \$58.00                   | \$10,440.00   | \$10.00                  | \$1,800.00    | \$2.00                   | \$360.00      | \$67.00                      | \$12,060.00   | \$60.00                 | \$10,800.00   | \$55.00                                | \$9,900.00    |
| 638  | Receiving Pit Excavation (15'-0" X 5'-0" Min.)  | 25       | CY   | \$73.00                 | \$1,825.00    | \$78.15     | \$1,953.75    | \$72.00                   | \$1,800.00    | \$10.00                  | \$250.00      | \$2.00                   | \$50.00       | \$240.00                     | \$6,000.00    | \$60.00                 | \$1,500.00    | \$60.00                                | \$1,500.00    |
| 638  | Jack and Bore 12" Water Main, 24" Casing  | 105      | LF   | \$230.00                | \$24,150.00   | \$239.90    | \$25,189.50   | \$225.00                  | \$23,625.00   | \$265.00                 | \$27,825.00   | \$74.00                  | \$7,770.00    | \$129.00                     | \$13,545.00   | \$80.00                 | \$8,400.00    | \$535.00                               | \$56,175.00   |
| 638  | 24" Steel Casing, 1/2-Inch Wall Thickness, ASTM A53, Grade B, Seamless, Electric Weld, Plain Ends, Casing Chocks/Spacers, Sand Annual Space Void Fill | 105      | LF   | \$55.00                 | \$5,775.00    | \$55.00     | \$5,775.00    | \$110.00                  | \$11,550.00   | \$265.00                 | \$27,825.00   | \$391.00                 | \$41,055.00   | \$230.00                     | \$24,150.00   | \$380.00                | \$39,900.00   | \$95.00                                | \$9,975.00    |
| 638  | Waterline Pressure Testing, AWWA C600   | 1        | LS   | \$550.00                | \$550.00      | \$459.00    | \$459.00      | \$650.00                  | \$650.00      | \$600.00                 | \$600.00      | \$504.00                 | \$504.00      | \$1,500.00                   | \$1,500.00    | \$3,000.00              | \$3,000.00    | \$1,500.00                             | \$1,500.00    |
| 638  | Waterline Disinfection, AWWA C651   | 1        | LS   | \$550.00                | \$550.00      | \$459.00    | \$459.00      | \$150.00                  | \$150.00      | \$400.00                 | \$400.00      | \$444.00                 | \$444.00      | \$1,500.00                   | \$1,500.00    | \$2,000.00              | \$2,000.00    | \$1,000.00                             | \$1,000.00    |
| 659  | Seeding & Mulching, Class 1, Lawn Mixture   | 160      | SY   | \$11.00                 | \$1,760.00    | \$2.05      | \$328.00      | \$17.00                   | \$2,720.00    | \$6.00                   | \$960.00      | \$2.00                   | \$320.00      | \$12.25                      | \$1,960.00    | \$5.00                  | \$800.00      | \$14.00                                | \$2,240.00    |
| 832  | Temporary Silt Fence, As Required   | 200      | LF   | \$2.00                  | \$400.00      | \$3.08      | \$616.00      | \$1.00                    | \$200.00      | \$1.00                   | \$200.00      | \$2.00                   | \$400.00      | \$3.50                       | \$700.00      | \$4.00                  | \$800.00      | \$2.00                                 | \$400.00      |
| SP1  | Pre-Construction Photographs/Video Documentation  | 1        | LS   | \$605.00                | \$605.00      | \$925.00    | \$925.00      | \$450.00                  | \$450.00      | \$350.00                 | \$350.00      | \$750.00                 | \$750.00      | \$1,500.00                   | \$1,500.00    | \$500.00                | \$500.00      | \$700.00                               | \$700.00      |
| SP2  | Dewatering (As Required)  | 1        | LS   | \$280.00                | \$280.00      | \$150.00    | \$150.00      | \$200.00                  | \$200.00      | \$500.00                 | \$500.00      | \$100.00                 | \$100.00      | \$1,000.00                   | \$1,000.00    | \$2,500.00              | \$2,500.00    | \$2,000.00                             | \$2,000.00    |
| Total Sum of All Unit Price BASE BID Items |   |          |      | \$76,256.00             |               | \$90,876.80 |               | \$82,410.00               |               | \$96,055.00              |               | \$109,155.00             |               | \$120,229.00                 |               | \$114,820.00            |               | \$129,225.00                           |               |

| BID OPTION 1                                   |  |          |      |                         |               |             |               |                           |               |                          |               |                          |               |                              |               |                         |               |  |               |
|--|--|----------|------|-------------------------|---------------|-------------|---------------|---------------------------|---------------|--------------------------|---------------|--------------------------|---------------|------------------------------|---------------|-------------------------|---------------|--|---------------|
| ITEM NO.                                       | DESCRIPTION  | QUANTITY | UNIT | Woodford Excavating LLC |               | S.E.T. inc. |               | Utility Contracting, Inc. |               | X-Press Underground Inc. |               | J.S. Bova Excavating LLC |               | Yarian Brothers Construction |               | Rudzik Excavating, Inc. |               | Northeast Ohio Trenching Services Inc. |               |
|  |  |          |      | UNIT COST               | CONTRACT COST | UNIT COST   | CONTRACT COST | UNIT COST                 | CONTRACT COST | UNIT COST                | CONTRACT COST | UNIT COST                | CONTRACT COST | UNIT COST                    | CONTRACT COST | UNIT COST               | CONTRACT COST | UNIT COST                              | CONTRACT COST |
| 638  | 8-Inch Water Main, Ductile Iron Pipe, ANSI Class 52, Cement-Mortar Lined, Push-On Joints, Polyethylene Encased, Tracer Wire, Marking Tape  | 40       | LF   | \$91.00                 | \$3,640.00    | \$98.33     | \$3,933.20    | \$60.00                   | \$2,400.00    | \$72.00                  | \$2,880.00    | \$88.00                  | \$3,520.00    | \$0.00                       | \$0.00        | \$110.00                | \$4,400.00    | \$160.00                               | \$6,400.00    |
| 638  | 12-Inch Water Main, Ductile Iron Pipe, ANSI Class 52, Cement-Mortar Lined, Push-On Joints, Polyethylene Encased, Tracer Wire, Marking Tape | 230      | LF   | \$93.00                 | \$21,390.00   | \$64.09     | \$14,740.70   | \$90.00                   | \$20,700.00   | \$76.00                  | \$17,480.00   | \$111.00                 | \$25,530.00   | \$0.00                       | \$0.00        | \$135.00                | \$31,050.00   | \$170.00                               | \$39,100.00   |
| Total Sum of All Unit Price BID OPTION 1 Items |  |          |      | \$25,030.00             |               | \$18,673.90 |               | \$23,100.00               |               | \$20,360.00              |               | \$29,050.00              |               | \$0.00                       |               | \$35,450.00             |               | \$45,500.00                            |               |

| BID OPTION 2                                   |  |          |      |                         |               |             |               |                           |               |                          |               |                          |               |                              |               |                         |               |  |               |
|--|--|----------|------|-------------------------|---------------|-------------|---------------|---------------------------|---------------|--------------------------|---------------|--------------------------|---------------|------------------------------|---------------|-------------------------|---------------|--|---------------|
| ITEM NO.                                       | DESCRIPTION  | QUANTITY | UNIT | Woodford Excavating LLC |               | S.E.T. inc. |               | Utility Contracting, Inc. |               | X-Press Underground Inc. |               | J.S. Bova Excavating LLC |               | Yarian Brothers Construction |               | Rudzik Excavating, Inc. |               | Northeast Ohio Trenching Services Inc. |               |
|  |  |          |      | UNIT COST               | CONTRACT COST | UNIT COST   | CONTRACT COST | UNIT COST                 | CONTRACT COST | UNIT COST                | CONTRACT COST | UNIT COST                | CONTRACT COST | UNIT COST                    | CONTRACT COST | UNIT COST               | CONTRACT COST | UNIT COST                              | CONTRACT COST |
| 638  | 8-Inch Water Main, Pressure-Rated Polyvinyl Chloride (PVC) Pipe, C900, DR 18, Push-On Joints, Tracer Wire, Marking Tape  | 40       | LF   | \$67.00                 | \$2,680.00    | \$74.81     | \$2,992.40    | \$48.00                   | \$1,920.00    | \$52.00                  | \$2,080.00    | \$61.00                  | \$2,440.00    | \$56.00                      | \$2,240.00    | \$100.00                | \$4,000.00    | \$95.00                                | \$3,800.00    |
| 638  | 12-Inch Water Main, Pressure-Rated Polyvinyl Chloride (PVC) Pipe, C900, DR 18, Push-On Joints, Tracer Wire, Marking Tape | 230      | LF   | \$70.00                 | \$16,100.00   | \$29.58     | \$6,803.40    | \$77.00                   | \$17,710.00   | \$56.00                  | \$12,880.00   | \$88.00                  | \$20,240.00   | \$61.00                      | \$14,030.00   | \$125.00                | \$28,750.00   | \$125.00                               | \$28,750.00   |
| Total Sum of All Unit Price BID OPTION 1 Items |  |          |      | \$18,780.00             |               | \$9,795.80  |               | \$19,630.00               |               | \$14,960.00              |               | \$22,680.00              |               | \$16,270.00                  |               | \$32,750.00             |               | \$32,550.00                            |               |

| BID SUMMARY   |  |  |  |                         |  |              |  |                           |  |                          |  |                          |  |                              |  |                         |  |  |  |
|---|--|--|--|-------------------------|--|--------------|--|---------------------------|--|--------------------------|--|--------------------------|--|------------------------------|--|-------------------------|--|--|--|
|   |  |  |  | Woodford Excavating LLC |  | S.E.T. inc.  |  | Utility Contracting, Inc. |  | X-Press Underground Inc. |  | J.S. Bova Excavating LLC |  | Yarian Brothers Construction |  | Rudzik Excavating, Inc. |  | Northeast Ohio Trenching Services Inc. |  |
| Total Sum of All Unit Price BASE BID Items  |  |  |  | \$76,256.00             |  | \$90,876.80  |  | \$82,410.00               |  | \$96,055.00              |  | \$109,155.00             |  | \$120,229.00                 |  | \$114,820.00            |  | \$129,225.00                           |  |
| Total Sum of All Unit Price BID OPTION 1 OR BID OPTION 2 Items                        |  |  |  | \$18,780.00             |  | \$9,795.80   |  | \$19,630.00               |  | \$14,960.00              |  | \$22,680.00              |  | \$16,270.00                  |  | \$32,750.00             |  | \$32,550.00                            |  |
| Total Sum of All Unit Price Bid Items<br>(BASE BID PLUS BID OPTION 1 OR BID OPTION 2) |  |  |  | \$95,036.00             |  | \$100,672.60 |  | \$102,040.00              |  | \$111,015.00             |  | \$131,835.00             |  | \$136,499.00                 |  | \$147,570.00            |  | \$161,775.00                           |  |

Introduced by: \_\_\_\_\_  
First Reading: \_\_\_\_\_

CITY OF CANFIELD

**RESOLUTION**

A RESOLUTION AUTHORIZING THE CITY MANAGER AND CITY ENGINEER TO FILE APPLICATION AND TO EXECUTE CONTRACTS AND ACT AS CHIEF EXECUTIVE OFFICERS FOR THE FEDERAL EMERGENCY MANAGEMENT AGENCY ("FEMA") FUNDED PROJECT; NAMELY THE SAWMILL CREEK IMPROVEMENT PROJECT, AND TO DESIGNATE THE FINANCE DIRECTOR AS CHIEF FISCAL OFFICER FOR ALL GRANT DOCUMENTS FOR THE PROJECT AND TO DESIGNATE MS CONSULTANTS, INC. AS THE PROJECT MANAGER,

WHEREAS, the City of Canfield hereby requests a grant in the amount of \$1,162,400.00 from the Federal Emergency Management Agency (FEMA) through the Ohio Emergency Management Agency for the Sawmill Creek Improvement Project

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Canfield, Mahoning County, Ohio:

**Section 1:** That Wade Calhoun, City Manager and Stephen Preston (MS Consultants, Inc), City Engineer are hereby authorized to execute for and in behalf of the City of Canfield, a public entity established under the laws of the State of Ohio, this application and to file it in the appropriate State office for the purpose of obtaining certain Federal financial assistance under the Disaster Relief Act (Public Law 288, 23<sup>rd</sup> Congress) or otherwise available from the President's Disaster Relief Fund.

**Section 2:** That the City of Canfield, a public entity established under the laws of the State of Ohio, hereby authorized its agent to provide to the State and to the Federal Emergency Management Agency (FEMA) for all matters pertaining to such Federal disaster assistance the assurances and agreements as listed in the Grant Agreement.

**Section 3:** That the Finance Director is hereby designated as Chief Fiscal Officer relative to all grant documents pertaining to the Sawmill Creek Improvement Project.

**Section 4:** That ms consultants, inc. is hereby designated as Project Manager for the Sawmill Creek Improvement Project.

**Section 5:** That this Resolution and all deliberations relating to the passage of this Resolution were held in open meetings of this Council, all pursuant to Section 121.22 of the Ohio Revised Code and Section 3.11 of the Charter of the Municipality of Canfield.

PASSED IN COUNCIL THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021.

\_\_\_\_\_  
PRESIDENT OF COUNCIL

ATTEST:

\_\_\_\_\_  
CLERK OF COUNCIL

CERTIFICATION OF PUBLICATION

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

\_\_\_\_\_  
CLERK OF COUNCIL

APPROVED AS TO FORM:

\_\_\_\_\_  
MUNICIPAL ATTORNEY



## Department of Public Safety

Mike DeWine, Governor  
Jon Husted, Lt. Governor

Thomas J. Stickrath, Director  
Sima S. Merrick, Executive Director



February 23, 2021  
**FEMA-DR-4447.08-R-OH**

Mr. Wade Calhoun  
City Manager  
104 Lisbon Street  
Canfield, OH 44406

Dear Mr. Calhoun:

Congratulations! You were recently notified the mitigation project for upsizing storm water pipes and catch basins in the Bradford-Briarcliff neighborhood, along with two overflow detention areas along Sawmill Creek was awarded by FEMA. Before the project can be started and funds disbursed, you must complete the following forms and return to my attention within 30 days of receipt of this letter.

1. State and Local Grant Agreement (enclosed)
2. W-9 Form (enclosed)
3. Subaward Financial Management Form (enclosed)
4. Resolution designating the person or organization responsible for implementing the mitigation project (sample enclosed)

The State and Local Agreement must be signed by the Chief Official and the Executive Director of the Ohio EMA before funds can be disbursed. The Project Manager is responsible for all activities related to the project and must be able to act on behalf of the community. The enclosed sample designation of Applicant's Agent is for your reference and information. A meeting to explain how the project shall be implemented will be scheduled with you and the Project Manager as soon as the above forms are returned.

If you have questions concerning this project, contact me at 614/799-3539 or Dan Clevidence of my staff at 614/799-3533.

Sincerely,

Steven Ferryman

STEVE FERRYMAN, CFM  
State Hazard Mitigation Officer  
Mitigation Branch Chief

Enclosures as stated

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

Motion No. \_\_\_\_\_

MOTION

A MOTION TO WAIVE A PORTION  
OF UTILITY CHARGES.

WHEREAS, a resident of the City of Canfield has asked City Council to waive a portion of the sewer charges; and

WHEREAS, the City of Canfield will waive the amount agreeable by the Mahoning County Sanitary Engineer, not to exceed \$746.22.

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

Section 1: That the utility customer at 584 E. Main #20 will not be responsible for an amount not to exceed \$746.22, on their utility bill.

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

PASSED IN COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.

\_\_\_\_\_  
CLERK OF COUNCIL

CERTIFICATION OF PUBLICATION

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

\_\_\_\_\_  
CLERK OF COUNCIL

APPROVED AS TO FORM:

\_\_\_\_\_  
MUNICIPAL ATTORNEY

| Adjustment Consideration #1 |                     |            |  |
|-----------------------------|---------------------|------------|--|
| Current Bill                | 584 E. Main St. #20 | Urban Barn |  |
| Statement Date              | 11/22/2020          |            |  |
| Billing Cycle Days          | 89                  |            |  |
| 08/03/20 -10/31/20          |                     |            |  |

| Services          | Consumption | \$ per/Gal | Total Charges    |
|-------------------|-------------|------------|------------------|
| FIXED CAPITAL CHG | 0           | -          | \$ 9.00          |
| STORM WA          | 0           | -          | \$ -             |
| SW                | 39,815      | \$ 0.00968 | \$ 385.41        |
| SW SURCHARGE      | 39,815      | \$ 0.00026 | \$ 10.35         |
| WA                | 39,815      | \$ 0.01112 | \$ 442.74        |
|                   |             |            | <b>\$ 847.50</b> |

| Adjustment Consideration   | See letter |
|--|------------|
| Average per day usage (gals)<br>02/05/20 -8/03/20                    | 2          |
| Statement Date   |            |
| Billing Cycle Days<br>08/03/20 -10/31/20                             | 89         |
| Adjusted Consumption based on<br>(Avg.Gals/Day x Billing Cycle Days) | 180        |

| Adjustment Consideration #1 |             |            |                  |
|-----------------------------|-------------|------------|------------------|
| Adjustments Summary         | Consumption | \$ per/Gal | Total Charges    |
| FIXED CAPITAL CHG           | 0           | -          | \$ 9.00          |
| STORM WA                    | 0           | -          | \$ -             |
| SW                          | 5,000       | \$ 0.00633 | \$ 31.64         |
| SW SURCHARGE                | 39,815      | \$ 0.00026 | \$ 10.35         |
| WA                          | 39,815      | \$ 0.01112 | \$ 442.74        |
|                             |             |            | <b>\$ 493.73</b> |

|                           |             |
|---------------------------|-------------|
| Total Adjustments Summary | \$ (353.77) |
| Penalty Adjustment        | \$ (83.84)  |



| Adjustment Consideration #2 |                     |            |  |
|-----------------------------|---------------------|------------|--|
| Current Bill                | 584 E. Main St. #20 | Urban Barn |  |
| Statement Date              | 2/22/2021           |            |  |
| Billing Cycle Days          | 64                  |            |  |
| 11/01/2020 -01/04/2021      |                     |            |  |

| Services          | Consumption | \$ per/Gal | Total Charges    |
|-------------------|-------------|------------|------------------|
| FIXED CAPITAL CHG | 0           | -          | \$ 9.00          |
| STORM WA          | 0           | -          | \$ -             |
| SW                | 35,150      | \$ 0.00968 | \$ 340.25        |
| SW SURCHARGE      | 35,150      | \$ 0.00026 | \$ 7.03          |
| WA                | 35,150      | \$ 0.01112 | \$ 390.87        |
|                   |             |            | <b>\$ 747.15</b> |

| Adjustment Consideration   | See letter |
|--|------------|
| Average per day usage (gals)<br>02/05/20 -8/03/20                    | 2          |
| Statement Date   |            |
| Billing Cycle Days   | 64         |
| 11/01/2020 -01/04/2021   |            |
| Adjusted Consumption based on (Avg.Gals/Day<br>x Billing Cycle Days) | 130        |

| Adjustment Consideration #2 |             |            |                  |
|-----------------------------|-------------|------------|------------------|
| Adjustments Summary         | Consumption | \$ per/Gal | Total Charges    |
| FIXED CAPITAL CHG           | 0           | -          | \$ 9.00          |
| STORM WA                    | 0           | -          | \$ -             |
| SW                          | 5,000       | \$ 0.00633 | \$ 31.64         |
| SW SURCHARGE                | 35,150      | \$ 0.00026 | \$ 7.03          |
| WA                          | 35,150      | \$ 0.01112 | \$ 390.87        |
|                             |             |            | <b>\$ 438.54</b> |

|                                  |                    |
|----------------------------------|--------------------|
| <b>Total Adjustments Summary</b> | <b>\$ (308.61)</b> |
|----------------------------------|--------------------|

| Activity Date> | Billing           | Lookup | Name            | Adj | Consumption | Balance   | Amount Billed | Amount Paid | Total Bill       |
|----------------|-------------------|--------|-----------------|-----|-------------|-----------|---------------|-------------|------------------|
| 2/22/2021      | WA                | 762016 | MARX, CONSTANCE |     | 35150       | \$ 390.87 | \$ 390.87     | \$ -        |                  |
| 2/22/2021      | SW SURCHARGE      | 762016 | MARX, CONSTANCE |     | 35150       | \$ 7.03   | \$ 7.03       | \$ -        |                  |
| 2/22/2021      | SW                | 762016 | MARX, CONSTANCE |     | 35150       | \$ 340.25 | \$ 340.25     | \$ -        |                  |
| 2/22/2021      | FIXED CAPITAL CHG | 762016 | MARX, CONSTANCE |     |             | \$ 9.00   | \$ 9.00       | \$ -        | <b>747.15</b>    |
| 12/22/2020     | WA PEN            | 762016 | MARX, CONSTANCE |     |             | \$ 44.27  | \$ 44.27      | \$ -        |                  |
| 12/22/2020     | SW PEN            | 762016 | MARX, CONSTANCE |     |             | \$ 38.54  | \$ 38.54      | \$ -        |                  |
| 12/22/2020     | SW BOND PEN       | 762016 | MARX, CONSTANCE |     |             | \$ 1.03   | \$ 1.03       | \$ -        | <b>\$ 83.84</b>  |
| 11/22/2020     | WA                | 762016 | MARX, CONSTANCE |     | 39,815      | \$ 442.74 | \$ 442.74     | \$ -        |                  |
| 11/22/2020     | SW SURCHARGE      | 762016 | MARX, CONSTANCE |     | 39,815      | \$ 10.35  | \$ 10.35      | \$ -        |                  |
| 11/22/2020     | SW                | 762016 | MARX, CONSTANCE |     | 39,815      | \$ 385.41 | \$ 385.41     | \$ -        |                  |
| 11/22/2020     | FIXED CAPITAL CHG | 762016 | MARX, CONSTANCE |     |             | \$ 9.00   | \$ 9.00       | \$ -        | <b>\$ 847.50</b> |
| 9/21/2020      | WA PEN            | 762016 | MARX, CONSTANCE |     |             | \$ -      | \$ 5.56       | \$ 5.56     |                  |
| 9/21/2020      | SW PEN            | 762016 | MARX, CONSTANCE |     |             | \$ -      | \$ 4.84       | \$ 4.84     |                  |
| 9/21/2020      | SW BOND PEN       | 762016 | MARX, CONSTANCE |     |             | \$ -      | \$ 0.01       | \$ 0.01     | <b>\$ 10.41</b>  |
| 8/21/2020      | WA                | 762016 | MARX, CONSTANCE |     | 202         | \$ -      | \$ 55.60      | \$ 55.60    |                  |
| 8/21/2020      | SW SURCHARGE      | 762016 | MARX, CONSTANCE |     | 202         | \$ -      | \$ 0.05       | \$ 0.05     |                  |
| 8/21/2020      | SW                | 762016 | MARX, CONSTANCE |     | 202         | \$ -      | \$ 48.40      | \$ 48.40    |                  |
| 8/21/2020      | FIXED CAPITAL CHG | 762016 | MARX, CONSTANCE |     |             | \$ -      | \$ 9.00       | \$ 9.00     | <b>\$ 113.05</b> |
| 6/22/2020      | WA PEN            | 762016 | MARX, CONSTANCE |     |             | \$ -      | \$ 5.56       | \$ 5.56     |                  |
| 6/22/2020      | SW PEN            | 762016 | MARX, CONSTANCE |     |             | \$ -      | \$ 4.84       | \$ 4.84     | <b>\$ 10.40</b>  |
| 5/20/2020      | WA                | 762016 | MARX, CONSTANCE |     | 135         | \$ -      | \$ 55.60      | \$ 55.60    |                  |
| 5/20/2020      | SW SURCHARGE      | 762016 | MARX, CONSTANCE |     | 135         | \$ -      | \$ 0.04       | \$ 0.04     |                  |
| 5/20/2020      | SW                | 762016 | MARX, CONSTANCE |     | 135         | \$ -      | \$ 48.40      | \$ 48.40    |                  |
| 5/20/2020      | FIXED CAPITAL CHG | 762016 | MARX, CONSTANCE |     |             | \$ -      | \$ 9.00       | \$ 9.00     | <b>\$ 113.04</b> |
| 2/20/2020      | WA                | 762016 | MARX, CONSTANCE |     | 226         | \$ -      | \$ 51.60      | \$ 51.60    |                  |
| 2/20/2020      | SW SURCHARGE      | 762016 | MARX, CONSTANCE |     | 226         | \$ -      | \$ 0.06       | \$ 0.06     |                  |
| 2/20/2020      | SW                | 762016 | MARX, CONSTANCE |     | 226         | \$ -      | \$ 35.85      | \$ 35.85    |                  |
| 2/20/2020      | FIXED CAPITAL CHG | 762016 | MARX, CONSTANCE |     |             | \$ -      | \$ 9.00       | \$ 9.00     | <b>\$ 96.51</b>  |

Wade Calhoun <[wcalhoun@canfield.gov](mailto:wcalhoun@canfield.gov)>

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**Water Bill at 584 E. Main Street Unit 20 Urban Barn**

1 message

**William Papas** <[bill@wallhavengroup.com](mailto:bill@wallhavengroup.com)>

Mon, Jan 25, 2021 at 12:04 PM

To: [wcalhoun@canfield.gov](mailto:wcalhoun@canfield.gov)

Dear Mr. Calhoun,

I am the owner of The Hilltop Village Plaza under Revere Reserve, Inc. Evidently we had an open vent that caused our water prevention backup system to crack and discharge quite a bit of water in unit #20 leased by Urban Barn, LLC. We did have it repaired. I feel responsible for this excess water bill. I am asking you to please review the bill and see if we can be forgiven for the sewer part of the bill and perhaps the late fee since I just got involved. After your determination, please forward the bill to my email address for prompt payment.

If you have any questions or concerns please let me know.

Thank you for your attention to this matter,

Bill

--

**Bill Papas, Principal Agent**

Papas &amp; Associates, LLC

[www.WallhavenGroup.com](http://www.WallhavenGroup.com)

Ph:(330) 836-1234

Fx:(330) 864-4388

**1650 W Market St, Ste 21****Akron, OH 44313**

## MINUTES

### CANFIELD CITY COUNCIL **REGULAR MEETING** FEBRUARY 17, 2021-5:30 P.M.

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

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

Under **Proclamations & Presentations**, there were none.

Under **MINUTES**, the Minutes of the Regular Meeting were approved as presented. The correction that Ms. Young (citizen) pointed out was later listened to on the audio recording and proven to be correct as written.

#### Under **READING OF COMMUNICATIONS:**

MR. TIECHE: I have none.

MR. NEFF: I have none.

MR. DUFFETT: I have none

MR. NACARATO: I have none.

MR. MORVAY: I have one question about the water. Can we somehow set it up so that we pay monthly now? Do we have that ability to do that now, Wade?

MR. CALHOUN: We don't have the ability to bill monthly. Any resident has the ability to pay monthly, so they choose to make whatever monthly payment they would like. But we don't have the ability to bill monthly current. Part of the AMI Project is to move toward a monthly billing citywide.

MR. MORVAY: How would they do that without an invoice or something? Write a letter with their account number on it.

MR. CALHOUN: So we have multiple ways to pay, online, in-person, mail in. They basically can look at their previous bills, whatever that average quarterly bill was and divide that by 3 and make that monthly payment. If any resident needs assistance doing that, if they wanted to pay

monthly, knowing how much they needed to pay, we can definitely look at their history and provide them an average of what their quarterly bills were.

MR. MORVAY: Also, I've been paying more attention to the meter. You can read the meter and figure out approximately 2 cents per gallon, whatever and come up with that.

MR. CALHOUN: A customer could read their meter every 30 days, calculate what it would be and pay that amount. You're correct.

MR. MORVAY: Okay, good. That's the only question I had. Wade, do you have any communications?

MR. CALHOUN: Just a few. The Columbia Gas project, the replacement of gas lines, they had their media relations government representative reach out and do sort of public awareness campaign. The news media picked it up and I think they did a good job of educating everybody that a major gas project is taking place, replacing lines here at Wadsworth all the way down 224 to I believe Barnstone or almost to Hillside. They're just waiting for the right weather to go ahead and start that project. To further communicate that, I posted it on Facebook and the Website. I know Columbia Gas did some significant PR in that regard as well.

Just a reminder, the CRA Joint Work session is coming up next Wednesday, the 24<sup>th</sup> at 5:30. We have a budget work session on Friday, the 26<sup>th</sup> and we have our Charter Review Work Session this evening after Council.

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

MR. TIECHE: I have no report this evening.

MR. NEFF: We had a Planning & Zoning Meeting, a productive meeting. We had a long discussion of a property on Indian Lake that is vacant that we needed an adjustment for. I'm going to let Mike address this. We talked about replatting Stonebridge property. I'm sure Mr. Cook will cover it.

MR. DUFFETT: I have none.

MR. NACARATO: I have nothing.

MR. MORVAY: The Fire District, I really don't have a report this evening, other than the COVID transports have slowed down. That's about all I have and our Board Meeting next week. I'll move onto Mr. Rapp, who is our Public Works Supervisor.

PUBLIC WORKS SUPERVISOR: Good evening. City crews have been busy with the plowing and salting. They've been taking care of all the city grounds. Hats off to them! They've done a

really good job, in my opinion. We should be really proud to have people that are very dedicated. Anybody on Neff Drive, we talked about this last time, there is going to be survey crews out there, surveying for the waterline installation. Howell's and Baird, you'll see them, probably marked cars and vests on. If you see any pink or colors in your front yard, flags, they're surveying.

The meter program that we're installing, the AMI, city crews, we had approximately 250 meters for this pilot study. We've installed over 150, so approximately 100 left to install. The residents have been so warm and welcoming. I think they absolutely love the idea, nothing but good things to say. Miller Pipeline will be that contractor for Columbia Gas installing that gas line down Main Street when the weather breaks.

MR. TIECHE: A question about the metering program. Maybe this is for Wade or Christine. If we go with the installation of the new meters and we end up with a monthly basis as far as the bills are concerned. Will we have the ability, in the program to actually have a meter kick out an individual's name; if for any reason their consumption extremely high on any given day or a weekly period, so we can go out and check on that meter? Instead of waiting until the end of the billing cycle.

MR. CALHOUN: The AMI Program Software is two sided. The back facing side, we can send those automatic reports to run overnight. If there is a parameter that we want to see, a resident that uses over 1,000 between midnight and 6:00 am, that will produced a report that flags those meters for us to proactively notify those customers that there may be an issue. On the customer side of that portal, the same thing, individuals can set alerts, email, text message, some sort of notification to tell them, I want to know when I use 500 gallons of water in a day, or if I use 200 gallons within a period of 3 hours, I want to know. There are a lot of user-friendly aspects to the software side. We'll dig into more details with software when we get the infrastructure installed. We'll get the software folks in here to train our personnel on it. We'll get a good feeling of how it works. We'll be able to have a training session or troubleshoot live on the phone with our customers, if we need to, once we get to that software and once it's instituted citywide. Right now, it's the Pilot Program. We probably won't have that aspect as part of the pilot because we won't move to the monthly billing until the entire city is on the AMI.

MR. TIECHE: Thank you.

MR. MORVAY: Mrs. Christine Clayton, who is our Finance Director.

FINANCE DIRECTOR: The January check register and cash basis fund summary will be posted on the city website on Friday. I need to complete and file the Canfield Community JEDD, Millennial Moments JEDD financial statements, and the Canfield Improvement Community Corp. Financial Statements with the Ohio State Auditor by the end of the month. Also, I've been working on the 2021 budget.

ZONING INSPECTOR: For the month of February we issued two permits for a total valuation of \$218,740, the bulk of that being an addition put on Millbrook. The adjustment that Bruce spoke of the frontage is 75 feet and they are 5 foot short of the minimum frontage and 1,800 short of the total lot size. They granted that adjustment so Sam Pitzulo can build a house in the future. Charlie Masters was in last week for approval of a preliminary plat lot 10 in Stonebridge off of Lake Wobegon. It was stated in 2006, the balance is the streets, curbs, and gutters. Also, you have a replat on your agenda tonight. He is splitting 2 lots, he has a potential buyer. He applied for an adjustment for a 40 ft. rear setback. That buyer will take over that property and build a house on Lake Wobegon.

CHIEF OF POLICE: Good evening. We have had body cameras deployed over the last month. Every officer now has one issued to them, they're in full function. The video clarity is excellent. Everything seems to be working really good. I'm sure we'll get to excellent. It's a new system. It's new for us. It's working really well. We have them. We continue to work to improve our policies and procedures to make sure they're consistent with the Ohio Standards, for the Ohio Collaborative. Saturday, I believe, Wade, John and I had long discussions about the upcoming storm. We put that parking ban out there. I think it was a council ago that we enacted that Ordinance, allowing us to do that, and it works great. I want to thank the community for complying. I want to thank Wade and John for communication and making that decision together. We got that out early making sure that the streets were clear for the street department to be able to clear it up. We didn't get the total snow accumulation that they spoke of but that ice was difficult. The community did awesome. The communication was really good, making sure that we got that out there with enough notice.

MR. TIECHE; Chief, what is the policy with regard to the body cameras and when they come on?

CHIEF COLUCCI: The body cameras are active for any situation when there is contact with the public, whether it is a traffic stop, call for service, or a complaint. They're activated by a button on the camera itself, or they're activated inside the cruiser, they work in combination with our cruiser cameras.

MR. TIECHE: Does the officer have to active that?

CHIEF COLUCCI: Yes. But it's always powered on. It's always running. It's just not recording.

MR. MORVAY: That situation in Cleveland when the officer didn't turn his on until after the incident, was that his error?

CHIEF COLUCCI: I don't want to speak for any other police department, in that specific situation. But we've been video recording since 1997 and although the body cameras are new, us recording is not new. It is a training issue to make sure they activate the cameras. In the cruisers as soon as we turn the lights on, the camera is triggered automatically, body camera and in-car camera. If the officer is outside of the cruiser and something happens, he can active it.

MR. MORVAY: Okay, we'll move onto our Counsel, Atty. Fortunato.

ATTY. FORTUNATO: No report tonight.

MR. MORVAY: Okay. Mr. Calhoun, our city manager.

MR. CALHOUN: Just a couple of things that I think everybody else have touched on. The Cardinal Joint Fire District, ongoing communications for the lease amendment. I sent out an email yesterday with some of the redline discussions we had for amending the lease agreement. I believe that will probably be a topic of discussion for the Joint Fire District for this meeting. Monday?

MR. MORVAY: Yes.

MR. CALHOUN: Hopefully, we can get that amended agreement wrapped up. As Christine mentioned budget meetings, so the department heads had to turn in their budgets on February 5<sup>th</sup>. Christine and I are going through different scenarios, what can or cannot be funded. We will sit with department heads and do that sort of, precut before it comes to Council for that final review and approval. You'll see all the items, much like we've done in the past, we'll show you everything and show essentially what Christine and I have negotiated out of the budget. But we'll be (inaudible) all the department heads, essentially, if you remember last year we kind of classified things as an improvement, upgrade or replacement, so that we can also prioritize if we need to fund this now, in 3 years or in 5 years. That's sort of how we approach the items we look at, that's how the departments approach the items they request. A lot of times you'll see stuff on there, that won't necessarily get funded this year but just to get it on the radar, it's something the department is working towards, an improvement or advancement.

The matter of the Utility Workers Union of America and the City of Canfield, there is a scheduled Fact Finder Hearing on March 16<sup>th</sup>. Myself, John Rapp, the union membership as well as our appointed legal counsels will participate in that fact finding. Right now, it's scheduled to be virtual. The Fact Finder is local, so we may end up doing it in-person. That's all up in the air right now, until we get closer to that date. I continued the discussions with the Youngstown Water Department. We were speaking in the fall, got to the holiday and basically reconvened those, last week, we're setting to meet tomorrow to have the proposed amendments and start working through that current agreement that was signed in 2017. That's all I have.

MR. MORVAY: Mrs. Patty Bernat, our Clerk.

CLERK: On December 2<sup>nd</sup>, Council passed a Motion appointing and reappointing members to Boards and Commissions. Mr. Doug Toot was overlooked on that list; he serves on the Civil Service Commission and is an exempt member of the Board. The Motion that you see on your agenda this evening is to reappoint Mr. Toot to the Civil Service Commission.



MR. MORVAY: Thanks, Patty. Council any questions for these reports that you've just heard?

MR. NEFF: John, is the waterline that is being replaced on Neff on the north or the south side?

PUBLIC WORKS SUPERINTENDENT: Right now it's on the south side. But it's being surveyed right now. Whatever the engineer's will let us know what the best fit for that; usually they keep it on the same side. It makes it easier for all the connections. We'll definitely let you know when we find out.

MR. MORVAY: John, I should have added, I had a comment on the roads, positive feedback, that we were doing a great job. I forgot to mention that in my communication.

PUBLIC WORKS SUPERINTENDENT: Thank you. I'll pass that on.

MR. MORVAY: I'll open it up to residents.

**Under Questions Regarding Reports:**

MS KATHRYN YOUNG: Kathryn Young, 570 Barbcliff Drive. This has been brought up but it hasn't been answered, will there be an opt-out for the smart meter?

MR. CALHOUN: We can't answer that at this time. We don't know.

MS> KATHRYN YOUNG: When will you know? When the pilot is over?

MR. CALHOUN: Yes.

MS. KATHRYN YOUNG: Do you have a scheduled end date for that?

MR. CALHOUN: We don't.

MR. MORVAY: Thank you, Kathryn. Is there anybody else that would like to address questions concerning one of these reports?

MR. BERNARD KOSAR: Bernie Kosar, 69 Alabaster. Just a quick question for the city manager. I hear talk of renegotiating the existing water contract.

MR. CALHOUN: Correct.

MR. BERNARD KOSAR: Will it be a better contract for the City of Canfield?

MR. CALHOUN: I'm hoping.

MR. BERNARD KOSAR: When will we know the specifics?

MR. CALHOUN: It depends on how our meeting goes tomorrow. There is a lot of discussion happening. As you may be aware of, you were present during the initial negotiations, there is a lot of parts of that agreement that both the City of Youngstown are looking to amend and the City of Canfield are looking to amend. We've been knee-deep in discussion regarding the rates, rate structure, the 20 year term, the percentage increase. So, that's been the focus for the most part. There are other items that need to be addressed. I would like to think we can get something done quickly but again, I can only speak for us, the City of Youngstown, their Water Commissioner has to run it through the Board of Control and then ultimately their Mayor and Council as well. My communications thus far have only been with the Water Commissioner.

MR. BERNARD KOSAR: I think it behooves us to try to get a better agreement, if we can.

MR. CALHOUN: I agree.

MR. MORVAY: I saw another hand raised. For the record would you step up and state your name and address.

MR. STEVE GATES: Hi, my name is Steve Gates, I live at 450 Millbrook. I had a question prepared that has mostly been answered. I really just wanted to come today to voice my concern about the high water rates in Canfield. Wade you had spoken with my wife on the phone, who is here. Wade was very helpful in clarifying a lot of issues that are behind what we're paying for here in the City of Canfield. You did mention that you had a meeting to renegotiate that contract. I want to thank you for taking the (inaudible) to what residents are asking about and pursuing that. In addition, I just was wondering, how will residents be able to keep track of the progress of that negotiation and anything else that might be able to be done to mitigate the high water rates?

MR. CALHOUN: Any amended agreement will appear on a Council Agenda. Like tonight, the agenda is prepared and it will be an item on the agenda. For the most part, as they're happening, if a citizen calls, I'm more than happy to answer any questions and provide as much information as I can at that time. Again, knowing that the specifics and the details are still being ironed-out there may not be a whole lot of specifics that I can go into, without commitment from them. The final, sort of draft, proposed agreement will appear before council on at least two agendas, so it will be first reading for council to see that first time, read it, and probably come back on the second reading to take action on that agreement. Whatever is negotiated if obviously Council has specific things that they look at the contract and wanted add to or changed, we'll take that back to Youngstown.

MR. TIECHE: I think the thing that everybody has to understand is we have technically a 20 year contract. I don't think anybody up here on city council is going to be talking about a negotiation that is going to increase our rates. We're looking at rates going down. There are a lot of things that go into that mix, as Wade had indicated. There are a lot of things within the contract. It's

not just all dollars and cents. How they want to implement things that they're able to do, not able to do, or willing to do. It's a complicated issue.

MR. STEVE GATES: I've been paying a lot of attention to it and doing our own research. There is a lot of misinformation floating around out there. Wade was helpful in teaching us about what's behind it. I just want to say, I moved here in September, my wife and I love Canfield. Our daughters go to school at C.H. Campbell and the Presbyterian Church Preschool. We love it. But when we got our first quarterly water bill, we were shocked. It made us wonder if we had done the right thing moving our family to Canfield. We moved here for family values, small town life and to give our children a better future. We were really excited to see that but with the increases that are on the books with this contract, we're nervous. If our water keeps going up 8% a year for 10 years and then 5 or 4% for 10 years after that, we might not be able to stay here. I want to thank you all for paying attention to it and listening to the residents' concerns about it. Hopefully, we'll be talking about better rates in the future. Thank you.

MR. MORVAY: Thank you, Mr. Gates.

MS. KATHRYN YOUNG: Kathryn Young, 570 Barbcliff. It was mentioned before, I don't know if residents are aware that there is a minimum amount that is charged whether you use it or not. So, in my head, I had 3,000 because it was brought up to maybe change it to 3,000 instead of the 5,000. There are homes that have retired people with only 1 person living in them. It does make a difference when you're paying for water that you don't use, plus that particular number is being used for the sewer number as well. Then also in the same timeframe, the storm water because of the situation of having poor infrastructure, the citizens agreed to, quarterly that went up from \$9.00 to \$24.00; which is 167%. Each one of these little things, I called it, "The frog in the pot." Doesn't realize what happens until maybe years down the road and you're like oh, my gosh, what just happened. So, I would suggest that maybe the minimum goes down to the 3,000. The people are paying for the water that they actually use. That would be very helpful. The difference between that was brought up, that the City of Canfield, other cities, this is nothing new but certain cities have what they call a "Rainy Day Fund." They put this extra money that they have in.....no that's not true.

FINANCE DIRECTOR: No. The State may be able to do that but cities may not.

MS. KATHRYN YOUNG: Oh, okay.

MR. CALHOUN: We have water enterprise fund. So, whatever we bring in, in revenue, minus whatever we spend in expenses, year over year, typically there are balances leftover, that's the Fund balance.

MS. KATHRYN YOUNG: So, that was to be used for infrastructure?

MR. CALHOUN: Correct. Currently that stands at what Christine? \$230,000 as of year-end 2020?

FINANCE DIRECTOR: Somewhere in that area.

KATHRYN YOUNG: So, when we needed that money for storm pipes.....

MR. CALHOUN: Storm water fund is a separate fund. So, the storm water fee that's on the bill goes into the storm water fund. That fund balance, through May 2019 when we did the analysis of money coming in minus money going out, the fund balance was small. We couldn't do the capital improvements and the necessary projects with the revenue minus expenses with the fund balance we had. So, by increasing the rates we are able to add to that balance to where now through the help of our consultants and getting grant funding for substantial storm water projects, we are now able to have a healthy fund balance in the storm water fund. Water funds that come from water utilities go into the water fund, can only be used for water. Storm water funds, go into the storm water fund can only be used for storm water, the sanitary sewer funds that come from sanitary sewer charges go into the sanitary sewer fund, can only be used for sanitary sewer. You can't comingle all of the funds together to have on big pot.

KATHRYN YOUNG: Okay, so what you're saying is there is potentially \$200,000 for water infrastructure, if we need it.

MR. CALHOUN: Correct.

MS. KATHRYN YOUNG: So, I don't know, a couple of months ago it was brought up that should there be trouble with water you had an agreement with Culligan for bottled water. Is that correct?

MR. CALHOUN: Correct. As a backup water supply, in the event that the City of Canfield did not have water or certain sections of the city were without water for an extended period of time.

MS. KATHRYN YOUNG: Wouldn't it makes sense, that maybe in the Parks or something you took some of this money and put a well, so there would be some kind of access to water in case of an emergency?

MR. TIECHE: You can't do that. The Ohio EPA will not allow you to do that.

KATHRYN YOUNG: Who won't?

MR. CALHOUN: The Ohio Environmental Protection Agency has very specific regulations on potable water systems in the State of Ohio.

ATTY. FORTUNATO: It's not like a private well you'd be drilling.

KATHRYN YOUNG: Not even a water fountain?

MR. CALHOUN: It's potable water and it would be regulated by the Ohio EPA. But because these are unprecedented times, would you think providing this type of service for the community of Canfield, there might be some way to approach that.

ATTY. FORTUNATO: You can approach the Ohio Legislature with that concept. But the City of Canfield can't do that, on its own. We'd be violating Ohio Law. Your audience on that is the Ohio Legislature.

MR. CALHOUN: The Culligan Water Supply Agreement you mentioned is meant to do. A temporary backup water supply. We're actively working on getting, per Ohio EPA Asset Management Regulations, the requirements for all public water systems is to set up and have that backup water supply. In the event that the City of Youngstown cannot provide the City of Canfield water. Our only means to provide water to our citizens, right now, is through that bottled water distribution. So, we are actively working on trying to set up or make arrangements for auxiliary backup water. Anybody that has educated themselves on water in the region knows that those options are limited.

MS. KATHRYN YOUNG: The City has sent letters to the State of Ohio when the city wanted certain things, for Funds in advance or things that would benefit the city. Couldn't we, as a city go through the city for signatures from citizens saying, we would like, we understand that it's not potable water, can we have this?

MR. CALHOUN: The Ohio EPA is literally trying to restrict any and all well digging, as well as in some form or fashion, septic systems because of the ground water issues.

MR. MORVAY: Kathryn, to address your minimum on the water usage also, we've had this discussion. We have fixed costs and variable costs. That minimum helps pay those fixed costs. That's the cost to deliver the water to the city. That's the rationale behind that. We can certainly look at the minimum. We have done that in the past. But that's the rationale behind it.

MS. KATHRYN YOUNG: I think the city put something on for people who needed help with utilities recently. Wasn't there something?

MR. CALHOUN: So, there is a non-profit, I guess, MYCAP that is providing utility assistance, I think in the entire state or region. They've got funds directly from the Cares Act money to provide assistance to any resident that needs it for utilities, water, electric, gas, mortgages, whatever the case may be.

MR. MORVAY: I'll take any more questions that have to do with the reports that you've just heard. Hearing none, we'll move on.

**Under Person's Desiring to Appear Before Council:**

MR. FRANK MICCHIA: Good evening, Frank Micchia, 220 Glenview. We did a lot of talking tonight about water. Let me expound a little bit. Beginning 2018 the City approved a 20 year contract with Youngstown Water. It includes a 7.75 increase in water costs each year of the first 10 years and a 3.5% increase each year thereafter until the end of the contract. Given that these increases will be passed onto the residents, and the same markup is applied for the cost of water, as we now do. From 2018 to 2025, our quarterly water bills will double. It gets a lot worse at the end of the contract. That's my analysis. I would welcome anybody else's analysis. This markup is to fund the infrastructure of the water system. I don't know if Council is aware of the magnitude of the increase. I doubt the citizens are aware of it. We have one here. There is going to be a lot of unhappy people (residents) when they realize the cost implications of the contract. As representatives of voters, the ball is in your court. The magnitude of these increases is unjustifiable. Good luck with your efforts to do something. By the way, if anybody is interested in calculating their water bill, I have a spreadsheet that will do it automatically for you. I'll be happy to share it with you. My price is reasonable. (Laughter)

MR. CALHOUN: The city provides the same service for free. (Laughter)

MR. MORVAY: Anybody else that has a question? Hearing none, we'll move on.

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

Under **NEW BUSINESS**:

ITEM A: An Ordinance Adopting a New Subdivider's Agreement to be entered into with the City of Canfield.

MR. MORVAY: 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. NACARATO: Second.

ROLL CALL ON MOTION:

5 Votes-Yes

0 Votes-No

Motion passes.

MR. TIECHE: Mr. President, I have an Ordinance Adopting a New Subdivider's Agreement to be Entered into with the City of Canfield. This constitutes first reading.

MR. MORVAY: This will be set for public hearing on March 17<sup>th</sup> at 5:20 P.M.

ITEM B: An Ordinance Approving the Replat of Canfield City Lot 2954 and Creating Lot 2953 by Charles Masters.

MR. MORVAY: 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. NEFF: Second.

ROLL CALL ON MOTION:

5 Votes-Yes

0 Votes-No

Motion passes.

MR. MORVAY: 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. NACARATO: Second.

ROLL CALL ON MOTION:

5 Votes-Yes

0 Votes-No

Motion passes.

MR. NEFF: Mr. President, I have an Ordinance Approving the Replat of Canfield City Lot 2954 and Creating Lot 2953 by Charles Masters. I move for passage.

MR. TIECHE: Second

MR. MORVAY: Wade could you give us a briefing on this please?

MR. CALHOUN: Mr. Master's approached the city in regards to a current lot 2954 in the Stonebridge Development in the back of Lake Wobegon. Currently, it's an unbuildable lot in terms of building one house on it and then leaving substantial property unused. He wanted to replat it into two usable lots. The Planning & Zoning Commission considered the item at their February 11<sup>th</sup> meeting. It was unanimously approved by the commission, to approve that subdivision. Per the proceedings it comes to Council now for the Ordinance, the replat, approving the creation of two lots out of the currently existing 2954 Lot.

MR. MORVAY: Thank you, Wade. Council questions? Hearing none, I'll open it up to residents. Hearing none, roll call.

ROLL CALL ON ORDINANCE:

5 Votes-Yes

0 Votes-No

Ordinance passes

Ordinance 2021-09

ITEM C: A Resolution Authorizing the City Manager of the City of Canfield to Submit a Grant Application and to Execute All Agreements Relative to the Eastgate Regional Council of Governments for Funding Through the Fiscal Year 2022 Planning Grant for the Cardinal Connector Bikeway Plan, and Declaring an Emergency.

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

MR. NACARATO: Second.

ROLL CALL ON MOTION:

5 Votes-Yes

0 Votes-No

Motion passes.

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

MR. TIECHE: Second.

ROLL CALL ON MOTION:

5 Votes-Yes

0 Votes-No

Motion passes.

MR. DUFFETT: Mr. President, I have A Resolution Authorizing the City Manager of the City of Canfield to Submit a Grant Application and to Execute All Agreements Relative to the Eastgate Regional Council of Governments for Funding through the Fiscal Year 2022 Planning Grant for the Cardinal Connector Bikeway Plan, and Declaring an Emergency. I move for passage.

MR. NACARATO: Second.

MR. MORVAY: Wade can explain this Resolution?

MR. CALHOUN: Sure. If Council recalls, we did a similar Planning Grant Application last year or in 2019 regarding the Canfield Bike Loop Study and in conjunction with the Comprehensive Plan, this is very similar. Planning Grant fiscal year 2022, for a bike spur that will connection Canfield High School to C.H. Campbell, through what we've dubbed the Cardinal Connector. It will study the feasibility of doing a walking/biking lane path that connects Canfield High School to C.H. Campbell. Anybody that's walked on Briarcliff there is that unofficial path that takes you to Bradford which then connects to C.H. Campbell. This kind of makes this more permanent, looks at it and also connects Canfield High School down Brookpark to the Village Green. The hope is through the Comprehensive Plan, the bike loop proposal idea is out there to connect



the city as a walkable/bikeable community through, within the bike lane sharrows. To connect city hall, schools, parks, village green up to the Fairgrounds and the business corridor on 224. This is one piece of that, which we think is needed. There are a lot of kids that walk and bike to school. They use the paths. Hopefully we can get more activity happening on the Village Green if allow the opportunity for people to do that, not getting in a car and driving and finding parking on the Village Green. What this grant application authorization, as part of the grant application, it requires that the governing body passes a Resolution authorizing the City Manager to do all appropriate documents but it also authorizes us to go for that grant. The study is \$15,000; Eastgate request that we're asking them for the grant would be \$9,000, so Canfield's local match for that study is \$6,000.

MR. MORVAY: Thank you, Wade. Council questions?  
Hearing none, I'll open it up to residents.

KATHRYN YOUNG: I think it's a great idea, the loop that connects the city and brings people downtown. It was mentioned in Parks maybe having some kind of restroom. A lot of times people want to be down there and you have to use the laundry mat or Kim's Confections. If we had something. Is that in our plan? The school/city plan. They were there during the COVID. The whole city plan, where you have that rest stop and not have to rely on other businesses and things like that. Remember where there used to be a coffee shop at the end of Farmer's Bank, which would be a nice location.

ROLL CALL ON RESOLUTION:

5 Votes-Yes  
0 Votes-No  
Resolution passes  
Resolution 2021-02

ITEM D: A Motion Making Appointments to Boards, Commissions & Committees.

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

MR. TIECHE: Second.

ROLL CALL ON MOTION:

5 Votes-Yes  
0 Votes-No  
Motion passes.

MR. NACARATO: Mr. President, I have a Motion Making Appointments to Boards, Commissions & Committees.

MR. NEFF: Second.

MR. MORVAY: This motion will do what.

MR. CALHOUN: As Patty explained during her report, during our appointing and reappointing new members to Boards & Commissions and Committees at the December 2<sup>nd</sup> council meeting, we overlooked the reappointment of Douglas Toot to the Civil Service Commission. He is the exempt member on Civil Service. This cleans that up. This officially appoints Mr. Douglas Toot to the Civil Service Commission for the next 3 year term.

MR. MORVAY: Thank you. Council questions? Hearing none. I'll open it up to residents. Hearing none, roll call.

ROLL CALL ON MOTION:

5 Votes-Yes  
0 Votes-No  
Motion passes.  
Motion 2021-04

E. A Motion Accepting an Appointment to the Community Reinvestment Area Housing Council.

MR. MORVAY: 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. NACARATO: Second.

ROLL CALL ON MOTION:

5 Votes-Yes  
0 Votes-No  
Motion passes.

MR. TIECHE: Mr. President, I have a Motion Accepting an Appointment to the Community Reinvestment Area Housing Council. I move for passage.

MR. NEFF: Second.

MR. MORVAY: Wade.

MR. CALHOUN: Mr. Stephen Decapua on our CRA Housing Council has resigned. Per Ohio Revised Code, the CRA Housing Council is appointed by 2 members are appointed by the Mayor, two members are appointed by city council and one member by Planning & Zoning Commission. Mr. Decapua was a mayoral appointment. I believe Mr. Duffett has had conversations with Mr. Steve Kristan as a replacement for Mr. Decapua.

MR. DUFFETT: I have not been able to talk to him.

MR. CALHOUN: Okay. We can hold off on this item if we don't have an appointment. It's a Mayoral appointment, so it's really just council accepting the appointment, like we did with the first two Mayoral appointments. It's just to record the resignation of one member and the appointment of the new member. We can probably Table the agenda item until we have further communications with whoever the Mayor wants to appoint to the CRA Housing Council

MR. MORVAY: Would that be okay with you Mayor?

MR. DUFFETT: Yes.

MR. MORAY: By tabling it, we have to address it next time. Do I need a Motion?

CLERK: Yes.

MR. NEFF: So moved.

MR. DUFFETT: Second.

ROLL CALL ON MOTION:

5 Votes-Yes  
0 Votes-No  
Motion passes  
Item E is Tabled.

Under **Council Comments:**

MR. TIECHE: I have none.

MR. NEFF: I have none.

MR. DUFFETT: I have none.

MR. NACARATO: I have none.

MR. MORVAY: We will adjourn this meeting. Take a brief intermission and then come back with our Work Session.

MR. CALHOUN: Charter Review Work Session.

MR. MORVAY: Thank you. With that we'll adjourn.

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PRESIDENT OF COUNCIL

ATTEST:

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CLERK OF COUNCIL

## MINUTES

### CANFIELD CITY COUNCIL

#### **CHARTER REVIEW WORK SESSION**

FEBRUARY 17, 2021-Immediately following Council

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

MR. MORVAY: We have a quorum and I'll turn the meeting over to Mr. Calhoun.

MR. CALHOUN: As Council recalls, January 20<sup>th</sup>, communications, we talked about the ability of this organization to perform at its highest level. That can only be done if there is a complete and total understanding of the City of Canfield Charter. Council President Morvay shared some time ago; which he read before the holiday, shared with council in memo form the International City Manager's International City and County Manager Association publication of Council/Manager relations and making it work. It identifies 3 key aspects really that let organizations flourish and fly. By the same context, issues within those 3 areas causing some organizations to stall out and potentially cause issues and frictions between the organization, city manager, and the governing body of the council. We're not alone. Every city goes through this sort of dichotomy; whether it's the State of Ohio, State of West Virginia or State of Texas. The Council/Manager form of Government, which Canfield instituted in 1968, sets up the City Manager form of government. Our Charter specifically outlines who is responsible for what. What the Council's responsibilities, powers, duties and roles are. What the City Manager, as well as other administrative departments within the city, all sort of, what their powers, duties, responsibilities and roles are with the organization. For the most part we abide by those. The City Charter is the Constitution for the City. It directs us. It directs our Law Director in his opinions on certain matters in writing a legal opinion to say, okay, let's look at Ohio Revised Code, now let's look at our City Charter and provide his professional, legal opinion for various matters for the City of Canfield. For me, it's important, and it may be partially my fault, when the current group started, when I started in 2018, Mr. Nacarato joined us after the last election and we never really had this sort of work session. Sit down, go through, areas of the Charter and make sure that we're all in alignment on what everybody is responsible for and what their powers and duties are. Through the course of the last 3 years, there have been various instances where certain members of council, through their actions and behaviors, alluded to the fact that they may not have an understanding of what the City Charter says, or an outright disagreement with the City Charter. I'm hopeful that we can have a discussion and clear the air on any issues that may be in conflict. Moving forward, we're all in agreement, on the same page on how we make this thing work of Council/Manager relations in order to allow this organization to function as it has, historically, and perform at the highest level.

ATTY. FORTUNATO: If I can add to that. I've written a couple of opinions on this. I think the Charter is very clear. It's not ambiguous. I think my opinion have been that. The Charter clearly

provides that, all administrative matters of the city run through the City Manager. The Mayor has certain duties in terms relative to the operations, design and judge of Mayor's Court. But all administration runs through the City Manager. It always has, as long as I've been Law Director and it has to because that's what the Charter says. In fact, the Charter says in a couple of places that members of council and the Mayor will not directly interact, as a boss, so to speak, or interfere with the city manager's role. With any personnel in the city, other than the Finance Director and the Law Director, that council (inaudible) for a legal opinion or financial reports. We seem to continue to have trouble with this issue. The Charter is clear. This is a situation where there is a natural rub. The Council and the Mayor gets elected, you appoint the city manager, and it's natural to feel that you're in charge but you're not in charge of the daily administrative functions of the city. The City Manager is. Your role is one of policy making and planning and the big picture items. But from an administrative standpoint that's not the way the city manager form of government works. We have somebody on the far right that has vast experience in this. I don't know if you want to add anything to that Chuck? I'm glad to take any questions. My legal opinion is very clear on this issue.

MR. TIECHE: Well, it has always been my opinion and I guess I grew up with the Charter form of government. I started working for the city before Canfield had a Charter, I started in 1965. I saw the implementation of the Charter in 1970 and I worked for the first City Manager of Canfield who was very ardent in his belief that, the Chief Executive Officer of the City is the Chief Executive Officer of the City and there would be some times when members of council or the Mayor may decide that they had some other opinions. Usually there was some sit-down discussions and clarification on what their responsibilities are. The problem is, if you've got a group of employees, and now all of a sudden, the group of employees gets a directive from the city manager and maybe he gets a directive from a city council member or another city council member, then where do they go with it. What direction do they take? They sort of use a catch phrase that goes like, *God so loved the world he chose not to send a committee*. That's somewhat the way I feel about the City Manager form of government. Not to say that the manager is God or anything like that. But that's what works. You don't see many corporations that go out and have the employees telling the Chief Executive Officer of the city how they're going to do things. I think that's the way it's got to be overall.

MR. NEFF: I would comment on that we're not employees, we're the council. From a hierarchy standpoint, Wade works for us. I completely agree that there shouldn't be interference. But I think that some of the contentiousness, that maybe I have caused or been at fault in, I joined Council because I want to have say, or help in the direction, or come up with good ideas and so forth.

ATTY. FORTUNATO: I think all that is appropriate. It's just when anybody and I'm not accusing you or you, or any member of council of this. But it's when you creep away from policy and kind of providing the direction you want to see the city move in, as opposed to creeping away from that into administration.

MR. NEFF: Right. We really don't have any choice, in my opinion. John has said to me, go meet with Wade. I don't want this to be all about.....

ATTY. FORTUNATO: The Charter contemplates the issue and says, in terms of administrative issues you may have, you work with the City Manager directly on those. I think you've done that, right?

MR. NEFF: I think so.

ATTY. FORTUNATO: I think that's the way it should be. My phone is always available and my door is always open, so to speak, to members of council. But, if every member of council called me all the time on different issues, Chuck's point is well stated. I generally take direction from Wade and Council. At the end of the day, you hired Wade and you hired me. You hired the City Manager and the Law Director. At the end of the day, if you don't like the way things are done, you hold the trump card, so to speak. But in terms of the daily administration of the affairs of the municipality, that's got to be the City Manager. You can certainly provide your input directly to him.

MR. MORVAY: Mark, I'd like to bring up an issue that I spoke about at the last council meeting. There were comments on social media and Mayor, you made those comments. I got perceived as I made those comments, as the city made those comments. It was the Mayor making those comments. It wasn't anything that was vetted through Council or Wade but rather somebody's comments that reflected on me. I think we have to be careful about that. Listen, I was taught any communications, I shouldn't have any with anybody. I should have communication with Wade, our city manager. Wade then, whatever information we need to get out be decimated and Wade can instruct one of us to do that. First of all, it's vetted through everybody, so that we're all on the same page. That's what I'm fearful of. I didn't make those comments but it was perceived that I was making those comments. That's what came to me, Duff.

MR. DUFFETT: How is it perceived to you, it's clearly my name posting on Facebook? Are you on Facebook?

MR. MORVAY: No.

MR. DUFFETT: When you make a comment your name is associated with it. My name. When I make a comment.

MR. MORVAY: John, the city said. The city said. No, the city didn't say. That's the perception that was out there.

ATTY. FORTUNATO: In response to that, I think everybody should be very careful not to speak for the city. Again, to Chuck's point, we can have 6 voices of the city out there. We should have one voice of the city, I think in all cases. I think you do have to be careful to try to make sure that what you do is not perceived as speaking on behalf of the city. Listen, you can speak

individually, nobody can take that away from you, and you have first amendment rights. But I think you have to be cognizant as council members and officials of the city that what you say may be taken as, the city. Speaking on behalf of the city. I think that creates an issue as well. It can also get us into some trouble.

MR. NEFF: I feel, and I know I'm probably the only one who feels this way; the Mayor was elected as the Mayor of Canfield. I feel that he's our public relations head. I'm not saying that we should be at on conflict. That's the way I feel and I don't think I'm in the majority.

MR. MORVAY: I don't mind the Mayor delivering that message, if we're all on that same board, on the same page. I don't have a problem with the Mayor delivering the message.

ATTY. FORTUNATO: The Charter provides the Mayor shall be the ceremonial head of the municipality. No question about that. I think it's a stretch to get to spokesperson from that. I'm not exactly sure what the ceremonial head of the city is. I don't think it's a spokesperson of the city. I think it's something.

MR. DUFFETT: I would like to comment on that. Taking over this job, talking to all the Mayor's that I can talk to, they gave me a turnover that you have a responsibility when you're elected by the people to speak for the people. So, bring issues to council and I can't keep track of how many calls I get, text, email and social media. So, if somebody asks me my opinion, I'm speaking as a Mayor. If Mr. Tieche or any of these guys disagree, they're welcome to speak and say whatever they want. It's been happening here. If somebody disagrees, Mr. Tieche has disagreed a couple of times; he comes out and says it. So, any of our citizens can say whatever they want, as far as questioning their government. I think, as Mayor and elected by the people, if folks don't like what I've done then they won't elect me again, if I seek reelection. John, having experience in social media and active, I don't feel like I have to run and get a jury and vote 3-2 for what I'm going to say on social media.

ATTY. FORTUNATO: I think that could get us into some trouble.

MR. NACARATO: I agree with you to an extent, Duff. But on social media a lot of people interpret things as a group, that could be misinterpreted, that you're saying, and get us all, for a lack of a better term, our s\*\*t in trouble. Social Media, if I've learned one thing being elected, social media can be the downfall of you in a heartbeat, just by one word being out of place. So, with that said, the way our government is written to be, we're part of a board, if you say one thing that can be reflected on all of us poorly, it can hurt all of us.

MR. DUFFETT: I can't tell you enough of some of the feedback that I've gotten that's positive on the communications, that have come from it and have come from the city manager, that's a City of Canfield post on water break. I got 4,800 friends on Facebook. If the city manager puts out something on a water break and I share it, it flashes that. I don't know if we have a high number of friends with Facebook that will see it when I share it. I think me and you talked



about it, sharing it is good because it disseminates it. People share what I share. It gets out there quick. I think that's effective.

ATTY. FORTUNATO: I think that's effective. I think that's a different kettle of fish than opining about an issue. I think you have to be fearful about that or at least get on the same page as the city manager. So, none of you are putting anything out there on social media or otherwise that is contrary to where the city manager wants to be on an administrative or other issue. We're all in the same boat. I remember when I first started in my law firm when I got out of law school, the manager of the department said to me, you're a lawyer and you might think you're a big shot but the office manager is the lifeguard of this pool and when you screw up, that life guard is going to grab you. I think that's a pretty good analogy. I know you're elected and you're in charge but by being elected in a city with a Charter you've agreed to serve subject to the administrative authority of the city manager. You're elected to council but you're elected to council that is subject to a charter. Our Charter says, the City Manager is the CEO of the city and you provide direction, policy, and you provide strategy. But you don't interfere in the daily operations of the administrative business of the city. That's just a formula for disaster.

MR. TIECHE: My concern ends up being if we haven't collectively agreed on how we're going forward and any one of us is out there expressing their personal opinion as though it is the opinion of the City of Canfield. I think that's where we get in trouble.

MR. NACARATO: That's where I was going with that Chuck.

MR. TIECHE: Mayor, you indicated that you talked to several Mayors' and they explained to you what they thought your position was. How many Mayor's that you talked to were Mayors of charter cities? There is a differential.

MR. DUFFETT: Our former Mayors of Canfield. Mayor Kay, Mayor Kosar. I'm not talking about Tito, naturally I know the other Mayor's but I talked to Canfield.

MR. TIECHE: And they felt they should be the one out there leading and that kind of thing. I never had that happen, one way or the other. When I was city manager, I would have said something, that's for sure.

MR. CALHOUN: Can I ask, Mayor Duffett, what do you think the role of the Mayor is in the City of Canfield?

MR. DUFFETT: I think it's to represent the people that elect you. You're elected on a separate ballot. So, I think public relations with the public is one. Media relations are one. Being a member of council and voting on legislation is one of the things that the Mayor does. Clarification, I get calls, I'm sure you get plenty of calls, we probably all get calls. I don't know about the other councilmen. But field calls, send the one's to you, like a drainage problem, naturally, I'm getting information and I'm sending it to you on the action/operational side. I think there are multiple hats that the Mayor has that I'm learning as I go.

MR. TIECHE: I differ with that philosophy quite honestly. I think you are a member of city council, you serve as the Magistrate in Mayor's Court and beyond that we are not any different in our responsibilities here. We administer a set policy collectively by decision of the 5 of us.

MR. DUFFETT: Legislatively, I see your point. Why is the Mayor elected on a separate ballot?

MR. TIECHE: I'm elected on a separate ballot.

MR. DUFFETT: With all the other council. The Mayor has a ballot and councilmen, I don't know how many there were last time.

MR. TIECHE: Each member of council has a separate ballot. I have a ballot, John has a ballot, and Bruce has a ballot. Three other members in the community, that aren't on council has a ballot.

MR. DUFFETT: It's not like the top vote getter becomes Mayor. The Mayor is on separate slate. You vote for the Mayor. Is that not correct?

MR. TIECHE: That's true. I don't see that as being any different.

MR. CALHOUN: I guess that would be my follow-up question. What do you believe then as a separate ballot Mayor position differentiates your role from the other members of city council?

MR. DUFFETT: I think from what I gather from the public is I know I get a lot of contacts. People, if they got a problem or want an opinion. I get a lot of calls. What do you think as Mayor? I get a lot of questions. I think that a lot of it is public relations of taking calls. Maybe an opinion on a wide variety of things. What we've done on the Green. Fielding calls and concerns of people that elect you.

MR. CALHOUN: But that's no different than any member of council.

MR. DUFFETT: Right.

MR. CALHOUN: When members of council get calls, for the most part, they funnel them to the city manager to address appropriately.

MR. DUFFETT: You're saying I haven't funneled calls to you?

MR. CALHOUN: Not in certain cases.

MR. DUFFETT: Okay, but....

MR. CALHOUN: Like you just stated, you provide opinions to residents on things you feel you can speak about. Now, if they're operational or something that you don't have the correct information or knowledge on, you don't speak on them. There have been multiple instances where you have provided information or spoke on issues that again, I'm just trying to get us all on the same page. Every member of council is of the agreement that it's one thing to provide opinions or information that people say, hey, all the activities you're doing on the Green are fantastic. Well, thank you. We do a great job. But in some instances where certain circumstances and issues come up, that's why I asked the question, where do you feel that differentiation is or exists as Mayor that separates you from other members of council in providing those opinions, as Mayor of Canfield?

MR. DUFFETT: That's a big general statement. I can't specifically answer. I'll answer like this; I get a wide variety, the comprehensive plan; which I'm on the Steering Committee. What I think of this. What I think of this. As far as operational things, people don't call me and say, what size pipe do you think I should use.

MR. CALHOUN: So, public affairs, public relations, that seems to be the most common thing we're talking about.

ATTY. FORTUNATO: Let me jump in. I will ask all 5 of you to show me anywhere in the Charter where any of you have the authority relative to public relations or media relations or otherwise. It's not spelled out in the Charter that any of you have that authority.

MR. NEFF: It's not spelled out in the Charter that the City Manager has the authority.

ATTY. FORTUNATO: Well, I think the city manager has all the administrative.... If you read the city manager's authority. I think it's much easier to.....

MR. NEFF: I think we're talking about a very difficult thing here from the standpoint, this is like semantics. I don't want to be able to be told that you can't talk to residents without clearing it with the city manager.

ATTY. FORTUNATO: I don't think anybody is advocating that. It's very clear in the Charter that the city manager alone has exclusive authority to run the city. The City Manager shall be the chief executive, administrative, and law enforcement officer of the Municipality and shall be responsible to the Council for the administration of all municipal affairs place in the charge of the manager by or under this Charter. The Manager shall have the following powers and duties including the powers to.... Then under Council-Manager Relations it says, the council or its members shall deal with officers and employees who are subject to the direction and supervision of the Manager solely through the Manager and neither the Council nor its members shall give orders to any such officer or employee, either publicly or privately, except that the Council may require of the Municipal Attorney and Director of Finance. There is another specific provision addressing the Mayor's authority relative to that issue. The Mayor shall not interfere with the powers and duties of the Manger in the supervision and conduct of

the affairs of the administrative departments and divisions of the Municipality. If you take all that and you take the authority of the manager and you spell it out in the Charter, I don't think anybody is saying, Mr. Neff that you're not allowed to answer a question that anybody asks you. I think we're saying that you have to be careful in terms of usurping any of the administrative authority of the city manager and I'm not saying that you do that. But you have to be careful of that. You have to be careful on speaking on behalf of the city. If any entity has a CEO, that CEO is the one and not its Board of Directors who would speak on behalf of that entity. This is no different.

MR. NEFF: If a Board of Directors of Farmer's National Bank was approached by a stockholder to ask a question, I don't think he would go to Kevin Helmick, the President or CEO and say, how do I answer this? He would give his opinion.

ATTY. FORTUNATO: That depends on the question. If I'm the counsel for the bank, I damn well don't want some board members answering a specific question. But we're not talking about general questions, I don't think.

MR. MORVAY: They probably have a policy.

ATTY. FORTUNATO: They absolutely do.

MR. MORVAY: They have a policy at that bank.

ATTY. FORTUNATO: I don't think anybody, pursuant to the charter; I don't think anybody can claim the right to be the voice of the city, other than the city manager. I just don't find it in the Charter. My job isn't to take sides. My job is to read the charter.

MR. NEFF: Well, I respect your opinion but I don't agree with it.

ATTY. FORTUNATO: Well, tell me what I'm missing in the Charter?

MR. NEFF: I'm not saying you're missing anything. I just don't think it's spelled out. I think that a Mayor seems to be a great person to be the spokesperson. Now, I don't think it could be adversarial between the Mayor and the City Manager. I think communication needs to be there, as well as communications with Council. It's interesting that it's come to this. It seems like we're being taken to task. We're not trying to usurp someone else's authority. We're trying to make the city work better and have good ideas come to the forefront for the community. If there is anything we can do to do that, that's quite honestly the hardest thing that I have a problem with. When I came onboard, I wanted to see activity on the Green; I wanted to see vacant stores be populated, Red Gate development. We're making progress. I don't want to be stifled. We don't have an economic development committee, I think we should. Some people have said that's Wade's job. Well, Wade has a ton of stuff he's doing. I'll try to bring it up in the next couple of meetings to make a Motion to have an economic.... We need these empty stores.

ATTY. FORTUNATO: Well, I think that's the correct role of Council. If that's something you believe in and that's a high level direction and a policy and a strategy, I think that's an appropriate thing for a council person to do.

MR. MORVAY: But have that conversation with the city manager and us.

MR. TIECHE: Collectively.

ATTY. FORTUNATO: I would advocate that.

MR. DUFFETT: I can't tell you how many people; I give out my cell to everyone. I say you can call me, you can text me, I prefer texting because where I work, it's hard to get a .....

ATTY. FORTUNATO: It's a public record though. You have to be careful. It does create a public record.

MR. DUFFETT: I work in a plant that has a lot of robots and it seems to interfere more with phone calls than it does texting, for some reason. Email is pretty good too. What my point is, I can't tell you how much feedback I receive on communications of things that are out there, that either I've said or I called people back, or posted or whatever. There might be a difference of opinion. This is a democracy. I have the right to speak my mind. So does everybody else here. They can all disagree with me. You see it all the time in Washington, not that that's the (inaudible) for good government. Each person comes and says what they want whether it's on the floor. Differences in government.

ATTY. FORTUNATO: I don't think anybody is saying that you shouldn't have the right to articulate your opinions here at Council. What I'm saying is; you have to be careful (all of you) in terms of speaking on behalf of the city. I see that as far different than speaking on behalf of your personal opinions or your personal opinion or anybody's personal opinions. When you're characterized as speaking on behalf of the city, then I think that sets up a formula for trouble. If the city manager or other members of council are in disagreement with that. You have one person out speaking on behalf of the city, yet that may not be the rest of council feels, or how the city manager feels.

MR. NEFF: We may be able to solve this if we come up with a standard sentence that we always answer. I'm not speaking on behalf of the city but my personal opinion is ... We don't want to say, I can't talk to you Frank because I got to talk to everybody about it first.

ATTY. FORTUNATO: I don't know if that's what everybody wants to do tonight is talk about talking. I was more interested in making sure everybody understand their role and the city manager and why it's important to protect that role, given our Charter and given where we all want to see the city go. I'm much more interested in making sure everybody understands those roles. Then speaking on behalf of the city, it's obvious that nobody should be doing that

without at least running it by the city manager and let the city manager speaking on behalf of the city.

MR. DUFFETT: I get multiple invitations to speak, more than I can go to. Whether it's small or whether it's big. Prior to the pandemic we had the state of the cities, where we had the Chamber and I usually speak at those. It would be difficult with us being part time here and all of us work, I think, I don't think there are any retirees, to get together and say, this is what I was going to say and send a script. Wade and I, when we were doing these, I don't know how many we've done, it's been awhile, I can't even remember the last one, we worked really good together to say, what do you think we need to cover. I think this and this. He thinks this and this.

ATTY. FORTUNATO: That's the right formula.

MR. DUFFETT: I open the thing and say, on behalf of the City of Canfield and introduce everybody there because I think that's a formal speech that we're giving to the public.

ATTY. FORTUNATO: Right.

MR. DUFFETT: But I also get asked as Mayor on other things and I'm not saying on behalf of the City of Canfield, when they ask the question because they're looking for my opinion, as their elected official. If Mark, they don't like the way I'm leading, they don't like the changes that have come to Canfield, then they're not going to elect us. I don't know if you have anything to add Mayor Kosar when you were Mayor?

MR. BERNARD KOSAR: Bernie Kosar, 63 Alabaster Avenue. I'm trying to recollect how we worked when I was the Mayor. It was fun. We disagreed but we did it in a gentlemanly manner. I think, you 5 folks here, your responsibility is to listen to the people that elected you, bring their message to Council, and then correct the problem if there is a problem. At the very least, let them know that you heard them, you did something with it, and maybe it's something you can't deal with, economics, laws, procedures, and the water thing. It seems so innocent to say, dig a well and you can have all the water you want, until somebody gets sick. Then you got Sebring, let's put somebody in jail for that. Your jobs, listen to the people, bring the message here and talk amongst yourselves. We used to do that every meeting. We'd be blowing in each other's ear. I think everybody knew what I was thinking. I even understood what John was thinking; which is way out in left field. (Laughter). We had excellent communication amongst ourselves. You have to strive for that. The guy sitting next to you isn't the enemy. He might disagree with you but he is not the enemy. I will leave you with that.

ATTY. FORTUNATO: I would like to say, I've been the Law Director for a long time, this is an inherent natural rub. It's an inherent conflict. You're elected, you want to be in charge, and you are, but you're not in charge of the administrative duties of the city. That creates a tension. It's kind of always existed in sometimes it's a little worse than it has been in the past. It's a natural tension. I don't think anybody should beat the hell out of themselves because of this issue. We

have to all be on the same page and understand what the Charter requires of us. It's not a choice. That's our constitution. It requires us to (inaudible) ourselves in a certain manner and that's what I will only advocate, is what the Charter says.

MR. MORVAY: Frank, you had a comment.

MR. MICCHIA: Frank Micchia, 220 Glenview. A little viewpoint from down within the weeds. In our form of Government the City Manager (inaudible). The Mayor is a ceremonial position. The Mayor has no administrative responsibility. My experience with the last 3 Mayor's, the last 2 Mayors have been very proactive in their ceremonial duties. I think that's a plus for the city. But there is a line where you got to separate (my opinion) ceremonial duties and executive and operational duties. It may be a fine line. Again, you have to be careful that you leave the city manager with those responsibilities. Many people think the Mayor, like in Youngstown, has the executive responsibilities to hire and fire. That's not the case here. It's a ceremonial duty. I think we're fortunate to have these two guys. They do a good job. If there is some conflict, we should iron it out, like we're doing here tonight. Keep the executive and administrative responsibilities with that big guy down there. There is no reason we can't do that. Thank you.

ATTY. FORTUNATO: That's not to say that they shouldn't point the city in the direction they want to see the city go. That's your job. If you want an economic (inaudible) then you have the authority to absolutely do that. You steer the ship. But he's in charge of the ship.

MR. MICCHIA: They have legislative responsibilities.

ATTY. FORTUNATO: Beyond that. I think they set policy and the overall direction of where the city is going.

MR. MICCHIA: Policy and legislative. Not administrative in regard to the operation of the city, police, finance, etc.

MR. CALHOUN: That's the question. I guess I'll start with Mayor Duffett. What do you believe are the powers and duties specific to the Mayor of the City of Canfield?

MR. DUFFETT: I think I just stated that.

MR. CALHOUN: So that is the role, what questions, and communications you get from citizens. What specific powers and duties do you feel lie with the Mayor's position that is separate and independent from the city council?

MR. DUFFETT: Mayor's Court. That seems to now be an issue. I'm not going to continue to stay here. I have things to do for my parents. I came here tonight because I thought I should be here. I came here to listen. I'm willing to talk about this and clarify, communications is going to be the key for you and I and the rest of Council. We've had some rubs and we're all men, if we disagree, we can still work together. I think we've got to increase the communications.

MR. CALHOUN: I'm more than happy to reschedule this. It's unfortunate. My deepest condolences go to you and your family. There is no reason we had to have this, this evening. We can reschedule it.

MR. DUFFETT: I want to answer your questions but I'm already 5 minutes late to the Lake Club where all our family is.

MR. CALHOUN: I suggest we reschedule it. I don't think we're going to get the answers or steer the ship, in the direction it needs to go to tonight, given the time.

MR. DUFFETT: Maybe some other folks can weigh in.

MR. CALHOUN: If other members of Council are fine we can continue on without you. But I have serious concerns, which I've voiced in the past, that went unaddressed, that are now significantly impacting the operations of this organization. Employees of this organization have come to supervisors and myself, based on certain activities, of certain members of this council. That's where we run into that fine line conflict to where it impacts the city; I cannot effectively do my job.

MR. TIECHE: There is a conflict here and if you read the ICMA Code of Ethics, item 10, specifically states that the manager shall resist any encroachment on professional responsibilities, believing the members should be free to carry out official policies without interference and handle each problem without discrimination on a basis of principle and justice. It sounds like where we're running into the rub. From my perspective, if somebody is calling me and asking me my opinion, I guess my response might be, my opinion is but if you really want information on this, you need to talk to the city manager. It's sort of my philosophy about how you get around that.

MR. MORVAY: My whole terms that I've served, consciously, whenever I talk to somebody, I try to direct them to the city manager, 100% of the time. There are questions that come up that are general and I can answer them. But if there is an issue, problem, opinion, absolutely, every time, I've directed it to the city manager. I feel, Mayor, that your job is the same as ours. We need to do that. We need to, just for continuity and for the sake of the city that we have one spokesman and that's Mr. Wade Calhoun. If Mr. Calhoun wants to then put it on us to deliver that message, then that's another story. Absolutely, I direct everything to Wade Calhoun.

MR. TIECHE: I actually thought that Frank's comments the analogy to the ceremonial head, was much on point as anything said this evening.

ATTY. FORTUNATO: Well, the Charter provides that the Mayor is the ceremonial head of the city. I think the Mayor and the city manager need to work together to figure out that.



MR. MICCHIA: Frank Micchia, 220 Glenview. I neglected to say when I was up there. If it weren't for Mayor's Court, you wouldn't need a Mayor. Anyone of the council members could do the ceremonial duties. But we do have a Mayor's Court and he does a good job.

ATTY. FORTUNATO: The Charter specifically says, the Mayor is the ceremonial head of the city and it also provides some duties relative to (inaudible) etc. etc. If the Mayor and the City Manager can get on the same page in terms as to what that ceremonial role is and how you're going to forge those duties, I think that would go a long way. The Mayor shall also be the ceremonial head of the Municipality; shall be recognized as head of the Municipality by the Governor for military purposes and by the Courts for the purpose of serving civil processes. The Mayor shall administer oaths, exercise all the judicial powers which are conferred upon Mayors by the laws of Ohio, and perform such other powers and duties as are elsewhere provided in this Charter or as provided by the Council. I think in my last opinion letter, I specifically stated that once Court starts in this room, the Mayor is in charge of this Court. He (inaudible) justice in Mayor's Court. The administrative functions surrounding the court before that door closes and court begins, those are Wade's responsibilities. But that's no different than anything else.

MR. MORVAY: I forget if it was Mr. Micchia or Mr. Tieche that said; we are nothing more than a Board of Directors. Very seldom do you hear a board of director talk about the company or its opinion or its direction. It's always the job of the CEO. That's what Wade is, he's a CEO. We can steer him and that's communications. But that's Wade's job. He's the CEO.

MR. CALHOUN: I think that's primarily where one of the conflicts has been taking place. Mayor on multiple occasions, you're stating, "As Mayor". Whether it's as innocent as a communication about a water break, it's being conveyed that it's coming from the city. That's where I'm trying to understand from your viewpoint; which I think I understand, it's just Mayor's Court, the outside powers, duties, and responsibilities that are separate from the city council. When you elude to certain things as Mayor, to the general public, feels as if, you are speaking on behalf of the entire city, the official statement from the City of Canfield, as the Executive Head of the City of Canfield. That's where Atty. Fortunato mentioned it could get us into trouble if we have one member of a governing body that is as, whatever, speaking out on behalf of the entire city.

ATTY. FORTUNATO: I agree that. That's correct. I will also say, that in some point and time, if you thought it best that a message came from the Mayor you should advocate that. You should do that. There may be times where, there is a message or a time, where you should be speaking on behalf of the city.

MR. CALHOUN: Public speaking engagements, Good Evening, Good Morning Canfield. All that information came from the city. It came from me. I felt that in that setting it was best to have the Mayor speak on behalf of the city.

MR. DUFFETT: You're saying that in your position you could take that away from the Mayor?

MR. CALHOUN: I could have very easily told the committee; which I was on, like the school does, they have the Superintendent speak. I could have very easily spoken during those meetings. In my view, as the ceremonial head of the city, the Mayor should be the one that's out there promoting, talking about future growth and planning and all the initiatives going on with the city. My job is to make all of those things happen. Just because you're speaking at those events, don't necessarily translate to what I think you're alluding to, media and public relations. There have been instances in the past that you have spoken to media on behalf of the city.

MR. DUFFETT: Well, maybe that's your interpretation.

MR. CALHOUN: It's not interpreting what transpired on multiple occasions.

MR. DUFFETT: Well, obviously we have difference of opinion on either what I said or that I'm speaking or got a call. Let me finish.

MR. CALHOUN: Which is why we default to the City Charter and the opinion of our Law Director. You have publically disagreed with the opinion of the City Law Director. That is a major issue for me, as one member of my governing body that is charged in task with my livelihood that is not agreeing with the City Charter and disagrees with the legal opinion of the Law Director that says what the City Charter says. That is where the biggest issues have taken place. I'm not going into a number of other issues that have been brought to light. But again, I don't know if Mayor Kosar or any employee in this organization, the Chief of Police, Police Officers, employees who have been in this city for 20+ years have voiced concerns or at least observed what is happening in my day to day activities because I'm constantly, I don't want to say battling but dealing with unnecessary issues because something was said, something was done, either directly to an employee or said during other meetings. It is significantly impacting my ability to do my job. By consequence the employees of this organization. It's not meant tonight to go through and hash out all of those issues. Which is why, I want to understand, what your opinion is, that makes you separate and independent from the Council; that as Mayor you have the ability to speak to the media and do some things that you've done as Mayor. It's not in the charter. Evidently, you've had conversations with previous Mayor's that have told you that is your job. Like I've said in the past, we operate based on what the city charter says. I will operate however this council dictates that I should operate. If the majority of this council wants to designate one member of this council or the Mayor as the person to be the lead public relations officer; which I think we've had this conversation in the past, I'm open for that. The majority of this council has indicated on multiple occasions to me to keep doing my job as I'm doing it, as the city manager, per the city charter. Your comments at the December 16<sup>th</sup> council meeting prove my point exactly.

MR. DUFFETT: What was that?

MR. CALHOUN: You publically admonished myself and Chief Colucci.

MR. DUFFETT: For?

MR. CALHOUN: Among other things overstepping our lanes in our powers and duties as it relates to Mayor's Court, infringing upon the independence of Mayor's Court. Alleging that we are interfering with American Jurisprudence and threatening to place written reprimands in our personnel files, if we don't abide by your authoritative delusion of grandeur.

MR. DUFFETT: Delusion of Grandeur.

MR. CALHOUN: Correct.

MR. DUFFETT: Justice is an independent thing.

MR. CALHOUN: I'm not arguing that. I'm giving you specific examples of what is causing the conflict in my day to day operations of the city.

MR. DUFFETT: To run a Mayor's Court for 3 years, going on my 4<sup>th</sup> year, and I think we have a very efficient court. It's working well. All of a sudden we're not sending our normal amount of people, that's changing. We're sending it to the county, without even a discussion. Talk about communications, why not sit down and say, hey, I don't know what the reason, it feels like retaliation.

MR. CALHOUN: I'm sorry it feels that way.

MR. DUFFETT: How else can I view it? Mark and I have worked well together, we have increased the revenue and that's not that the gold standard is revenue but we've tried to increase the numbers, just in our latest Ordinance we passed, about not sending certain violations to the county, because we want to keep them here.

MR. CALHOUN: I think it may be unjust for me not to say that to view Mayor's Court, in any aspect for revenue generation to the city is wrong.

MR. DUFFETT: I'm just telling you that we've talked about this. We lose money when it goes over to the county.

MR. CALHOUN: (inaudible) no discussions about revenue as it relates to Mayor's Court. It puts Chief Colucci and his department in an awkward position and it puts me as the city manager in an awkward position.

MR. DUFFETT: Why do I give a Monthly Mayor's Court Report and it's all transparent? That's what I go over, the numbers.

MR. CALHOUN: But you're inferring is the case loads.

MR. DUFFETT: No, I'm not inferring that. You're inferring that. I'm inferring that we get defendants here and we fine them guilty and that's a fine, then that stays in Canfield. That's local justice. If you're picked up in Canfield, our police do a fine job, they document it. Again, last night we had that, I look at all the facts; I go to Mayor's Court for training to look at different things to get that. If they plead not guilty they go to Mark and I think..... Do you think we have a good court?

ATTY. FORTUNATO: I've always thought we had a good court. We have great help. Great clerks.

MR. DUFFETT: It's a good team. I would hate to see folks that come through Canfield; we have a court here and not have those defendants come for local justice for the misdemeanors that we see. That's what concerns me. On top of that, if that was the difference that you guys felt, why make the decision without talking to the presider of the court.

CHIEF COLUCCI: You mentioned retaliation, correct? Do you really feel that was retaliation?

MR. DUFFETT: I don't know, you didn't talk to me about it.

CHIEF COLUCCI: Similar to canceling court. But you said retaliation. I really didn't want to speak tonight but retaliation is a smack in our faces, it's wrong.

MR. DUFFETT: I said it feels like.

CHIEF COLUCCI: It doesn't. Have you ever done anything as Mayor that would make us question the morality of Mayor's Court?

MR. DUFFETT: I'm not sure what you're talking about.

CHIEF COLUCCI: Have you ever asked our court clerk to, maybe it's not the right time.

MR. NEFF: Under the circumstances. I think we've had some good discussion here tonight. I think we're all onboard with Mark's review of the Charter. I'm not sure that we all agree on different points. But under the circumstances, I would move that we adjourn and we have a follow-up session at least an Executive Session. I'll make that Motion.

MR. MORVAY: Mark?

ATTY. FORTUNATO: That's fine. You could adjourn. You could reconvene.

MR. CALHOUN: So, when will we schedule the follow-up meeting?

MR. TIECHE: I'll second that Motion.

MR. MORVAY: I would really like to see the Mayor and Wade sit down and work to some agreement. But I am under the opinion that we stay out of Wade's way.

MR. NEFF: Mr. President, there is a question on the floor.

MR. MORVAY: I'm getting to it. I think we do need to come to some agreement. We are making Wade's job so much harder. He has to deal with all this and then move the city forward and he can't do it.

MR. NEFF: He's doing a good job.

MR. MORVAY: He's doing a great job.

MR. CALHOUN: Because you're not seeing the internal implications of certain members of council's actions. Chief Colucci and I have spent numerous hours focused on not city operations and not moving the city forward, as councilman Morvay alluded to.

MR. MORVAY: Why don't we pick this up after the next Council Meeting? Maybe in between have some discussion amongst ourselves and with Wade. Is that fair? I have a question to adjourn and a second by Mr. Tieche.

ROLL CALL ON MOTION:

5 Votes-Yes

0 Votes-No

Motion passes.

MR. MORVAY: Meeting adjourned.

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PRESIDENT OF COUNCIL

ATTEST:

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CLERK OF COUNCIL