

NEWTON FALLS CITY COUNCIL

REGULAR MEETING AGENDA

MONDAY, JULY 6, 2020

6:00 P.M.

CITY COUNCIL MEMBERS

Zachary Svette, Ward 1,
John Baryak, Ward 2
Lyle Waddell, Ward 3
Sandra Breymaier, Ward 4
Tarry Alberini, At-Large

MAYOR

Kenneth A. Kline

CITY MANAGER

David M. Lynch

LAW DIRECTOR

A. Joseph Fritz

CITY CLERK

Kathleen M. King

1. Call to Order

2. Pledge of Allegiance/Prayer

3. Roll Call

4. Special presentations by staff members or invited consultants

5. Public Comments (limited to those items as identified on the agenda)

6. Reports

Mayor
Council Members
Finance Director
Law Director
City Manager

Changes to tonight's agenda

7. Approval of Previous Minutes

June 15, 2020 - Regular Meeting

June 24, 2020 - Special Meeting

8. Public Hearings:

1. Ord. 2020-17: Amending Section 521.06 in reference to sidewalks to require railroad to maintain underpasses.
2. Ord. 2020-18: Amending Chapter 557 in reference to weeds grass, and shrubs to require railroads to maintain underpasses.

9. Unfinished Business:

1. Ord. 2020-17: Amending Section 521.06 in reference to sidewalks to require railroad to maintain underpasses.
2. Ord. 2020-18: Amending Chapter 557 in reference to weeds grass, and shrubs to require railroads to maintain underpasses.

10. New Business:

1. Recognition of Newton Falls High School Class of 2020 Valedictorians & Salutatorian.
2. Ord. 2020-22: Accept annexation of 27.952 ± acres.
3. Ord. 2020-23: Amend Ord. 2016-14 income tax allocations.
4. Ord. 2020-24: Amend Ord. 2015-15 cost allocations.
5. Ord. 2020-25: Authorizing the lease of property.
6. Ord. 2020-26: Repealing 2020-10 and enacting 2020-26 executing a contract for an AMI implementation project.
7. Res. 20-2020: Establishing Capital Improvement Funds.

11. Public Comments:

12. Closing Remarks: Mayor, City Manager and Council

13. Motion to Recess into Executive Session (if necessary)

Move into executive session, by majority vote, for any of the following reasons with a motion and second.

- ___ 1. Personnel Matters: To consider one or more, as applicable, of the marked items
- ___ Appointment
 - ___ Employment
 - ___ Dismissal
 - ___ Discipline
 - ___ Promotion
 - ___ Demotion
 - ___ Compensation
 - ___ Investigation of charges/complaints (unless a public hearing is requested)
- ___ 2. Purchase or Sale of Property
- ___ 3. Pending or Imminent Court Action
- ___ 4. Collective Bargaining Matters
- ___ 5. Matters Required to be Kept Confidential
- ___ 6. Security Matters (National Security)
- ___ 7. Hospital Trade Secrets
- ___ 8. Confidential Business Information of an Applicant for Economic Development Assistance
- ___ 9. Veterans Service Commission Applications

14. Adjourn:

PROCLAMATION OF RECOGNITION

(Sponsored by Mayor Kline, Ward 1 Councilman Zachary Svette, Ward 2 Councilman John Baryak, Ward 3 Councilman Lyle Waddell, Ward 4 Councilman Sandra Breymaier, at-large Councilman Tarry Alberini)

WHEREAS, The Newton Falls High School Class of 2020 graduated many students this year of which to be proud; and

WHEREAS, Among the graduates were several students who graduated with the special designation of Valedictorian and Salutatorian for achieving outstanding academic success and joining the ranks of the best and brightest students; and

WHEREAS, These students have demonstrated, through their performance, the value they place on learning and earned an exemplary grade point average; and

WHEREAS, The Mayor, City Council and Community wish to acknowledge the persistence, effort, and diligence exerted toward studies during their school life which deserves proper recognition of their academic accomplishments; and

WHEREAS, These students, through their accomplishments, have earned the respect of their peers, teachers, administrators and families.

COUNCIL FOR THE CITY OF NEWTON FALLS, STATE OF OHIO HEREBY PROCLAIMS:

SECTION I: Special recognition is hereby extended to the Newton Falls High School Class of 2020 Valedictorians: Allison Sembach, Hanna Carden, Julie Coss, Bailey Shrum, and Kalena Speicher and Salutatorian Elizabeth Nutter..

SECTION II: Newton Falls City Council, Mayor and City Manager on behalf of the citizens of Newton Falls officially extends congratulations to these students for their accomplishments and commends Allison Sembach, Hanna Carden, Julie Coss, Bailey Shrum, Kalena Speicher, and Elizabeth Nutter for achieving academic excellence and extend our best wishes to them in their future endeavors.

IN WITNESS THEREOF, We have set our hand and caused the Official Seal to be affixed this 6th of July 2020.

Mayor, Kenneth A. Kline

Tarry Alberini

Sandra Breymaier

John Baryak

Zachary Svette

ATTEST: _____
Clerk of Council

Lyle A. Waddell

Newton Falls City Council met in Regular session on Monday, June 15, 2020 at 6:00 p.m. in Council Chambers. Mayor Kline, called the meeting to order following the Pledge of Allegiance.

Life Church Newton Falls Pastor Brent Erb gave the opening prayer.

ALSO, PRESENT:

David M. Lynch, City Manager; Kathleen M. King, City Clerk; Attorney A. Joseph Fritz; Anna Musson, Finance Director; Gene Fixler, Police Chief.

ROLL CALL:

Baryak, Alberini, Waddell, Breymaier, attending remotely by phone Svette

ABSENT:

SPECIAL PRESENTATIONS BY STAFF MEMBERS OR INVITED CONSULTANTS:

PUBLIC COMMENTS:

Dennis Richter, 231 Maple St., reviewed the legislation on tonight's agenda and informed Council what he was in favor of and what he was against.

John Ruscoe, 21 Eagle Drive, representing the Newton Falls Youth Baseball Softball league asked for passage of the legislation in reference to money for the fencing.

Jim Luonuansuu, 10 East Liberty, commented on Ordinance 2020-19. He stated Council promised that the City had the money to purchase this property. Now there is legislation borrowing money for the purchase and for fixing the inside. He said if this passed, they would file an injunction, referendum or both.

Tim Stintson, 253 Arlington, said he did not understand why we were borrowing money and that we needed to stop spending so much. He also commented that we have spend a lot on the baseball fields already and there are other needs in the parks.

Brian Kropp, 247 Elizabeth St., said the people in the audience tonight are upset and Council should listen to them.

Brenda Koontz, 411 Ravenna Road, was upset on the money spent on Covid expenses and asked what it was spent on.

Rick Kerlin thanked the City and Police Chief for their recognition tonight of Mike Rowe.

Chuck Homa, 256 Woodland, said no one he knows is in favor of the legislation on tonight's agenda.

REPORTS :

Kline:

- Has started to go door to door again to talk to citizens. The two issues brought up most by residents were: The division and vindictiveness not only in the community but as well in our local government; and drugs in the community.

Waddell:

- Today's paper had an article about SCOPE coming to Newton Falls. A lot of work has gone into this over the past few month.
- The state passed legislation to fund some of the broadband we have been discussing. He will bring more information when available.
- Met with residents in the East River Garden area about issues with landlords. This has been discussed in Council before however no legislation is currently pending. He hoped to bring legislation to Council by September dealing with some of the issues.
- Work will be starting soon to clean out the ditches on St. Rt. 534.

Breymaier:

- She has not forgotten the interest in a dog park or pickle park. Now that things are opening, she hoped to start working on these issues.

Alberini:

- Will be convening a meeting of those interested in forming watch block groups.

CITY MANAGER: Nothing at this time

FINANCE DIRECTOR:

The annex building opened to the public June 8th. They are following social distancing rules, two people are allowed in the lobby at one time and must wear masks.

The 2019 audit will be starting shortly.

Spoke with the Game Works consultant and the new playground equipment will be on site tomorrow. The goal is to have this completed by June 19th.

On tonight's agenda there is a debt management plan laid out before Council. Legal debt bond Counsel, Blake Beachler one of the team she worked with on this plan is in attendance. This plan has been worked on for several months and went out for bid. The bid came in at 2.37% which is an outstanding rate from Huntington Bank. Rates have gone up since we received this bid. Mr. Beachler was introduced and proceeded to explained the debt package and legislation on tonight's agenda.

Ms. Musson explained that as part of the debt management presented tonight, she has certified certificates, provided debt amortization schedules and S & P ratings has assigned an SP1 rating for our electric Amp system bond. This shows that the City is in excellent shape to repay debt.

Baryak commented that we were taking on a lot of debt and asked why and why by emergency. He did not feel bonds were the way to go.

Musson stated that that the majority of Council passed contracts that we have to pay. We have \$8.4 million on hand but not for these projects. She proceeded to explain that we do fund accounting which means the money is in different “buckets” and you can’t move money from one “bucket” to another.

At the request of Alberini, Ms. Musson gave her background education and experience.

Ms. Musson stated this was the best debt management plan she and the consultants could come up with and, in addition, we have not reached or approached our debt limit.

Baryak said he was not aware that we had to put money into the OPWC project, and other people have the right to have stuff done at the parks other than the fields. He also said Ms. Musson got the park playground without the Parks Committee.

Ms. Musson explained that the OPWC project amount is our City share and in reference to the parks she was working with the City Manager. These projects are to bring our community together not divide it.

LAW DIRECTOR: Nothing at this time

CHANGES TO TONIGHT’S AGENDA:

Waddell made a motion seconded by Alberini to add Resolution 20-2020 to tonight’s agenda.

ROLL CALL: Svette aye, Alberini aye, Waddell aye, Breymaier aye, Baryak aye.
MOTION PASSED 5 – 0

APPROVAL OF PREVIOUS MINUTES:

Waddell made a motion seconded by Svette to adopt the minutes from the June 1, 2020 Regular Meeting as submitted by the Clerk.

ROLL CALL: Alberini abstain, Waddell aye, Breymaier aye, Baryak aye, Svette aye.
MOTION PASSED 4 - 0 - 1

PUBLIC HEARINGS: None at this time

UNFINISHED BUSINESS: None at this time

NEW BUSINESS:

RESOLUTION 18-2020: A Resolution of condolence commemorating the passage of Michael Milton Rowe.

Waddell made a motion seconded by Breymaier to adopt this Resolution.

ROLL CALL: Waddell aye, Breymaier aye, Baryak aye, Svette aye, Alberini aye.
MOTION PASSED 5 - 0

RESOLUTION 19-2020: A Resolution awarding the leasing contract for the AMI system to Huntington Public Capital Corporation and further authorizing the City Manager to execute all documents and instruments that are necessary or desirable to effectuate financing.

Alberini made a motion seconded by Waddell to adopt this Resolution.

ROLL CALL: Breymaier nay, Baryak nay, Svette aye, Alberini aye, Waddell aye.
MOTION PASSED 3 – 2

RESOLUTION 20-2020: A Resolution authorizing the City Manager and or Finance Director to request the City of Newton Falls share of funds from the county coronavirus relief distribution fund.

Alberini made a motion seconded by Waddell to adopt this Resolution.

Mr. Lynch explained that he has been discussing this for several meetings now. The State Legislature has been working on what was formerly known as the CARES Act or SB 310 and is now HB 481. We received this legislation from OML Friday after regular hours which is why it was added to the agenda today. As explained earlier by passing this resolution supplied by Ohio Municipal League it will allow the City to apply for and recoup monies spent on Covid-19 expenses. Mr. Lynch said he anticipates that this money will reimburse the entire \$50,000 spent on Covid related expenses.

ROLL CALL: Baryak aye, Svette aye, Alberini aye, Waddell aye, Breymaier aye.
MOTION PASSED 5 – 0

ORDINANCE 2020-17: An Ordinance amending Newton Falls Codified Ordinance Section 521.06 Duty to Keep Sidewalks in repair and clean, in order to expedite sidewalk maintenance by all property owners such as railroad or other commercial owners.

Baryak made a motion seconded by Breymaier to adopt this Ordinance.

Mr. Lynch stated this is a way to try and make the railroad more accountable for their properties.

Baryak asked what happens if this does not work. Attorney Fritz stated we can assess their properties, but noted that it may not be possible to get CSX to pay on the lean or collect the money.

ROLL CALL: Svette aye, Alberini aye, Waddell aye, Breymaier aye, Baryak aye.
MOTION PASSED 5 – 0

ORDINANCE 2020-18: An Ordinance amending Newton Falls Codified Ordinance Chapter 557 Weeds and Grass to include railroad and commercial properties.

Baryak made a motion seconded by Breymaier to adopt this Ordinance.

ROLL CALL: Alberini aye, Waddell aye, Breymaier aye, Baryak aye, Svette aye.
MOTION PASSED 5 – 0

ORDINANCE 2020-19: An Ordinance to provide for the issuance and sale of various purpose general obligation bonds of the City of Newton Falls, Ohio, in a principal amount not to exceed \$395,000 to pay the costs of the acquisition and improvement of certain real property and improvements for use as a municipal building and declaring an emergency, due to the expected increase in interest rates and the possibility of having no bid (current bid expiring June 25, 2020) at all of these bonds due to the rapidly changing economy.

Alberini made a motion seconded by Waddell to adopt this Ordinance.

Baryak stated he agreed to buy the church because it looked good and he thought repairs were going to be done as needed. He did not want to leave future Councils hands tied because they are bound with fiscal obligations. Baryak said he thought our debt totaled about \$12 million.

Musson stated we only have one debt limit and that is in the Electric Department the rest are loans which are part of the rate studies. This debt financing plan allows us to refinance our debt such as the USDA and this legislation is part of that debt plan. We have contract obligations. There is not enough cash on hand to pay for the projects.

Alberini stated regardless of what we do everybody will be against it. The purchase of the church building is a great deal for the City. It is appraised at a million dollars and there will have to be some investments made internally inside. The goal of the Council was to consolidate all the operations into one location for our citizens.

A brief discussion was held on the use of the building and SCOPE using the building.

ROLL CALL: Waddell aye, Breymaier nay, Baryak nay, Svette aye, Alberini aye.
MOTION PASSED 3 – 2 passed for first reading.

ORDINANCE NO. 2020-20: An Ordinance to provide for the issuance of not to exceed \$20,000 of general obligation bonds to pay the costs of acquiring and installing certain site improvements comprised of fences for municipal baseball fields, and declaring an

emergency due to the expected increase in interest rates and the possibility of having no bid (current bid expiring June 25, 2020) at all on these bonds due to the rapidly changing economy.

Alberini made a motion seconded by Waddell to adopt this Ordinance.

Alberini thanked John Ruscoe and his group for the outstanding job they have done on the baseball fields.

ROLL CALL: Breymaier nay, Baryak nay, Svette aye, Alberini aye, Waddell aye.
MOTION PASSED 3 – 2 passed for first reading.

ORDINANCE NO. 2020-21: An Ordinance to provide for the issuance and sale of various purpose general obligation bonds of the City of Newton Falls, Ohio, in a principal amount not to exceed \$98,000 to pay the costs of the acquisition and installation of certain sewer improvements comprising the Medley Avenue sewer project and declaring an emergency due to the expected increase in interest rates and the possibility of having no bid (current bid expiring June 25, 2020) at all on these bonds due to the rapidly changing economy.

Alberini made a motion seconded by Waddell to adopt this Ordinance.

Baryak said this is in his ward and he wants to see this project but will not vote for it under the emergency.

Mr. Lynch reminded Council that we are under a federal consent order from the EPA to do this project.

Waddell stated the problem in this town is that we are chastised on what we don't do and then chastised on what we do. We have talked about the need to do many things and it takes money to do them. Sometimes bonds are how you have to do it. If you don't want to pass this and we don't do anything then don't complain that we are not doing anything.

Breymaier said one of the main problems is the word emergency. Emergency should not be used to force people to vote immediately without people being able to speak.

Alberini agreed but felt it was an emergency to those folks who live there and have been waiting for the project.

ROLL CALL: Baryak nay, Svette aye, Alberini aye, Waddell aye, Breymaier nay
MOTION PASSED 3 – 2 passed for first reading.

Alberini made a motion seconded by Baryak to accept the Finance Department May monthly report and attachments as presented.

Baryak asked if administrative costs were still over or have, they been adjusted. Musson stated that those numbers were adjusted quarterly which would be the end of June.

Svette asked for a brief discussion how the revenue is on tax collections. Musson stated the Income Tax collections year to date at the end of May were down approximately 12.92%. The rest of the revenues for income tax, municipal court and investments is in the back of the report. You will see the comparison from last year and now. Mostly the impact was to the municipal court revenue. We are financially stable. Statement of cash position at the end of May overall for all funds we are at \$8.2 million.

ROLL CALL: Svette aye, Alberini aye, Waddell aye, Breymaier aye, Baryak aye.
MOTION PASSED 5 – 0

Waddell made a motion seconded by Breymaier to accept the Police Department May monthly report.

ROLL CALL: Alberini aye, Waddell aye, Breymaier aye, Baryak aye, Svette aye.
MOTION PASSED 5 – 0

PUBLIC COMMENTS:

Dennis Richter, 231 Maple, asked how a government body can spend its way out of debt. He commented on things the City Manager said he would be doing, and nothing has happened such as road paving. He said Council thinks they come first and have no consideration to taxpayers and what the people want.

John Ruscoe, 21 Eagle Point, wanted to make sure people knew that the baseball softball league raised and donated to the fencing project \$41,000. He also took time during his vacation to help the City take down the fence. They league is still fundraising however they have not received any money from the soccer league who played there last year and only got \$250.00 from the high school who also uses one of the fields. He appreciates what the City has done and is still doing.

Brenda Koontz, 411 Ravenna Road, was disturbed by the way people treat each other. She was not happy that there was no money for her road, but Eagle Point got fixed.

Brian Kropp, 247 Elizabeth Street, said he hoped Council saw the people here today and this would continue until they start listening to them and quit spending our money on things we don't need.

Linda Clark, South Canal, trustee of the Congregational Church who removed the stained-glass window. She brought one window back at the request of the City Manager and now the City will not return it. She asked for the window to be returned so it could be put with all the other church things in storage.

Jim Luonuansuu, 10 East Liberty Street questioned if the ordinance to purchase the church was still valid since Mr. Lynch changed the contract.

He said he heard that the Finance Director was calling Council members lobbying for votes. If that is correct that is outside the realm of the job.

It is time for this silliness to stop. There are two referendums out and regardless of what your are hearing, if you look up the case law any act of Council can be subject to referendum. They will take this to court if they have to.

He also stated that according to Robert's Rules of Order the legislation tonight did not receive the four votes needed so it does not automatically go to a first reading.

Laura Neiheisel, 227 North Center Street, thanked Baryak for listening to the people.

John Richards, 212 Albert Street, asked if people could opt out of the smart meters.

Chuck Homa, 256 Woodland, thanked John Ruscoe for the work the baseball league has done .

CLOSING REMARKS; MAYOR, CITY MANAGER AND COUNCIL:

Mr. Lynch addressed comments from Mr. Richter and clarified that we just received bids on the road paving for this year. He also stated that last year we did more roads than we have in a long time. Mr. Richter also indicated that we have a deficit in the General Fund and that is not true.

Mr. Lynch addressed comments from Ms. Clark about the church windows. He stated that the windows were not on the list attached to the contract of items the church wanted.

Mr. Lynch also address a comment earlier that the church was locked out of the building this past weekend. That was not true. Nancy DeSalvo has a key to the church and enters freely including weekends.

Mr. Lynch stated that if someone is going to stand at the microphone they should take responsibility that they are making true remarks.

Baryak said he did not understand about the windows. Mr. Lynch stated that the contract signed by the Trustees provided a list of items they wanted, and that list is attached to the contract.

Baryak stated that Mr. & Mrs. Valot Sr. would like to donate two picnic tables of whatever the City picks out.

He asked why other people don't step up and help with the fencing.

Baryak said he knew nothing about the SCOPE deal and there is no money in the budget for road repairs or demolitions. There is a pot hole in front of City Hall that needs fixed and found out the street department was painting a wall at the new building instead of fixing the pothole. He asked where our priorities were.

Baryak stated elected officials should stop arguing and be on the same page. He was tired of being on the closed end of things.

Breymaier has heard a lot of people talk bad about Mr. Haney, how he never did anything, no one knew what he looked like. She said this is the reason why. Why should he use his time to try to help you when you fight about everything. You don't want any money spent; you don't want anymore taxes. Somebody has to pay. We can't stay the way we are now and if you want to go forward it costs money to go forward. And here we go again against Mr. Lynch.

Alberini said in the process of a democracy there is give and take and he has no problem with people speaking their peace because as taxpayers you have the right to do so. We do listen to the taxpayers.

Alberini replied to a comment about roads and listed some which were paved last year. He thanked Mr. Baryak for going to Eastgate to help get the project on Eagle Point done.

Alberini stated Council may not always agree but in the course of business if we all agreed on the same thing something is wrong. At the end of the day you work it out and come to the best conclusion you can.

Mayor Kline thanked everyone for coming out tonight. He felt that had good intentions and hoped they would respect the intentions of the Council. Some of the things being done, in the big picture and the long run, are to save money such as the church building. This still does not mean we will always agree, but that is what conflict resolution is about.

Mayor Kline also reminded everyone that the Senior class banners are on sale and if anyone is interested, they should contact the City Clerk.

MOTION TO RECESS INTO EXECUTIVE SESSION:

ADJOURN:

After no further comments or questions Baryak made a motion seconded by Alberini to adjourn at 7:54 p.m.

ROLL CALL: Waddell aye, Breymaier aye, Baryak aye, Svette aye, Alberini aye.
MOTION 5 – 0

Mayor, Kenneth A. Kline

ATTEST: _____
City Clerk/Clerk of Council

Newton Falls City Council met in Special session on Wednesday, June 24, 2020 at 6:00 p.m. in Council Chambers. Mayor Kline called the meeting to order followed by a prayer.

PLEDGE OF ALLEGIANCE

ROLL CALL:

Svette, Baryak, Waddell, Breymaier, Alberini

ALSO PRESENT:

City Manager, David Lynch; Police Chief, Gene Fixler; Finance Director, Anna Musson; Law Director, A. Joseph Fritz.

Waddell made a motion seconded by Alberini to appoint the Law Director as Secretary Pro Tem for tonight's meeting.

**ROLL CALL: Svette aye, Baryak aye, Waddell aye, Breymaier aye, Alberini aye.
MOTION PASSED 5-0**

Mayor Kline made a presentation to the Finance Department for the Certificate of Achievement for Excellence in Financial Reporting Award from the Government Finance Officers Association.

Mr. Lynch commented that in the State of Ohio there has only been one other time that this award for financial transparency and accuracy in accounting for a Village in the State has been awarded.

PUBLIC COMMENTS:

Sarah Jaster, 17 River stated on 6-15-2020 ordinance 2020-19 was introduced as an emergency. On today's agenda the word emergency has been removed. At the first reading the Ordinance did not get the four votes necessary for passage as an emergency. She did not feel this should be a second reading and that the legislation did not fit the priority as an emergency.

John Rusco, 21 Eagle Point Drive, asked that we finish what we started in the park and to finish one thing before we start another. He thanked everyone on board with them and appreciated everything.

John Richards, 212 Albert Street objected to the legislation tonight. He also stated the legislation was not passed as an emergency and felt they failed. He was not in favor of borrowing money. He did not think we needed to purchase the building, but he was in favor of the baseball fields.

Phillip Beer, 509 Ravenna Road supported the purchase of the building.

Jim Luonuansuu, 10 East Liberty Street asked why Council felt it was necessary to continue to spend exorbitant amount of tax payers money. He read the bond and he felt we were strapping future generations of Newton Falls with this 40 year bond. The only necessity on the agenda tonight was the sewer project. He expressed concern about this year and next year's tax collections.

Tim Stintson, 253 Arlington agreed with what was just said. He did not feel we needed to go in debt and borrow money. He suggested paying cash for the baseball fields the new building and to not do the improvements. He asked that Council vote no on all issues.

David Hanson 4365 Warren Road. He said the only problem he saw with this building was we should have done this 20 years ago. This could showcase our town if we were going to move ahead.

UNFINISHED BUSINESS/NEW BUSINESS:

Attorney Fritz responded to the comment about the emergency/legislation. He said there has been confusion since the last meeting. He is very well aware of what the Charter says. At the last meeting the Mayor asked for an oral vote on the Ordinances. The Ordinances received three yes and two no votes. The Ordinances were not passed as an emergency, but would pass for a first reading. Under Ohio Law there are three readings that most legislation has to have to go into effect. The court has decided is important is how much time for the enactment of the law and that is what needs to be focused upon. An emergency ordinance immediately goes into effect with the right amount of votes, it is enacted and cannot be judicially attacked. The Charter sets our ground rules. For example, the Charter does not specifically say how things pass if only four members are present; therefore, certain things under Ohio Law and Roberts Rules of Order supplement the Charter that explains those things. What happened is the Ordinances passed for first readings and the only part that comes off is the emergency part. If they had only gotten two votes they would not have passed at all. They got three votes which allowed the Ordinance to go forward. The key is when would they be enacted. We have a second reading and if passed they will be published and thirty days after publication they are enacted. That gives the citizens time to act upon that.

Attorney Fritz stated that the Ordinances passed for their first readings and that was his legal opinion. This was based on a few things. Case lase exists. In Miller v City of Cleveland 146 N.E. 2nd 178, (1957) case. Attorney Fritz briefly discussed that decision.

Attorney Fritz said finally we have always done it this way. He does not get to pick and choose which he likes and which he doesn't. If you go back through the last several year's he found several where it failed as an emergency and continued as a regular ordinance. He noted that the Law Director is an umpire both sides hate him, but he will not change the law.

If you don't like what happened if it passes tonight, it will be published then thirty days after it will be enacted. If you don't like it, you have time to attack it.

Baryak said he asked in official capacity for the Law Director to explain what he just explained tonight. He said he was denied that. Baryak said he is just one Councilman and did not ask for an opinion but for what was just supplied tonight. Baryak felt we used the Charter when we wanted to. Baryak commented on the number of Council members present at meeting and how the votes counted. He also read minutes from the March 16th meeting. He asked if this meeting was fourteen days after the last meeting.

Baryak read under Section 16 in the Charter about passage of Ordinances. He said it was written up as an emergency and now it was not is that what sent this back to a regular ordinance now.

Attorney Fritz stated in reference to the number of Council members present at a meeting. He noted the Charter does not specify therefore if the legislation for emergency vote was 3-1 it would not pass for emergency.

He addressed the allegation that he did not respond to his request and that he was not asking for an opinion just wanted to know where he got the information. Attorney Fritz said that is asking for an opinion. He explained that he works for the City Manager and majority of Council. If every time a council member asked him to do something there would be no channel of communication and no structure. He is not everyone's lawyer, he is the lawyer for council, staff, and the City not for individual Council members.

It was suggested that we pick and choose how things are done. Attorney Fritz said that was incorrect we have been consistent in the application of this role.

In reference to the question of is this fourteen days after the last meeting, Attorney Fritz said once again the statement is being taken out of context. The law is written where we are allowed to call Special Meetings if we follow proper procedures. We followed the Charter procedure to set up a Special Meeting. Notices were sent out and published and obviously citizens received it and we are able to hold a public hearing on these three ordinances this evening which is necessary under Ohio Law and should they pass there is a time period after passage in which they can be addressed by the citizenry.

PUBLIC HEARINGS:

Ord. 2020-19: AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF VARIOUS PURPOSE GENERAL OBLIGATION BONDS OF THE CITY OF NEWTON FALLS, OHIO, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$395,000 TO PAY THE COSTS OF THE ACQUISITION AND IMPROVEMENT OF CERTAIN REAL PROPERTY AND IMPROVEMENTS FOR USE AS A MUNICIPAL BUILDING.

Mayor Kline opened the public hearing for this Ordinance.

Tim Stintson, 253 Arlington again suggested they vote no and pay cash.

Jim Luonuansuu, 10 East Liberty Street asked why we were taking out bonds to pay for this building. When this first came up, we were told it was move in ready. Now there is an extra \$148,000. Our tax collections are down, and we do not know the numbers for this year or next. Next year you will want higher utility rates and tax levies.

After no further comments Mayor Kline declared this public hearing closed.

Ord. 2020-20: AN ORDINANCE TO PROVIDE FOR THE ISSUANCE OF NOT TO EXCEED \$20,000 OF GENERAL OBLIGATION BONDS TO PAY THE COSTS OF ACQUIRING AND INSTALLING CERTAIN SITE IMPROVEMENTS COMPRISED OF FENCES FOR MUNICIPAL BASEBALL FIELDS.

Mayor Kline opened the public hearing for this Ordinance.

Jim Luonuansuu, 10 East Liberty street said he was not against the baseball league and the improvements they have done to the park. What he had a problem with was the issuance of the bond and paying interest for five years. He suggested we just pay the money, so we don't have to pay for the next five years.

Unidentified citizen agreed with everything said and suggested to take the money out of the general fund and pay cash.

After no further comments Mayor Kline declared this public hearing closed.

Ordinance 2020-21: AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF VARIOUS PURPOSE GENERAL OBLIGATION BONDS OF THE CITY OF NEWTON FALLS, OHIO, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$98,000 TO PAY THE COSTS OF THE ACQUISITION AND INSTALLATION OF CERTAIN SEWER IMPROVEMENTS COMPRISING THE MEDLEY AVENUE SEWER PROJECT.

Mayor Kline opened the public hearing for this Ordinance.

Tim Stintson, 253 Arlington felt this was the only legit one but said we should pay cash.

After no further comments Mayor Kline declared this public hearing closed.

UNFINISHED BUSINESS:

Ord. 2020-19: AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF VARIOUS PURPOSE GENERAL OBLIGATION BONDS OF THE CITY OF NEWTON FALLS, OHIO, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$395,000 TO PAY THE COSTS OF THE ACQUISITION AND IMPROVEMENT OF CERTAIN REAL PROPERTY AND IMPROVEMENTS FOR USE AS A MUNICIPAL BUILDING.

Alberini made a motion seconded by Waddell to adopt this Ordinance for its second reading.

Baryak said when the acquisition came about he thought it was a good deal and we would save money because the annex needed a lot of money. We would move Zoning over and put all our eggs in one basket. He said he was told we would pay cash. He was told we would do repairs as we came along.

Finance Director Musson addressed earlier comments and said as fiscal officer she is required by Ohio Revised Code to certify the debt certificate. There is boiler plate language per ORC that the bond can go out for 40-year maturity. That is not what we are doing. That is not what our bid is. The bid is 10 years. A short-term debt, ten years at approximately 2.4% interest. In addition the assets have to have a minimum useful life of five years.

Baryak stated we were going to pay and with the revenue flow we have the bonds are not a solid investment now. He will not vote for this tonight it leaves money we might blow on another venture. He felt we would handcuff whoever took his seat like we did with the AMP projects.

Waddell said Mr. Baryak said he would not vote on this tonight because it was an emergency and this is not an emergency.

Alberini said when we first looked at the Congregational Church the goal was to have all City operations in one building. He looked at this as a long-term investment for the City of Newton Falls. The current City Hall is not the best conducive to conduct business. Right now it is advantageous for us to borrow money because money was cheap because of interest rates. We have been conservative in our investments. People ask about roads but vote down a police levy and vote down road levies, so which do you want.

Svette asked the Finance Director to explain the difference between the purchase price and the amount of the bond amount. Musson stated that the money we are borrowing for any of these projects as soon as approved by Council we will receive the money from Huntington and would be able to be spent right away.

Svette asked if the money could be used after ten years to do upgrades to the building. Musson said the money is for the purchase of the building and any improvements not afterwards. The money not used has to go to the bond retirement fund.

Mr. Lynch said what Ms. Musson did is prepare an amount of money that would be the outside amount needed. There is a very fair chance that we would not need that amount. With the interest rates where they are, we did not want to come back and ask for more and have the interest rates go up again. The amount set aside is a ceiling but not an amount we have to spend.

Svette agreed but asked if we did not spend all of that can we spend some now would we have money to spend later if another improvement was needed. Ms. Musson said the amount was an estimate and if the repairs came in under that amount, it would be less money we borrow and less we have to pay back. Svette noted that the amount was a ceiling on the bond then. Musson agreed.

Baryak said he were all supposed to sit down and have a meeting on what the facility was to be used for and then he read SCOPE was coming in. He felt that Council was not in unison and he would vote no tonight because he did not know what was going to be done and it was not discussed with him.

Svette said the county has inside and outside limits in reference to bond issues the minimum amount is \$100,000. Musson stated the inside millage and outside millage does not apply to us because we have not come close to our debt limit.

ROLL CALL: Baryak nay Waddell aye, Breymaier aye, Alberini aye, Svette aye.
MOTION PASSED 4-0

Ord. 2020-20: AN ORDINANCE TO PROVIDE FOR THE ISSUANCE OF NOT TO EXCEED \$20,000 OF GENERAL OBLIGATION BONDS TO PAY THE COSTS OF ACQUIRING AND INSTALLING CERTAIN SITE IMPROVEMENTS COMPRISED OF FENCES FOR MUNICIPAL BASEBALL FIELDS.

Waddell made a motion seconded by Alberini to adopt this Ordinance.

Baryak said he is for the kids. When he asked the City Manager where the \$20,000 invoice come from the City Manager did not answer him.

Alberini told Mr. Rusco he appreciated all their hard work and could not think of any better investment for the parks and the future. He supported them 100%

Baryak said the invoice was turned in March 18th and so someone was aware of it, but he did not.

ROLL CALL: Waddell aye, Breymaier aye, Alberini aye, Svette aye, Baryak nay.
MOTION PASSED 4-0

Ord. 2020-21: AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF VARIOUS PURPOSE GENERAL OBLIGATION BONDS OF THE CITY OF NEWTON FALLS, OHIO, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$98,000 TO PAY THE COSTS OF THE ACQUISITION AND INSTALLATION OF CERTAIN SEWER IMPROVEMENTS COMPRISING THE MEDLEY AVENUE SEWER PROJECT.

Svette made a motion seconded by Alberini to adopt this Ordinance.

Svette asked what the total project cost was. Mr. Lynch stated the total was \$193,000 the grant from the Ohio Public Works Commission is for \$103,500 and the City contribution is before the body this evening.

Baryak said we talked about this in previous meetings he was under the impression that Eastgate was going to pick up a larger amount through the OPWC program. He asked how much we had to pay on Washington and First Streets. Mr. Lynch said we will not know exactly until they are approved and get back to us.

Baryak said he would vote for this tonight because it was necessary and is for the people. Economic Development starts where we can show we take care of our community.

**ROLL CALL: Breymaier aye, Alberini aye, Svette aye, Baryak aye, Waddell aye.
MOTION PASSED 5-0**

MOTION TO ADJOURN TO EXECUTIVE SESSION (if necessary)

PUBLIC COMMENT:

John Rusco 21 Eagle Point Drive commented on the invoice for the \$20,000 and said he had invoices for the entire project which totaled about \$350,000. He had three companies who gave quotes. Each section had a different invoice and he has copies if you want one just to call him.

Jim Luonuansuu 10 East Liberty Street a lot of Council will probably not be here in ten years and that is still a long time and unnecessary spending. He said they would do a referendum on the \$395,000 and let the people vote on the.

Phillip Beer, 509 Ravenna Road felt all the projects are infrastructure. There is a lot of future in the City. All the people complaining about this were ok with spending money on the Community Center. We lost money on that building just keeping it heated. We never made money on that ever. Fix it fine but not with his tax dollars. He would rather put his money into a new building into a facility we can use without losing money and supports it 100%.

Dave Hanson, 4365 Warren Road if you divide the square footage you are at about \$100 a square foot to have a pole barn type facility, this building is probably about \$300 a square foot to put up. We are going to turn this over to our kids and the next generations.

ADJOURNMENT:

After no further comments or questions Svette made a motion seconded by Alberini to adjourn at 7:13 p.m.

**ROLL CALL: Alberini aye, Svette aye, Baryak aye, Waddell aye, Breymaier aye.
MOTION PASSED 5-0**

Mayor, Kenneth A. Kline

ATTEST: _____
Clerk of Council

ORDINANCE 2020-17

**AN ORDINANCE AMENDING NEWTON FALLS CODIFIED ORDINANCE SECTION 521.06
DUTY TO KEEP SIDEWALKS IN REPAIR AND CLEAN, IN ORDER TO EXPEDITE
SIDEWALK MAINTENANCE BY ALL PROPERTY OWNERS SUCH AS RAILROAD OR
OTHER COMMERCIAL OWNERS.**

(Sponsored by the Newton Falls City Manager)

WHEREAS, Newton Falls Codified Ordinance Section 521.06 authorizes the City to cause sidewalks to be repaired, and associated expenses when approved by Council; and

WHEREAS, Newton Falls City Council, in order to expedite the process to get sidewalks in compliance with City Ordinances, agree that the City Manager should be authorized to approve sidewalk repairs and expenses incurred.

COUNCIL FOR THE CITY OF NEWTON FALLS, STATE OF OHIO, HEREBY ORDAINS:

SECTION I: Newton Falls Codified Ordinance Section 521.06, Duty to Keep Sidewalks in Repair and clean shall be amended as follows:

521.06 DUTY TO KEEP SIDEWALKS IN REPAIR AND CLEAN.

(a) No owner or occupant of abutting lands shall fail to keep the sidewalks, curbs or gutters in repair and free from snow, ice or any nuisance. (ORC 723.011)

(b) No owner of any lot or land abutting upon any street shall refuse, fail or neglect to repair or keep in repair and free from nuisance and obstruction, the sidewalk in front of such lot or land after due notice thereof.

(c) If the owner or person having charge of such land fails to comply with the notice in subsection (a) hereof, Council *or the City Manager* shall cause the sidewalk to be repaired, all expenses and labor costs incurred shall, when approved by Council *or the City Manager*, be paid out of City funds not otherwise appropriated. Council shall make a written return to the County Auditor of its action, with a statement of the charges for its services, the amount paid for labor, the fees of the officers serving the notices and a proper description of the premises. The amounts, when allowed, shall be entered upon the tax duplicate and be a lien upon the lands from and after the date of the entry and collected as other taxes and returns to the City with the General Fund.

(d) Whoever violates this section or fails to comply with any notice thereof is guilty of a minor misdemeanor.

PASSED IN COUNCIL THIS _____ DAY OF _____ 2020.

Mayor Kenneth A. Kline

ATTEST: _____
City Clerk, Kathleen M. King

ORDINANCE 2020-18

**AN ORDINANCE AMENDING NEWTON FALLS CODIFIED ORDINANCE CHAPTER
557 WEEDS AND GRASS TO INCLUDE RAILROAD AND COMMERCIAL
PROPERTIES.**

(Sponsored by Newton Falls City Manager)

WHEREAS, Newton Falls Codified Ordinance Chapter 557, Section 557.01 Trimming of Trees, Shrubbery Required addresses owners of every lot or parcel of land within the City overhanging a public street or sidewalk to conform to all regulations; and

WHEREAS, Newton Falls City Council wishes to clarify properties affected by this section.

COUNCIL FOR THE CITY OF NEWTON FALLS, STATE OF OHIO, HEREBY ORDAINS:

SECTION I: Newton Falls Codified Ordinance 557, Section 557.01 Trimming of Trees, Shrubbery Required shall be amended as follows:

(a) The owner, *including commercial and railroad* owners, of every lot or parcel of land within the City upon which a tree, plant or shrubbery stands with any part thereof upon or overhanging a public street or sidewalk, *or creating a sloppy or unkept appearance*, shall conform to the regulations herein provided; otherwise, the City shall cause the trees to be trimmed or cut down and removed in accordance with regulations and access the cost thereof against the owner of the lot or parcel of land pursuant to Section 557.03

SECTION II: The remainder of Newton Falls Codified Ordinance 557, Section 557.01 shall remain intact.

SECTION III: Any ordinance or parts of ordinance in conflict with the context of this ordinance are hereby repealed.

PASSED IN COUNCIL THIS _____ DAY OF JUNE 2020.

Mayor, Kenneth A. Kline

ATTEST: _____
City Clerk, Kathleen M. King

ORDINANCE 2020-22

**AN ORDINANCE ACCEPTING THE ANNEXATION OF 27.952± ACRES
IN NEWTON TOWNSHIP AND BRACEVILLE TOWNSHIP,
TRUMBULL COUNTY, OHIO TO THE CITY OF NEWTON FALLS
AND DECLARING AN EMERGENCY.**

(Sponsored by Mayor Kline, Ward 1 Councilman Zachary Svette, Ward 3 Councilman Lyle Waddell, Ward 4 Councilman Sandra Breymaier, at-large Councilman Tarry Alberini)

WHEREAS, a petition for annexation of approximately 27.952± acres in Newton Township and Braceville Township, Trumbull County to the City of Newton Falls described in attached Exhibit A and shown on the map or plat attached as Exhibit B was filed with the Trumbull County Commissioners on February 27, 2020. The petition followed the expedited type 2 annexation process provided for in Ohio Revised Code Section 709.023; and

WHEREAS, the petition was signed by all of the owners of real estate in the unincorporated territory of the township proposed for annexation; and

WHEREAS, by resolution adopted on April 8, 2020, the Board of County Commissioners of Trumbull County, Ohio approved the annexation of that 27.952± acres in Newton Township and Braceville Township to the City of Newton Falls, Ohio; and

WHEREAS, the clerk of the Trumbull County Board of County Commissioners had a certified copy of the record of the annexation proceedings, including all resolutions of the board held in connection with the 27.952± acre annexation, delivered to the city clerk on May 4, 2020; and

WHEREAS, more than sixty (60) days from the date of delivery of the record of the annexation proceedings to the City has elapsed in accordance with provisions of Section 709.04 of the Ohio Revised Code and the city clerk has now laid the resolution of the Trumbull County Commissioners granting the annexation and the annexation papers before Council at this next regularly scheduled meeting to accept or reject the petition for annexation; and

WHEREAS, it is the desire of the owners, and in the interest of the City, that all municipal ordinances and powers be immediately effective in the annexed territory, that city services be immediately available to the territory and that the territory immediately be within the City so that the City can begin providing services and for the preservation of the public peace, health, safety and welfare of the annexation territory, the city and its residents.

COUNCIL OF THE CITY OF NEWTON FALLS, STATE OF OHIO, HEREBY ORDAINS:

SECTION I: The annexation of 27.952± acres described in Exhibit "A" and shown on the map or plat labeled Exhibit "B" previously approved by the Trumbull County Board of County Commissioners by Resolution on April 8, 2020 be and is hereby accepted by the City.

SECTION II: The City Clerk is hereby directed to make three copies containing the petition, the map or plat accompanying the petition, a transcript of the proceedings of the board of county commissioners, and resolutions and ordinances in relation to the annexation, including this Ordinance. The Clerk shall then deliver one certified copy to the Trumbull County Recorder for recording it in the recorder's official records. The other two copies shall be certified by the Clerk and forwarded to the Ohio Secretary of State and the Trumbull County Auditor. The Clerk shall pay any associated fees and costs and to take any other action required by statute.

SECTION III: The City Clerk is further directed notify the Trumbull County Board of Elections of the changes in the boundaries of the City in writing which shall include a certified copy of this ordinance with its attached exhibits including the annexation plat and legal description within thirty days of the adoption of this ordinance.

SECTION IV: This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety or welfare of the City and its residents for the reason the annexation territory has an immediate need for City services, the owners of the annexation territory desire to have the property immediately subject to the City's authority and for City services immediately available to the property. In addition, it is in the interest of the City and its residents and inhabitants to have its municipal ordinances, powers and services immediately applied throughout the municipality without delay, including in newly annexed territories.

PASSED IN COUNCIL THIS ____ DAY OF _____, 2020.

Mayor Kenneth A. Kline

ATTEST: _____
Clerk of Council

Description of 27.952 acre annexation to Newton Falls, Ohio

Situated in the State of Ohio, County of Trumbull, located in the Township of Braceville, Section 23 of Township 4, Range V and in the Township of Newton, Section 3 of Township 3, Range V, all of the Connecticut Western Reserve and further described as follows;

Commencing in the centerline of right of way of Ravenna-Warren Road (Old State Route 5, 60.00 feet wide) at the intersection with the centerline of the Ohio Turnpike (Interstate Route 80) as shown on the Plat of Highway Centerline Survey recorded in plat volume 11, page 83 of the Trumbull County Recorder's Office;

Thence along the centerline of right of way of Ravenna-Warren Road, South 58 degrees, 51 minutes, 07 seconds West, 786.66 feet to the northwesterly corner of land deeded to David N. Hanson in instrument 201610280019841 of the Trumbull County Recorder's Office (Trumbull County Auditor's Parcel Number 67-000013) and a corner of the corporation boundary of Newton Falls as annexed by Trumbull County Commissioner's Resolution dated August 23, 2017 in instrument number 201810290021282 of the Trumbull County Recorder's Office, also being the northeasterly corner of land deeded to Kenmar Land Company, Ltd. in instrument 201610280019839 of the Trumbull County Recorder's Office (Trumbull County Auditor's Parcel Number 54-042300) and the **Place of Beginning**.

Thence along the westerly line of David N. Hanson's land and the corporation line of Newton Falls, South 31 degrees, 08 minutes, 53 seconds East, 912.03 feet to the northerly right of way line of CSX Transportation Inc. by Certificate of Merger of The Chesapeake and Ohio Railway Company, formerly the Baltimore & Ohio Railroad Company, effective September 2, 1987, 66.00 feet wide (Trumbull County Auditor's Parcel Number 68-000002), at the southwesterly corner of David N. Hanson's land and the southeasterly corner of Kenmar Land Company, Ltd.'s land (Trumbull County Auditor's Parcel Number 67-000001), being a corner in the corporation line of Newton Falls;

Thence along the northerly right of way line of CSX Transportation Inc. and the corporation line of Newton Falls, South 70 degrees, 51 minutes, 23 seconds West, 1469.48 feet to a point of curvature;

Thence continuing along the northerly right of way line of CSX Transportation Inc. and the corporation line of Newton Falls, along the arc of a curve deflecting to the left 234.06 feet, said curve having a radius of 1845.61 feet, a central angle of 07 degrees, 15 minutes, 58 seconds, and a chord which bears South 67 degrees, 13 minutes, 24 seconds West for 233.90 feet to the southwesterly corner of lands deeded to David N. Hanson as parcel 6 in official record volume 1034, page 332 of the Trumbull County Recorder's Office (Trumbull County Auditor's Parcel Number 54-273554), also being the easterly line of land deeded to Raymond L. Lutz and Carol M. Lutz in instrument 201312230030096 of the Trumbull County Recorder's Office (Trumbull County Auditor's Parcel Number 51-154700) where the right of way of CSX Transportation Inc. transitions from 66.00 feet wide to 100.00 feet wide and a corner in the corporation line of Newton Falls;

Thence along the transition in the northerly right of way of CSX Transportation Inc. and continuing along the easterly line of Raymond L. and Carol M. Lutz's land, North 27 degrees, 50 minutes, 10 seconds West, 573.30 feet to the centerline of right of way of Ravenna-Warren Road;

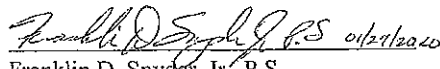
Thence along the centerline of Ravenna-Warren Road, **North 58 degrees, 51 minutes, 07 seconds East, 705.13 feet** to the southeasterly corner of land deeded to Teresa L. Young in instrument 200901050000188 of the Trumbull County Recorder's Office (Trumbull County Auditor's Parcel Number 54-028400) and a corner in the corporation line of Newton Falls at the southwesterly corner of land deeded to David N. Hanson as parcel 17 in official record volume 1034, page 332 of the Trumbull County Recorder's Office (Trumbull County Auditor's Parcel Number 67-000012);

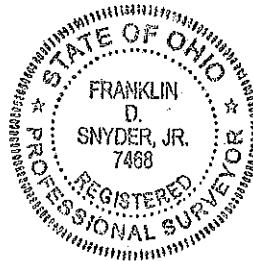
Thence continuing along the centerline of Ravenna-Warren Road, along the corporation line of Newton Falls, **North 58 degrees, 51 minutes, 07 seconds East, 930.51 feet** to the Place of Beginning and **containing 27.952 acres.**

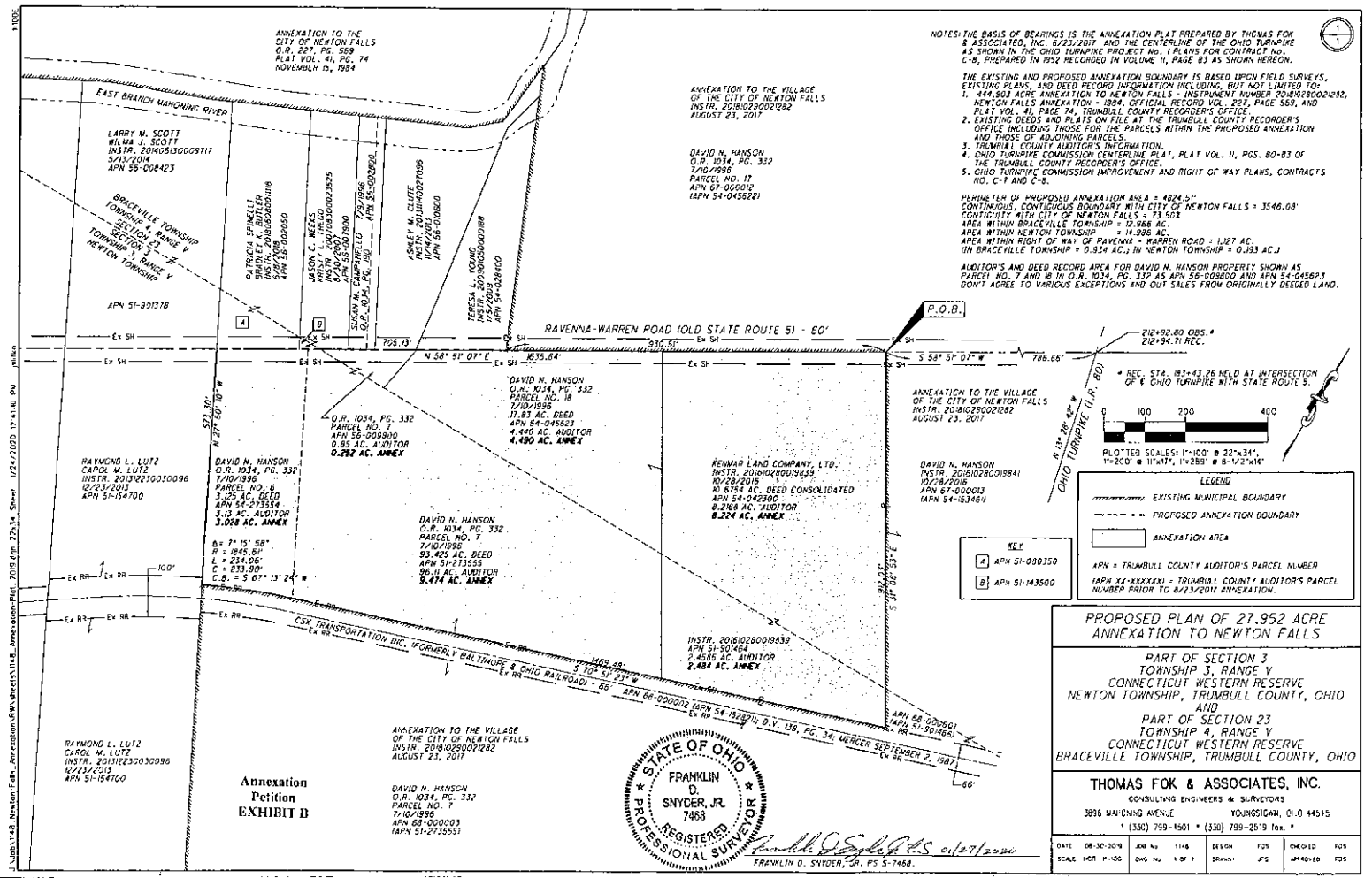
Intending to encompass all of the land deeded to David N. Hanson in official record 1034, page 332 in the Trumbull County Recorder's Office as Parcel No. 6 (Trumbull County Auditor's Parcel Number 54-273554) and Parcel No. 18 (Trumbull County Auditor's Parcel Number 54-045623), and that portion of Parcel No. 7 located north of the CSX Transportation Inc. right of way (Trumbull County Auditor's Parcel Numbers 56-009800 and 51-273555), and all of the land deeded to Kenmar Land Company, Ltd. in instrument 201610280019839 of the Trumbull County Recorder's Office (Trumbull County Auditor's Parcel Numbers 54-042300 and 51-901464.

The basis of bearings is North 13 degrees, 28 minutes, 42 seconds West along the centerline of right of way of the Ohio Turnpike as shown in the Ohio Turnpike Project No. 1 plans for Contract No. C-8 prepared in 1952 and the Plat of Highway Centerline Survey recorded in plat volume 11, page 83 of the Trumbull County Recorder's Office.

This description was prepared by Thomas Fok & Associates, Inc. in August 2019 under the direction of Franklin D. Snyder, Jr., P.S. Ohio #S-7468 and is based upon field survey locations performed in 2017, existing improvement and right of way plans, deeds and plats in the Trumbull County Recorder's Office.


Franklin D. Snyder, Jr., P.S.
Thomas Fok & Associates, Inc.
3896 Mahoning Avenue
Youngstown, Ohio 44515
330-799-1501





NOTES: THE BASIS OF BEARINGS IS THE ANNEXATION PLAT PREPARED BY THOMAS FOK & ASSOCIATES, INC. 8/23/2017 AND THE CENTERLINE OF THE OHIO TURNPIKE AS SHOWN IN THE OHIO TURNPIKE PROJECT NO. 1 PLANS FOR CONTRACT NO. C-8, PREPARED IN 1952 RECORDED IN VOLUME II, PAGE 83 AS SHOWN HEREON.

THE EXISTING AND PROPOSED ANNEXATION BOUNDARY IS BASED UPON FIELD SURVEYS, EXISTING PLANS, AND DEED RECORD INFORMATION INCLUDING, BUT NOT LIMITED TO:

- 444.203 ACRE ANNEXATION TO NEWTON FALLS - INSTRUMENT NUMBER 201802002282, NEWTON FALLS ANNEXATION - 1894, OFFICIAL RECORD VOL. 227, PAGE 569, AND PLAT VOL. 41, PAGE 24, TRUMBULL COUNTY RECORDER'S OFFICE.
- EXISTING DEEDS AND PLATS ON FILE AT THE TRUMBULL COUNTY RECORDER'S OFFICE INCLUDING THOSE FOR THE PARCELS WITHIN THE PROPOSED ANNEXATION AND THOSE OF ADJOINING PARCELS.
- TRUMBULL COUNTY AUDITOR'S INFORMATION.
- OHIO TURNPIKE COMMISSION CENTERLINE PLAT, PLAT VOL. II, PGS. 80-83 OF THE TRUMBULL COUNTY RECORDER'S OFFICE.
- OHIO TURNPIKE COMMISSION IMPROVEMENT AND RIGHT-OF-WAY PLANS, CONTRACTS NO. C-7 AND C-8.

PERIMETER OF PROPOSED ANNEXATION AREA = 4824.51' CONTIGUOUS, CONTIGUOUS BOUNDARY WITH CITY OF NEWTON FALLS = 3546.08' CONTIGUITY WITH CITY OF NEWTON FALLS = 73.50' AREA WITHIN BRACEVILLE TOWNSHIP = 12,386 AC. AREA WITHIN NEWTON TOWNSHIP = 14,396 AC. AREA WITHIN RIGHT OF WAY OF RAVENNA - WARREN ROAD = 1,127 AC. (IN BRACEVILLE TOWNSHIP = 0.934 AC.; IN NEWTON TOWNSHIP = 0.193 AC.)

AUDITOR'S AND DEED RECORD AREA FOR DAVID N. HANSON PROPERTY SHOWN AS PARCEL NO. 7 AND 8 IN O.R. 1034, PG. 332 AS APN 58-008800 AND APN 54-045823 DON'T AGREE TO VARIOUS EXCEPTIONS AND OUT SALES FROM ORIGINALLY DEEDED LAND.

LEGEND

- EXISTING MUNICIPAL BOUNDARY
- PROPOSED ANNEXATION BOUNDARY
- ANNEXATION AREA

KEY

- APN 51-030350
- APN 51-143500

REC. STA. 183+43.26 HELD AT INTERSECTION OF E OHIO TURNPIKE WITH STATE ROUTE 5.

PLOTTED SCALES: 1"=100' @ 32"x34", 1"=200' @ 11"x17", 1"=288' @ 8-1/2"x14"

PROPOSED PLAN OF 27.952 ACRE ANNEXATION TO NEWTON FALLS

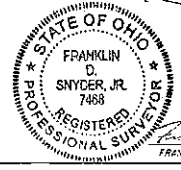
PART OF SECTION 3 TOWNSHIP 3, RANGE V CONNECTICUT WESTERN RESERVE NEWTON TOWNSHIP, TRUMBULL COUNTY, OHIO

AND

PART OF SECTION 23 TOWNSHIP 4, RANGE V CONNECTICUT WESTERN RESERVE BRACEVILLE TOWNSHIP, TRUMBULL COUNTY, OHIO

THOMAS FOK & ASSOCIATES, INC.
CONSULTING ENGINEERS & SURVEYORS
2886 MARCONI AVENUE YOUNGSTOWN, OHIO 44515
*(330) 799-1501 * (330) 799-2519 fax *

DATE	08-30-2018	APN NO.	1148	DESIGN	F28	CHK'D BY	FDS
SCALE	NOR 1"=100'	DWG NO.	1 OF 1	DRAWN	JFS	APP'D BY	FDS



FRANKLIN D. SNYDER, JR. PS 5-7468

1: Sub 1148, Number 1, Fok, Annexation APN 51-143500, 2018, pg. 27, 34, Sheet 1/28, 2018, 1/28/2018, 10:41:18 AM
 2: Sub 1148, Number 1, Fok, Annexation APN 51-143500, 2018, pg. 27, 34, Sheet 1/28, 2018, 1/28/2018, 10:41:18 AM

ORDINANCE 2020-23

**AN ORDINANCE AMENDING ORDINANCE 2016-14 AMENDING
COLLECTED INCOME TAX ALLOCATIONS**

*(Sponsored by Mayor Kline, Ward 1 Councilman Zachary Svette, Ward 3 Councilman
Lyle Waddell, Ward 4 Councilman Sandra Breymaier, at-large Councilman Tarry
Alberini)*

WHEREAS, The City of Newton Falls has previously established an Ordinance to allocate the income tax funds collected during the fiscal year; and

WHEREAS, The present allocation in the amount 1% to Future Building Fund is no longer required; and

WHEREAS, City Council deems it necessary and in the best interest of the City to amend the existing 1% Building Fund to the Street Construction, Maintenance and Repair Fund.

THE COUNCIL OF THE CITY OF NEWTON FALLS, STATE OF OHIO,
HEREBY ORDAINS:

Section I: The Income Tax Collections shall be allocated beginning June 1, 2020 and thereafter as follows:

80 % General Fund
~~10.5% Street Construction, Maintenance and Repair Fund~~
11.5 % *Street Construction, Maintenance and Repair Fund*
5 % Capital Improvement Fund
1.5 % Parks and Recreation Fund
~~1% Building Fund~~
2 % General Fund Reserve Fund

Section II: Any ordinances or parts of ordinances in conflict with the context of this ordinance are hereby repealed.

Section III: This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety or welfare of the citizens of the City of Newton Falls the reason for the emergency is to meet all financial obligations.

PASSED IN COUNCIL THIS _____ DAY OF _____ 2020

Mayor, Kenneth Kline

ATTEST: _____
Clerk of Council

ORDINANCE 2020-24

AN ORDINANCE AMENDING ORDINANCE 2015-15 ESTABLISHING ADMINISTRATIVE OVERHEAD COST ALLOCATIONS TO THE ELECTRIC REVENUE FUND, THE WATER REVENUE FUND, THE SEWER REVENUE FUND AND GENERAL FUND.

(Sponsored by Mayor Kline, Ward 1 Councilman Zachary Svette, Ward 3 Councilman Lyle Waddell, Ward 4 Councilman Sandra Breymaier, at-large Councilman Tarry Alberini)

WHEREAS, The City Council of the City of Newton Falls established a fair and equitable methods for determining administrative support services for the Electric Revenue Fund, the Water Revenue fund and the Sewer Revenue fund; and

WHEREAS, The Finance Director has followed the overhead cost allocation plan approved by Council in 2015; and

WHEREAS, In order to clarify the allocations the following amendment is needed.

COUNCIL FOR THE CITY OF NEWTON FALLS, STATE OF OHIO, HEREBY ORDAINS:

SECTION I: Newton Falls City Council hereby amends Ordinance 2015-15 effective retroactive to January 1, 2020 to include the following:

Section VIII: The cost allocations exclude donations, grants and reimbursements for expenditures made in the General Fund that cover those expenses.

SECTION II: The remainder of Ordinance 2015-15 shall remain intact.

SECTION III: Any Ordinance or parts of Ordinances in conflict with the context of this ordinance are hereby repealed.

PASSED IN COUNCIL THIS _____ DAY OF AUGUST 2020.

Mayor, Kenneth A. Kline

ATTEST: _____
Clerk of Council, Kathleen M. King

ORDINANCE 2020-25

AN ORDINANCE AUTHORIZING THE LEASE OF PROPERTY LOCATED AT 36 WEST BROAD STREET TO FIELDVIEW ACRES MERCANTILE LLC OPERATED BY TOM AND TRACY COLOSIMO AND DECLARING AN EMERGENCY.

(Sponsored by Mayor Kline, Ward 1 Councilman Zachary Svette, Ward 3 Councilman Lyle Waddell, Ward 4 Councilman Sandra Breymaier, at-large Councilman Tarry Alberini)

WHEREAS, The City of Newton Falls entered into a Commercial Lease Agreement with Greg Johnson for office space property located at 36 West Broad Street, Newton Falls, Ohio 44444; and

WHEREAS, With the acquisition of a new building for City offices Fieldview Acres Mercantile LLC operated by Tom and Tracy Colosimo would like to open a business at this location and take over the lease entered into by the City and Mr. Johnson; and

WHEREAS, The Newton Falls City Council agrees that this office space will no longer be utilized by the City and it is in the best interest of the City to authorize this lease and encourage downtown business.

COUNCIL FOR THE CITY OF NEWTON FALLS, STATE OF OHIO, HEREBY ORDAINS:

SECTION I: The Newton Falls City Council hereby authorizes the City Manager to assign its interest to attached "Exhibit A" lease to Fieldview Acres Mercantile LLC operated by Tom and Tracy Colosimo for the property located at 36 West Broad Street per the terms of "Exhibit A" attached hereto as if fully rewritten herein.

SECTION II: This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety or welfare of the citizens of the City of Newton Falls the reason for the emergency is that Fieldview Acres Mercantile LLC has accumulated merchandise to be sold and must have a storefront for their business as soon as possible and would like for that storefront to be in the City of Newton Falls.

PASSED THIS _____ DAY OF _____ 2020.

Mayor, Kenneth A. Kline

ATTEST: _____
Clerk of Council, Kathleen M. King

Commercial Lease

This lease is made between Greg Johnson, of the address of 5035 Woodlawn, N, Township, Oh 44444 hereinafter known as lessor, and the City of Newton Falls, Ohio, hereinafter known as lessee.

By virtue of this commercial lease, lessee agrees to lease from lessor the premises situated in the City of Newton Falls, Ohio 36 West Broad Street, 44444 (commercial real estate) upon the terms and conditions set herein.

1. Term and rent. This lease shall be for the period of five years, commencing Sept. 1, 2019 and terminating on the date of June 30, 2024, for the rental of \$300 per month plus utilities, the rent increasing by \$100 per month beginning with the 31st month of this lease, renewable at the tenant's exclusive option for an additional five years at the rate of \$450 per month plus utilities. All rental payments shall be made to lessor at the address specified above or in accordance with any subsequent instructions the lessor may give to the lessee, with the tenant having the right to sublease or assign this lease without restriction. Landlord acceptance of rent waives any eviction or termination rights. Any rent not paid and overdue through the date of July 1, 2020 can be paid in one lump sum on August 1, 2020.

2. Possession. If lessor is unable to deliver possession of the demised premises at the commencement of this lease, lessor shall not be liable for any damage caused thereby, nor shall this lease be void or voidable. However, the lessee shall not be liable for any rent until possession is delivered. Furthermore, the lessee may terminate this lease if possession is not delivered within 30 days of the commencement date set forth in paragraph 1 above.

3. Uses and maintenance. Lessee shall use the premises for operating an office or commercial establishment and the premises shall be used for no other purpose. Lessor represents that the premises may be lawfully used for such purpose. Lessee acknowledges that the premises are in good order and repair. Lessee shall, at lessee's own expense, maintain the premises in good and safe condition, including plate glass, electrical wiring, plumbing and heating systems and any other fixtures

or equipment upon the premises. At the termination of this lease, the Lessee shall surrender the same in good and working condition expecting ordinary wear and tear. Lessee shall be responsible for all repairs required, except the roof, exterior wall, and structural foundations that shall be maintained by the lessor. Lessee shall also maintain in good condition such portions adjacent to the premises, such as sidewalks, driveways, launch and landscaping that would otherwise be required to be maintained by lessor. Lessee shall not make any alterations or improvements to the demised premises without first obtaining the written consent of lessor. Making use of the demised premises, lessee shall comply with all federal, state or municipal statutes, ordinances and regulations now in force, or which may come into force and effect during the term of the commercial lease.

4. Utilities. All appliances and connections for utility services of the demised premises shall be made in the name of the Lessee only, and Lessee shall be solely liable for utility charges as they become due, including those for sewer, water, gas, electric, cable television and telephone services.

5. Indemnification. Lessor shall not be liable for any damage or injury to lessee, or other person, including without limitation employees or business invitees, or to any property, occurring of the demised premises. Lessee agrees to indemnify and hold lessor harmless from any and all claims for damages or injury.

6. Entry and inspection. Lessor or lessor's agents may enter the demised premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same. Lessee will permit lessor at any time within 60 days prior to the expiration of this commercial lease, to place upon the premises "for lease" signs, and permit prospective Lessee's to inspect the premises.

7. Eminent domain. If the demised premises or any part thereof which materially affect Lessee's use of same shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent pay for any period beyond that shall be refunded to lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but lessee

may file a claim regarding fixtures and improvements owned by lessee or for moving expenses.

8. Destruction of premises. In the event of a partial destruction of the premises during the term hereof, lessor shall be responsible for immediately repairing the same, provided that such repairs can be made within 60 days. In no event shall such partial destruction terminate this lease, except the Lessee shall be entitled to a proportionate abatement of rent while such repairs are being made, based upon the extent to which the making of such repairs interferes with the business of lessee of the premises. If such repairs cannot be made within said 60 days, lessor, at his aforesaid determination, and in the event the lessor shall choose not to make such repairs which cannot be made within 60 days, this lease may be terminated at the option of either party. In the event that the building or the demised premises may be situated is destroyed to an extent of not less than one third of the replacement cost thereof, lessor may elect to terminate this lease for the demised premises. A total destruction of the building in which the premises may be situated shall terminate this lease.

9. Lessor's remedies on default. If Lessee defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the terms or conditions hereof, lessor may give Lessee notice of such default and if Lessee does not cure any such default within 30 days, after the giving of such notice, or if the default is of such nature that cannot be cured within the allotted period, if Lessee does not commence such curing within 30 days and thereafter proceeds with reasonable diligence and in good faith to cure such default, the lessor may terminate this lease and not less than 30 days notice to lessee. On the date specified in such notice the term of this commercial lease shall terminate, and Lessee shall then quit and surrender the premises to lessor, but lessee shall remain liable as hereinafter provided. If this lease shall has been so terminated by lessor, lessor may at any time thereafter resume possession of the premises by any lawful means to remove lessee or other occupants and their effects. No failure to enforce any term or herein shall be deemed a waiver.


10. Notices. Any notice that either party may be required to give, shall be given by mailing the same, postage prepaid, to Lessee at the premises, or lessor at the address shown at the beginning of this lease. Parties may designate other places for delivery of such by providing written notice of such change the to other party.

11. Heirs, assigns, and successors. This commercial lease is binding upon and inures to the benefit of the heirs, assigns, and successors in interest of the parties.


12. Entire agreement. This commercial lease contains the entire agreement between the parties may be modified only in writing signed by both parties.

Execution of Signatures

Signed this 12th day of June, 2020 by the parties below as proof of their acceptance of the terms of the preceding commercial lease:

 June 12, 2020

Greg Johnson, Lessor Date
aka Earl G. Johnson

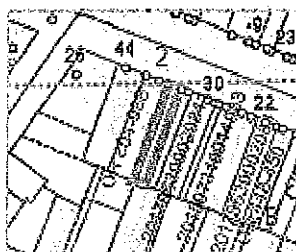
 6/12/2020

David M. Lynch, City Manager, authorized agent
City of Newton Falls, by its authorized agent Date

Data For Parcel 53-051410

Base Data

Parcel:	53-051410
Owner:	EARL G JOHNSON
Address:	36 W BROAD
Dist/Map/Route:	53020 13600



Tax Mailing Address

Tax Mailing Name:	EARL G JOHNSON
Address:	2342 RAILROAD ST
City State Zip:	NEWTON FALLS OH 44444

Owner Address

Owner Name:	EARL G JOHNSON
Address:	
City State Zip:	

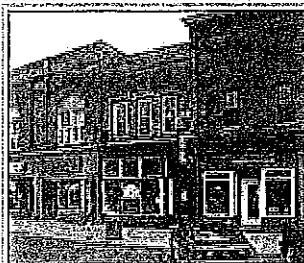
Geographic

City:	UNINCORPORATED
Township:	NEWTON TOWNSHIP
School District:	NEWTON FALLS EVSD
Tax District:	53 - NEWTON TWP - NEWTON FLS CITY - EVSD

Legal

Legal Acres:	0.0654	Homestead Reduction:	NO
Legal Description:	34 3 19F N VILL ALL BROAD ST	2.5% Reduction:	NO
Land Use:	431 - OFFICE/APARTMENTS OVER	Foreclosure:	NO
Neighborhood:	47100	Board of Revision:	NO
Number Of Cards:	1	New Construction:	NO
Annual Tax (Does not include delinquencies.):	\$817.54	Divided Property:	NO
Map Number:	020 13600	Routing Number:	020 13600

Photos



53-051410 04/10/2015

[+] Click to enlarge.

Notes

Notes:

DEED NUMBER:

GIS parcel shapefile last updated 6/12/2020 5:16:46 AM.

The CAMA data presented on this website is current as of 6/12/2020 4:06:45 AM.

ORDINANCE 2020-26

AN ORDINANCE REPEALING ORDINANCE 2020-10 AND ENACTING ORDINANCE 2020-26 AUTHORIZING THE CITY MANAGER TO ENTER INTO AND EXECUTE A CONTRACT FOR AN AMI IMPLEMENTATION PROJECT WITH GARDINER SERVICE COMPANY LLC. AND DECLARING AN EMERGENCY.

(Sponsored by Mayor Kline, Ward 1 Councilman Zachary Svette, Ward 3 Councilman Lyle Waddell, Ward 4 Councilman Sandra Breymaier, at-large Councilman Tarry Alberini and City Manager David Lynch)

WHEREAS, The City of Newton Falls has been working with Gardiner Service Company LLC to develop energy saving and Automated Meter Implementation Solutions (AMI) for our City facilities; and

WHEREAS, The City wishes to administer, fulfill, and execute its responsibility to replace and service the Water and Electric Meters in the City as operated by the City, said responsibility created through Newton Falls Municipal Code Chapter 953 pertaining to water meters and Newton Falls Municipal Code Section 971.05 (Ordinance 2002-23) pertaining to electric meters, said contract with Gardiner enabling fulfillment of said responsibility; and

WHEREAS, The updated contract with Gardiner contains a public information hotline requirement which is an urgent need to protect the public welfare; and

WHEREAS, The previously passed Ordinance 2020-10 contained a project schedule which because of Covid-19 delays is inaccurate, creating the urgent need for an updated schedule of events; and

WHEREAS, The City of Newton Falls would like to enter into a contact with Gardiner to assist the City of Newton Falls in an implementation of an Aclara AMI solution for all electric and water endpoints; and

WHEREAS, Services provided will include but are not limited to AMI Hardware, software, installation, and license procurement; and

WHEREAS, Gardiner was the successful bidder under the State of Ohio authorized cooperative purchasing alliance, a program for statewide competitive bidding, and a program under which the City of Newton Falls has previously purchased other goods and services such as salt, maintenance vehicles, police cars, and other equipment.

COUNCIL FOR THE CITY OF NEWTON FALLS, STATE OF OHIO, HEREBY ORDAINS:

SECTION I: The Newton Falls City Manager is hereby authorized to enter into and execute a contract with Gardiner of Solon, Ohio for an Automated Meter Implementation (AMI) project, according to the contract terms a found in the attached Exhibit A, and the finance director is authorized to create the financing lease or other financing instrument to pay said contract

amount, and the city manager is authorized to execute said financing instrument on behalf of the city.

SECTION II: The City wishes to administer, fulfill, and execute its responsibility to replace and service the Water and Electric Meters in the City as operated by the City, said responsibility created through Newton Falls Municipal Code Chapter 953 pertaining to water meters and Newton Falls Municipal Code Section 971.05 (Ordinance 2002-23) pertaining to electric meters, said contract with Gardiner enabling fulfillment of said responsibility.

SECTION II: This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety or welfare of the citizens of the City of Newton Falls the reason for the emergency consisting of the urgent need to protect the public welfare by clarifying the schedule for meter installation which serves the public's need to be informed, providing a public information hotline which serves the public's need to be informed, and protecting the health of our citizens through the urgent replacement of meters through which water flows despite the decrepit condition of the old meters, and through which electricity flows despite the potentially dangerous condition of the old meters.

PASSED IN COUNCIL THIS _____ DAY OF _____ 2020.

Mayor, Kenneth A. Kline

ATTEST: _____
Clerk of Council, City Clerk

CONTRACT FOR THE PROVISION AND INSTALLATION OF METERS AND ENERGY SAVINGS

Now comes Gardiner Service Company (hereinafter also referred to as “company” or “Gardiner” or “GSC”) and The Village of Newton Falls (hereinafter referred to as “client” or “system owner” or “customer”), who do hereby enter into the below agreement which may also be referred to as the City Wide Automated Meter Infrastructure and Energy Project, also known as the “AMI Project”, or “Project”:

Statement of Work

This Statement of Work (“SOW”) and the terms and conditions of the Master Agreement (hereinafter “Agreement”) describes the Services to be provided to the Client in support of the Project as authorized by Client signing this Statement of Work. This SOW is governed by the Agreement’s Attachment 1, Gardiner Standard Terms and Conditions of Sale for Equipment and Certain Services. By signing this SOW, Client represents and affirms that it has reviewed and agrees to the terms and conditions as set forth in the Agreement, its Attachments and Exhibits. Additional terms contained on any purchase order are hereby rejected unless specifically agreed to in writing by the Client and Gardiner.

Scope of Work

The scope of the project for Energy Management and Aclara AMI Implementation includes professional services (project management, coordination, meter/MTU installation, training and system acceptance testing) to implement the solution.

The new solution will support various uses of the components and applications defined in Attachments 1 and 2. More detailed requirements will be developed during the requirements task of the project, but will remain consistent with Attachment 1 and 2, unless mutually agreed by the Client and Gardiner.

This Statement of Work addresses the implementation services required by the Project. It is mutually understood that business requirements, resources and dates may change subject to the applicable terms of this Statement of Work and that any such material change requested by the Client or as a result of the Client’s inability to provide agreed upon resources and perform its other responsibilities set forth herein or the result of Client errors or omissions may result in a Change Order.

It is understood by Gardiner and the Client that any material changes to scope, will be addressed through a formal change order process. Material changes are those which specifically will impact budget, scope, timeline and/or resources.

1. Project Approach

The Gardiner Services Team (“Gardiner Team”) assigned to this project will complete the Gardiner tasks described herein and will perform work for the Client for the duration of the Project at designated Client facilities and from remote locations. Gardiner as well as Aclara or other agents or subcontractors of Gardiner will serve as agents for the employees of the City Water and Electric departments who are charged by law with the duties of replacing and servicing the electric and water meters of the city.

The scope of the services engagement for this SOW is set forth in the attached Attachments 1 and 2 hereto. Attachment 1 also includes certain Responsibilities and Assumptions that are the responsibility of the Client. In addition to the tasks specified in Attachments 1 and 2 hereto, the Client will provide

appropriate Project resources, including but not limited to data, information, and appropriate and cooperative personnel, to facilitate the performance of the Services. The Client shall designate a Project Manager to work with the Gardiner Team to facilitate the provision of the Services. Once this SOW is executed, Gardiner and the Client will assign resources to the Project. The Gardiner Team will work on the Project and provide support as specified by the SOW. In addition, Gardiner will maintain and man a public information hotline so that as the project proceeds, citizens can speak with a person who can provide accurate and detailed answers regarding the project.

2. Assumptions and Responsibilities

Project Assumptions and Responsibilities are set forth in Attachments 1 and 2. Should the Client fail to fulfill those that are applicable to the Client, the estimated level of effort, timeline and scope may be subject to change which may result in a Change Order.

Project Entities:

- Gardiner Service Company LLC is the Project Prime, owning the contract with the System Owner
- City of Newton Falls Public Works Department is the System Owner
- Aclara is the AMI provider, responsible for internal project management and SOW as listed herein
- Aclara Smart Grid Solutions (Aclara SGS) is responsible for installation of Aclara Endpoints and Meters

3. Scope Estimates

Gardiner will support the Client by providing a team to complete the Statement of Work defined in Attachments 1 and 2.

Gardiner's estimate of the level of effort is based on the following:

- Information provided by the Client to Gardiner
- Gardiner's understanding of the project scope, based on Client information

Should the information provided by the Client be inaccurate or should Gardiner gain additional information during the Project, the work required may be out of scope and the pricing and schedule may be impacted. If so, the additional work will be addressed as a change to the SOW (change order).

4. Software Licenses

The AclaraONE software components are licensed in accordance with the Aclara Software Agreements ("Licenses") executed between Aclara and the System Owner. The Licenses cover the integration with the System Owner's single production environment and within the System Owner's current service territory.

5. Changes

Any change to this SOW shall be subject to mutual written agreement of the parties. Aclara shall not commence work on any such change unless and until the change has been agreed to in writing by both parties. Additional charges may apply based on Aclara's level of effort to complete the requested change.

6. ATTACHMENTS: Attachments 1 through 6 and the terms contained therein attached to the end of this contract are incorporated into this contract in their entirety. They include the following:

Attachment 1 = Project Definition – AMI Implementation

- Attachment 2 = Project Definition – AMI Installation Services**
- Attachment 3 = Project Definition – Energy Management Services**
- Attachment 4 = Project Definition – Expected Financial Benefits of all Services**
- Attachment 5 = Change Order Procedure**
- Attachment 6 = Gardiner Intelligent Services Support**

Total project cost complete : \$ 3,041,203

Notes:

- **contract is in accordance with Sourcing Alliance contract requirements.**
- This price includes provisions for safety under standard industry & Gardiner safety guidelines. Any special additional safety training, equipment, or processes required by your organization could affect the project scope and/or hours and may result in a price adjustment. If you have any specific safety practices or requirements, please alert your sales representative immediately so we ensure that our proposal fully meets your requirements.

Terms and Conditions:

Our standard terms and conditions of sale, as well as an acceptance, are attached at the end of this document. Gardiner must post a performance bond approved by the Director of law of Newton Falls, Ohio as a condition of this contract.

IN WITNESS WHEREOF, the parties have so agreed as of the last date signed below.

Accepted By:

Accepted By Client:

Gardiner Service Company

City of Newton Falls

By: _____

By: _____

Print name: _____

Print name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attachment 1
To
Exhibit A Statement of Work

Project Definition – AMI Implementation Project

1.0 Gardiner AMI Project Scope

Included in the purchase of an Aclara AMI Electric Implementation are the Professional Services efforts required to design the AMI network, identify the optimal locations of the DCU sites, complete the commissioning of the DCUs, complete the installation of software and implement standard interface functionality as defined in Section 1.1. The purpose of this document is to outline the tasks and deliverables of the Gardiner Team and provide the Client an overview of the responsibilities and time commitment that will be required of their staff.

1.1 Project Scope

Gardiner will assist the Client in an implementation of an Aclara AMI solution for all electric and water endpoints. Gardiner and Aclara will work with the Client in the design, installation of needed hardware, software, maintenance, training and other related activities needed to complete the project successfully. All hardware quantities will be governed as specified per Exhibit B. The project scope includes:

AMI Hardware:

- Total of 2,573 Aclara RF electric endpoints and 2,791 Water MTUs. See Section 1.2 Implementation Approach for more details on the deployment approach.
- 3 Data collectors and mounting kits
- 2 Toughpads and USB field programming kit

Software:

- AclaraONE unified head end for the total 2,573 Aclara RF meters and 2,791 Water MTUs including integration to System Owner's CIS System.
- STAR programmer software configuration and installation

Services:

- AclaraONE Hosted Headend Software Installation
- FCC frequency license procurement
- DCU installation oversight and commissioning
- AclaraONE software and hardware product training

- Overall project management services for the defined scope of this project

The schematic in Figure 1 depicts the scope of the solution that is included in this SOW.

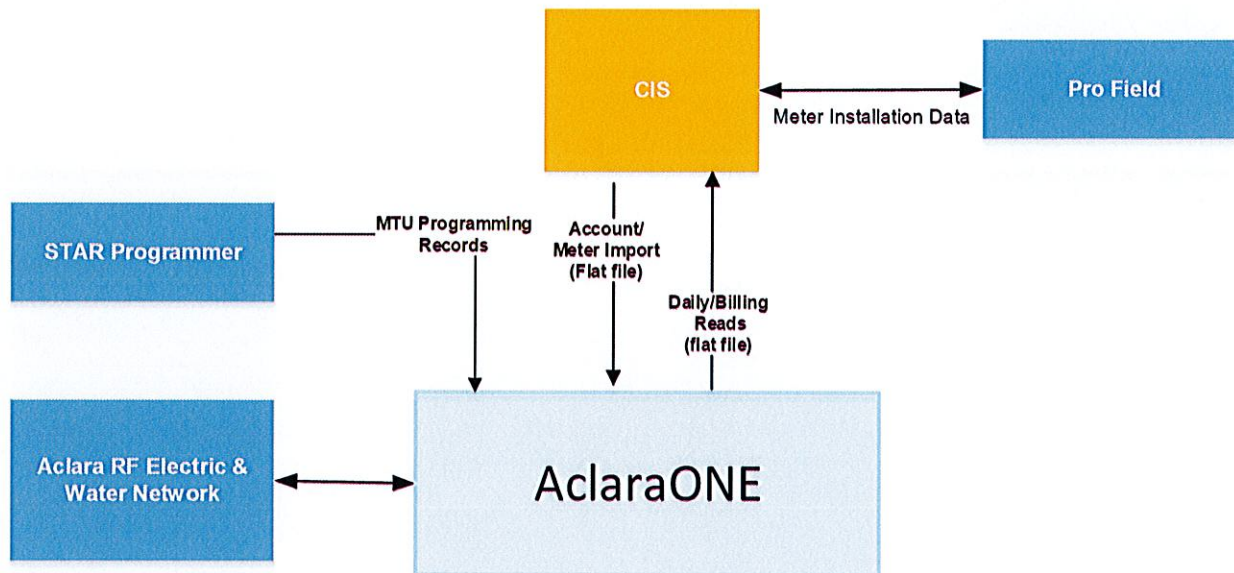


Figure 1: City of Newton Falls Light and Power Solution Schematic

1.2 Implementation Approach

The Gardiner AMI implementation approach involves two project stages – Stage 1 – Meter to Cash Validation and Stage 2 – Mass Deployment. The Meter to Cash validation stage will include the following:

- Installation of up to 10 Aclara RF electric endpoints and Water MTUs (specific forms and quantities for each form to be determined) and all 3 (three) Data Collectors. Location of the initial deployment area to be determined. The System Owner will be responsible for installing the initial deployment of the Stage 1 RF electric meters and water MTUs.
- AclaraONE Unified Headend and software integration as detailed in this scope.

Stage 1 – Meter to Cash Validation

The objective of this stage is to confirm the Meter-to-Cash process and the integration with the System Owner’s CIS. The Gardiner and Aclara project team project manager (PM) will manage the project through a series of tasks and activities to deploy a subset of the full deployment end points, DCUs, software installation and integration configuration and concludes with end-to-end testing to confirm meter reads and billing export files are successful transferred to the System Owner’s CIS system.

The phases for this initial Stage 1 deployment include:

Phase 01 Project Planning & Kick-Off

The Gardiner project team will begin work upon contract execution. The Gardiner project team

will begin the internal preparations for the official launch of the project. The project manager will coordinate and schedule the kick-off meeting with the Client. During this kick-off phase, Gardiner and Client will define the project team organization, introduce the teams, review the project scope and proposed timeline, review the utility's goals and business objectives and develop the communication plan with the Client. Gardiner and Aclara will introduce a project managers and other leaders assigned to oversee and coordinate the day-to-day activities of all parties involved. Frequency scans will also be completed, and the appropriate frequency selection will be determined, and the FCC application submitted. The Client will be responsible for coordinating and completing a Limited Power of Attorney (POA) form and returning to Aclara so that Aclara may complete and submit the FCC application for the selected frequencies on behalf of the System Owner. Entry criteria for this phase to begin are defined as: signature of the contract; assignment of an Aclara project manager; and, establishment of a mutually agreed upon project kick-off start date. This phase will be deemed complete once the following tasks have occurred: the project teams have been defined; kick-off meeting has occurred; and the project plan has been reviewed and mutually agreed to.

Phase 02 Requirements Analysis & Design

At the beginning of the implementation process, Gardiner and Aclara meets with the key stakeholders to confirm the detailed functional, integration, and infrastructure requirements for the system. Field installation plans document the approach, logistics, timing, and requirements for installations. Aclara will complete site surveys, propagation studies, and any remaining spectrum analysis to finalize the DCU (network) installation plan. Gardiner and Aclara will work with the Client to jointly create an installation plan that documents how to communicate meter/MTU installations to the end customer. Gardiner and Aclara will hold software interface requirements sessions and create requirement documents and overall solution architecture specifications.

Aclara delivers a testing strategy that will document the System Acceptance test scenario and acceptance criteria. This phase is complete once the Client reviews and approves all associated deliverables.

Phase 03 Configuration & Network Deployment

In this phase, Gardiner and Aclara completes all tasks to support network deployment and prepare for system testing. Aclara will set up and provision the hosted IT environment for the headend software. Software is installed, configured and enabled for data loading and testing. In parallel, Aclara begins to install, configure, and validate the DCU network (tasks such as DCU installation in this phase may overlap with part of the System Requirements and Design phase). The Client will coordinate with 3rd party vendor(s) to work with Aclara to configure software integrations and performs unit testing in preparation system integration testing. The Client coordinates with Aclara and delivers sample integration data from production systems to validate interface configuration and software functionality. For water endpoints, Aclara will also configure the field programmers to integrate into the client's environments, as coordinated by the Client. Additionally, the Client coordinates with Aclara to review and finalize the endpoint installation and communication plans. As a standard practice, Aclara will expect the client to install 5-10 test meters and MTUs in a meter shop environment in order to test the end- to- end AMI functionality, including but not limited to meter disconnects, demand resets, etc. Aclara will achieve entry criteria by reviewing the software installation and integration configuration plans with Client. This phase is deemed complete once Aclara and supporting resources install the software solutions and DCU network; configures interfaces; completes handheld configuration; and completes the first step of software system acceptance.

Phase 04 Training, Testing & Acceptance

The testing phase validates end-to-end meter-to-cash system functionality from the meter read capture through billing. Aclara provides training for all software solutions being deployed, including headend software prior to the start of System Acceptance Testing. On-site classes are scheduled for the Aclara SGS endpoint installation team as well as the Client so that meter/MTU installations are successful.

Aclara creates the test plan as described in the previous phases. This includes conducting test cases during acceptance testing. Aclara will support the Client and System Owner as acceptance test cases are executed and correcting any problems to allow for retesting as necessary.

The testing concludes when the client signs off at the completion of testing which signifies acceptance of Aclara products and processes, workflows, and end-to-end logistics function as expected. Any remaining issues are categorized into severity level 3 or 4. The definition of "severe" falls into the categories shown in Table 1: Issue Severities.

Table 1: Issue Severities

Severity Level	Description
1	Requires immediate attention – Use of the AMI system is lost or degraded for all users preventing operation of business
2	Requires priority attention - Use of the AMI system is lost or degraded for single or small number of users, affecting significant business functionality
3	Requires attention – Users of the AMI system can continue business operations, but a problem or issue has been identified that affects operation of business
4	There is a problem or issue that does not affect operation of business

** For the purposes of this table, "users" is defined as Utility users of the AclaraONE interface*

Once training and System Acceptance Testing are complete, Gardiner and Aclara will compile all open issues and review the status of these issues with Aclara's Technical Support team and the Client project team.

Gardiner, Aclara and the Client will mutually develop a formal system acceptance test plan which will include test cases and scenarios to ensure the system is adequately tested.

Stage 2: Mass Deployment

Upon successful completion of the System Acceptance testing activity, an acceptance certificate will be provided for formal approval. Mass deployment meter and MTU installations will begin. Gardiner will support Aclara SGS as they begin planning and pre-installation launch activities about 2 – 3 months before the start of mass deployment. Aclara will monitor the network performance and work with the System to remediate any issues that might come up.

During this process, Gardiner will coordinate the Clients introduction to Aclara's Technical Support operations. All support operations will begin to be managed by the Aclara Technical Support team. The

Client coordinates training on Aclara's Support processes, which include opening support tickets and managing and obtaining status of these tickets. The Client will also be introduced to the AclaraConnect client portal.

1.2.1 Deliverables and Milestones by Step

The table below details the milestone deliverables for this project. Delivery dates for each milestone will be communicated at project launch.

Milestone	Deliverables	Payment Milestones Descriptions
1	Contract Execution	<ul style="list-style-type: none"> Contract Execution – This milestone is complete after the contract documents are fully executed by both parties
2	Project Plan, Communication Plan, Project Kickoff Materials, Project Kickoff	<ul style="list-style-type: none"> Project Kickoff Complete. Gardiner will facilitate a kickoff meeting onsite to walkthrough the project schedule, introduce team members and roles, review Client responsibility and upcoming tasks. Additionally, during this meeting the project governance will be established. This includes communications plan, team meetings, status reporting, and issues management.
3	Installation and configuration of base AclaraONE Software	<ul style="list-style-type: none"> Base AclaraONE Software installed. This task is complete after the installation of the base software is completed in the System Owner's environment
4	DCUs Deployed	<ul style="list-style-type: none"> DCUs Deployed. This task is complete after DCUs are deployed and commissioned in the field.
5	Installation and configuration of CIS integrations Data Validation workshop Network Management head end configuration System Acceptance testing (SAT)	<ul style="list-style-type: none"> Installation of in scope integrations – This task is complete after the installation of these integrations in the Clients environment.
6	Deliver Training and training materials Document SAT results	<ul style="list-style-type: none"> Training complete – Aclara will provide training for Aclara RF network system administrators, field personnel and customer service representatives.

Milestone	Deliverables	Payment Milestones Descriptions
7	Signed Certificate of Acceptance Transition to Support Meeting	<ul style="list-style-type: none">System Acceptance Certificate Approved - SAT results will be documented and upon successful completion, a certificate of acceptance will be provided to the utility for signature.
8	Mass Deployment Start	<ul style="list-style-type: none">Start of meter endpoint mass deployment has begun

1.3 Interface Scope

Gardiner will provide sufficient assistance to the Client in support of integrating with the standard interface file formats. It is the Client's responsibility to integrate these standards with their back office systems

Aclara will provide the integration to AclaraONE as noted in the table below. The Client is responsible for coordinating with the System Owner to extract data as per the prescribed data format from the System Owner's systems to integrate with AclaraONE. Aclara recommends the Client coordinate with the System Owner to discuss the integration requirements with their back-office system vendors in advance of the project kickoff and confirm the necessary resources are available to support the project.

Input Integration

Integration Name	Type	Functions
Customer Import Interface	Flat file	Populate AclaraONE with meter inventory and customer account /location details from Client's CIS

Output Integration

Integration Name	Type	Functions
Billing Output Interface	Flat File (CMEP)	Export Billing Read values from AclaraONE to CIS using the California Meter Exchange (CMEP) file format.

Assumptions:

- All import and export interfaces meet the standard import and export formats from AclaraONE.
 - AclaraONE's standard bill export and interval data format is California Meter Exchange Protocol (CMEP).
- Gardiner assumes data in System Owner's systems do not require any data cleanup. Any data cleanup will be the Client's responsibility to perform cleanup.

1.4 Preliminary Project Schedule

The project is expected to take between 360-480 calendar days from the time of contract signing. A detailed project schedule will be developed for project kickoff meeting after contract execution and updated on a regular basis.

Assumptions:

- Gardiner's professional services includes project management oversight for the mass deployment phase until the endpoint installations are considered substantially complete, as defined in Attachment 2, Section 2.5.5. The Client can coordinate with Gardiner to opt to extend the project management support for additional cost.
- DCU locations are in non-hazardous locations.
- Aclara will not deploy antenna and cable on poles with power lines.
- Lattice Tower installations are not included.
- Aclara will perform DCU commissioning and will provide antenna and cable installation oversight at hazardous sites.
- Gardiner assumes DCU sites will be ready for installation. If DCU requires AC power, the Client is responsible for AC power run to disconnect box.
- Aclara does not perform site acquisition for DCU sites that are not owned by System Owner.
- Client will provide an earth grounding point at sites selected for DCU installations.
- Client's CIS vendor resources are available to support the integration requirements discussions and any work on the CIS side to enable the interfaces.
- No custom reports or customizations are included in this scope.
- Hardware delivery ship dates are not factored into this high-level plan. After meter configuration is finalized and order entry has been completed, the project plan may require revision since confirmed ship dates of hardware may impact the timeline of the overall project.
- Gardiner assumes all project resources are available to kick off the project within one month of contract signature.
- Client is providing warehouse space to Gardiner for delivery and storage of materials, parts, and product.
- Client is providing warehouse space to Gardiner as base for project operations.

1.5 Accountability

The following shows the key that is used to identify accountability for each deliverable:

[R] Responsibility

Indicates that the designated Party has responsibility and accountability to complete the applicable Deliverable or milestone.

[A] Approve

Indicates that the designated Party is responsible for approving the applicable Deliverable or milestone.

[S] Supports

Indicates that the designated Party is responsible for supporting the applicable Deliverable or milestone.

[C] Consulted

Indicates that the designated Party will need to provide feedback or contribute as the applicable Deliverable or milestone is completed.

[I] Informed

Indicates that the designated Party will be informed after completion of the applicable Deliverable or milestone.

The acceptance procedure for all deliverables outlined in this SOW will be as follows:

- Gardiner will work with Client personnel to gather input and complete deliverables.
- When complete, final deliverables will be given to Client. Client should review and sign off by Client utilizing a mutually agreed Acceptance Form.
- The Acceptance Form should be physically signed (or electronically signed) indicating approval or disapproval within five (5) business days of receiving the deliverable.

Key Project Task/Activity	Accountability	
	Gardiner	Client
Project Initiation & Kick Off		
Communication Plan	R	I
Change control procedures	R	S
Contact list – with roles and responsibilities	R	S
Detailed Project Plan	R	S
Requirements Confirmation		
Integration requirements sessions	R	S
Completed requirements document	R	A
Setup environment	C	I
Configuration and Unit Testing		
Install Base AclaraONE Software	R	A
Configure interfaces	R	S
Configure application - AclaraONE	R	I
Configure touchpads	R	S
Develop System Acceptance Test plan	R	A
Execute System Acceptance test scripts	S	R
Certificate of System Acceptance	C	R

Key Project Task/Activity	Accountability		
Hardware Installations			
DCU site surveys	R		S
DCU Site Prep (Pole installation, AC power and Ethernet if applicable)	C		R
Installation of DCUs	R		S
Installation of Antenna and cables on electric poles	S		R
Installation of Antenna and cables on water tank	R		S
Commissioning and testing of DCUs	R		S
Coordinate with Client on Installation of RF Meters/MTUs for System Acceptance Testing	S		R
Coordinate with Client on Installation of RF Meters/MTUs for Full Deployment (as applicable)	R		S

1.6 Project Governance

1.6.1 Project Organization

Client agrees to provide appropriate Project resources including but not limited to, data, information, workspace and appropriate and cooperative personnel, all as necessary to facilitate Gardiner’s performance of the Services and the Client’s integration.

Client will allocate the following described personnel to the Project to provide appropriate knowledge of the indicated area and the skills to perform the Client tasks, and any additional personnel that may be necessary for Client to perform its obligations under the implementation work plan.

- Project Manager – Main point of contact for the Project. Is responsible for scheduling Client and System Owner resources, managing the scope and the Client tasks of the Project schedule, facilitating document approvals, and escalating & resolving issues as required by Gardiner as well as those required by the Client.
- Technical Owner/SME(s) – Responsible for architecture, design and development of interfaces on the System Owner’s external systems. Provides input for IT process flow, test data preparation, post-install troubleshooting and diagnostics.
- User Acceptance Testing Resources – End users of the system. UAT Resources will participate in training and execute the test cases defined by the Project team.
- Escalation Resources – Typically the Project sponsor. Will participate in monthly Project review sessions with Aclara Portfolio Manager. Available to assist with any escalated issues.

Gardiner will allocate the following described personnel to the Project to provide appropriate knowledge of the indicated area and the skills to perform the Gardiner tasks, and any additional personnel that may be necessary for Gardiner to perform its obligations under the implementation work plan.

- Project Manager - Oversees all deliverables and quality control, coordinates scheduling and work assignments, assists in requirements and detailed design, resolves issues and serves as daily interface with the Client's Project Manager, who will be the primary point of contact for the Client.
- Business Systems Analyst - Gathers and documents requirements. Develops detailed configuration and interface specifications, performs system configuration, performs integration testing and training; supports data migration
- Systems Engineer - Provides hardware and software planning; Completes unit of any configured core product components. Performs installation, testing, and troubleshooting; configures network and OS; provides support and maintenance planning. Develops interfaces and any custom components, performs unit testing.
- Executive Sponsor – Makes sure project stays on track and meets Client objectives; escalation resource

1.6.2 Problem Resolution and Exception Management

A defined and understood escalation process is a critical component of any project implementation. The Gardiner project team is organized with multiple points of escalation that can be utilized as needed. Project Issues will be logged, tracked, and reviewed at least weekly. In addition, risks are identified in our status reports along with suggested mitigations. Once an issue has been identified, it will be added to the issues list and worked according to priority. Depending on the type and severity of the problem, the Gardiner PM will escalate appropriately within the organization as well as within Client.

Project leads assigned to the project will communicate daily and will escalate risks and issues that could affect the project timeline or scope to the PM who will be providing active oversight and first-level escalation support to the engagement. The PM may continue to escalate the issue through the Gardiner organization to the Vice President of Installation Services. Gardiner escalation resources will work jointly with Client escalation resources to try to resolve the issue at each level and avoid all issues from escalating further.

In addition, Gardiner will establish a communication plan at the start of the project. The Project Communication Plan will be jointly developed between Gardiner and the Client to identify issue escalation paths and to determine project status meeting cadence and expected attendees.

Gardiner's goal for the project is to provide the necessary information to Client to allow for accurate validation of schedule, scope, and deliverables. To accomplish this, Gardiner proposes the following activities: status reporting (includes schedule, issue, and risk tracking), quality reviews, and incident reviews.

1.6.3 Communication Plan & Progress Reporting

The table below details the communication and progress reporting for the project.

Project Status Report	Report sent via email	Weekly	Gardiner Project Team Client Project Team (includes Client and System Owner)
Project Team Meeting	Conference call, on-site meeting	Weekly	Gardiner Project Team Client Project Team
Issues Meeting	Conference call, on-site meeting	Weekly or as needed	Gardiner Project Team Client Project Team
Quarterly Project Review Meeting	On-site meeting	Quarterly	Gardiner Program Manager Project Managers Key Project Sponsors Aclara Executives Sponsors

1.7 Modification

No modifications to the core software are planned for this project.

1.8 System Technical Support

Aclara will support the Client regarding the AclaraONE Solution and field hardware, which operates all main facets of the proposed solution.

Attachment 2

To

Exhibit A Statement of Work

Project Definition: AMI Installation Services

This Attachment 2 describes the Installation Services to be provided by Aclara SGS to Client in support of the Project.

1. Definitions

“AMI” shall mean Advanced Metering Infrastructure.

“Certified Installed” shall mean those meters installed that have passed all QA processes with data being delivered to the System Owner.

“CIS Data” shall mean the data file of work orders provided by Client to Aclara SGS from its customer information system.

“Deployment Schedule” shall mean the mutually agreed upon schedule developed by Aclara SGS

and Client to support the scope set forth in this Statement of Work.

"Handheld" shall mean an electronic device or equivalent running Windows or Android on the latest version available from the manufacturer that is compatible with, and incorporated into, ProField.

"Installation Attempt" shall mean physical visits, phone calls, letters, and other means to contact the customer.

"Installation Workshops" shall mean the structured startup Workshops led by Aclara SGS for Client staff to jointly define the detailed requirements and specifications for the Project.

"Installers" shall mean the field technicians who install meters/modules for this project.

"Life Support" shall designate locations where there is Life Support Equipment or other critical service requiring an appointment to install meters for this project.

"ProField" shall mean the workforce management software product used by Aclara SGS and Client for managing the performance of Services on this project. The terms under which ProField is licensed by Aclara SGS to Client shall be governed by the terms set for in Exhibit 1 to this Statement of Work. Accordingly, Exhibit 1 attached hereto is expressly made a part of this SOW as though fully set forth herein.

"ProField OnSite" shall mean the application module of ProField that is loaded on Handhelds to be used by installation technicians in the field to guide installation activities.

"Route" shall mean meter reading routes.

"RTUs – Return to Utility" shall mean those Aclara SGS work orders that need to be returned to Client for further investigation or other action as defined in the Installation Workshops. RTUs are deemed complete as it relates to billing and completed work orders.

"Services" shall mean labor, material, equipment, tools, vehicles, transportation, storage, and other things and actions necessary to perform and to complete the scope set forth in this Statement of Work.

"System Owner Agreement" means the Contract for AMI Electric and Water Implementation between Client and System Owner, dated MM/DD/YYYY.

"UTC – Unable to Complete" shall mean those installations that Aclara SGS is not currently able to complete due to issues of access or other reasons to be identified during the Installation Workshops. For avoidance of doubt, UTC items are still the responsibility of Aclara SGS until they are either resolved or change to RTU status.

"UTI – Utility to Install" shall mean work orders identified in the CIS Data as System Owner to install.

2. Gardiner and Aclara SGS Services and Responsibilities

2.1 Scope of Services

2.1.1 During the term of this SOW, Gardiner and Aclara SGS shall be expected to perform Services and manage the deployment process according to the Deployment Schedule. Gardiner and Aclara SGS responsibilities shall include, but not be limited to, installing electric meters and water meters and MTUs, inventory management, tracking and reporting on project metrics and field deployment completion data, interface development, data file exchanges, and ProField software implementation and configuration. Project entails the following:

2.1.1.1 Completion of electric and water meter quantities listed in Exhibit B.

2.1.1.2 If actual quantities of work orders are reduced by more than 2.5%, Aclara may

- adjust meter installation pricing.
- 2.1.2 In addition, Aclara SGS will perform following additional services:
 - 2.1.2.1 Perform Commercial Water Meter surveys
 - 2.1.2.2 Advanced customer communications include printing of customer postcards and management of mailing lists
 - 2.1.2.3 Door Hangers printing and using them in the field during deployment
- 2.1.3 Aclara SGS shall be responsible for the items listed in the following sections.

2.2 ProField Implementation and Access

- 2.2.1 The services provided under this Agreement that are required to deploy the ProField System for use on the Project include:
 - 2.2.1.1 Solution Design. Gathering the Project requirements and integration specifications, and designing the workflows to be implemented in the ProField System.
 - 2.2.1.2 Customization. Implementing the Solution Design in the ProField System.
 - 2.2.1.3 Commissioning. Testing and deploying ProField on the production server.
 - 2.2.1.4 Product Training. On-line training of users on the ProField System as customized for the Project.
 - 2.2.1.5 IT Infrastructure. The production servers and backup systems.
 - 2.2.1.6 IT Facility. The rent, utilities, and hosting fee
- 2.2.2 Gardiner and Aclara SGS shall integrate ProField with Client systems via daily file transfer and provide on-going IT system support during deployment. This integration is expected to consist of data file exchange between the systems occurring daily. Integrations shall include capabilities:
 - 2.2.2.1 Daily Exchange file with install data from the previous days installations.
 - 2.2.2.2 Daily Sync file with account information changes since previous business day.
- 2.2.3 As part of the services performed under this contract, Gardiner and Aclara SGS shall provide web licenses to Client to access the ProField system for review of progress and examination of other installation metrics. This web access shall be available to up to 5 necessary personnel including customer service representatives.

2.3 Deployment

Gardiner and Aclara SGS shall complete the installation of assigned AMI Electric and Water Meters in the Client service territory as outlined in the Deployment Schedule. The Deployment Schedule will be developed in such a way that it optimizes installation operations.

2.3.1 Deployment Schedule

- 2.3.2 Gardiner and Aclara SGS shall maintain a forward-looking detailed installation schedule based on the Deployment Schedule and includes:
 - 2.3.2.1 The proposed deployment is expected to have a 2-month Project Kickoff Period during which mobilization activities will occur, which will occur in conjunction with the Aclara AMI software integration and network deployment activities. Full electric meter deployment will occur over a continuous 90 day period immediately following the project kick-off period.
 - 2.3.2.2 Full water meter deployment will occur over a continuous 12-month period immediately following the Project Kickoff Period.
 - 2.3.2.3 A brief Project Demobilization period.

2.3.2.4 A Deployment Schedule will be created as part of the Installation Workshops.

2.3.3 Project Planning

2.3.3.1 Client shall cause System Owner to provide Aclara SGS with a Master Planning File, via FTP file transfer, in order to develop the Deployment Schedule. The Master Planning File shall consist of those fields that are identified in the Installation Workshops and mutually agreed upon. For avoidance of doubt, included in that data shall be designations for UTI meters.

2.3.3.2 Gardiner and Aclara SGS shall be responsible for the planning and execution of a Deployment Schedule that maximizes efficiency, produces quickest route saturation, and provides reasonably steady workflow for Aclara SGS Installers.

2.3.4 Installation Workshops

The following documents will be created after the Installation Workshops are held. Each of the following documents and the content therein shall be incorporated by reference into this SOW as if fully set out here in its entirety:

2.3.4.1 Project Manual

2.3.4.2 ProField Integration Specifications

2.4 Project Reporting and Administration

2.4.1 Gardiner and Aclara SGS shall be responsible for project management, systems, staffing, call services, back office support, IT systems and field tools required to deliver the services.

2.4.2 Gardiner and Aclara SGS shall document meter change outs as well as those sites where the installation was not possible due to problems outside of the Installer's responsibilities. This information shall be collected in ProField OnSite and managed via ProField; this information shall be available to up to 5 of Client and System Owner users via ProField's web interface as specified in 2.2.3 above and printable reports.

2.4.3 Reporting

Gardiner and Aclara SGS shall make available daily, weekly and monthly reports. For clarity, the daily reporting shall include a report of new deployment orders and daily transmission of completed orders and the transmission of completed orders is expected to be no later than the next business day.

Report Name	Brief Description
<u>Route Saturation Report</u>	Reports the saturation (completion percentage) of each route
<u>Production Report</u>	Summary of installations completed grouped by date
<u>Production Detail Report</u>	Detail of the work orders that are completed
<u>Inventory Report</u>	Reports the count of devices in all status grouped by manufacturer and model
RTU Escalation Report	Reports all the historic and current "RTU Escalations" made on any work order
<u>Field Escalation Summary Report</u>	Reports the count of the field escalations (PER) created for each service type between the selected date range
<u>Field Escalations Report</u>	Reports the details of every field escalations (PER) created for each service type

Report Name	Brief Description
Today's Installation summary Report	Reports the count of installations by District, completed on the report day
Installation performance summary report	Reports total installs done by a tech, average time per installs, tech's experience in the project, number of escalations made by the tech on the selected date

2.4.4 Meetings

Gardiner shall hold meetings as described below:

Reoccurrence	Day	Time	Location	Attendees
Weekly	TBD	TBD	Conference Web-Based	Project Managers
Quarterly	TBD	TBD	Conference Call	Project Sponsors / Principals

If additional meetings are required, Gardiner reserves the right to review and offer options or pricing.

2.5 Installation Specifics

2.5.1 Work Hours

Gardiner and Aclara SGS may perform field work services within the hours of 7AM – 6PM Eastern Time, Monday through Saturday (as needed).

2.5.2 Blackout Window

Aclara SGS shall complete work orders as outlined in the Deployment Schedule. Aclara SGS will not install meters during the billing "blackout" window.

2.5.3 Route Completion

Route completion shall be defined as 98% of existing meters at the opening of the route for which Aclara SGS is responsible being those meters that 1.) are Certified Installed; or 2.) designated as Return to Utility; or 3.) have a future appointment for installation scheduled; or 4.) escalated to the System Owner and awaiting further action by the System Owner.

2.5.4 Return to Utility (RTU)

2.5.4.1 RTU includes irregular or unsafe conditions preventing meter installation, the parameters of which will be agreed upon between Aclara SGS and Client during the Installation Workshops and documented in the Project Manual. Such activity shall be documented in ProField and made accessible to Client/System Owner to support resolution of the issue.

2.5.4.2 Aclara SGS will be compensated at the applicable unit rate for any meter installation that must be RTU'd and cannot be completed for reasons outside of our control, including those that cannot be accessed after Aclara SGS has exhausted the required attempts to do so.

2.5.5 Substantially Complete

The project is considered Substantially Complete when Route Completion is achieved on all Routes.

2.5.6 Unable to Complete (UTC)

2.5.6.1 For electric meter UTC situations, Aclara SGS will make an initial field attempt to install the meter. If this is not possible, Aclara SGS Call Services will make a first

phone attempt to contact the customer to schedule an appointment. If that is not successful, Call Services will make one additional phone attempt. If an appointment cannot be scheduled, the location will be returned as an RTU to the utility and the meter is considered complete for project completion percentages and billing purposes and will be paid as if the meter had been installed.

- 2.5.6.2 For water meter UTC situations, Aclara SGS will make up to 2 phone calls, including 1 after hours, and 1 physical attempt to access the meter. If these attempts are unsuccessful, the location will be returned as an RTU to the utility and the meter is considered complete for project completion percentages and billing purposes and will be paid as if the meter had been installed.

2.5.7 Installation Processes

Gardiner and Aclara SGS will use a standard electric meter/water meter workflow for each type of work (electric/water). Deviations from the standard workflow will result in additional charges for customization.

- 2.5.7.1 Electric meters are assumed to all be outdoors; approximately 3% of locations will require a second visit to complete. Should the first-time failed visit rate for electric meters exceed 3%, Aclara SGS will issue an appropriate Change Order to Client for additional costs incurred.
- 2.5.7.2 Water meters are assumed to be indoors and require appointments to access.
- 2.5.7.3 Water meter exchanges will be like-for-like.
- 2.5.7.4 Commercial water meters size 3" and above and require a 2-person crew and Confined Space Entry are assumed.
- 2.5.7.4.1 Pricing for installation of commercial water meters 3" and above is estimated and dependent upon a survey of the meter location. Aclara SGS has provided a price for its staff to survey these locations in order to determine sufficient information to provide a final installation estimate to the System Owner.
- 2.5.7.5 Traffic light and railroad crossing electric meters are not included.

2.5.8 Bypass Availability

Aclara SGS shall use its most efficient and safe meter change-out process. Aclara SGS will change out a polyphase or CT meter where a bypass facility is available. Such premises where a bypass is not available including but not exclusive to instrument-rated meters will be RTU'd.

2.5.9 System Owner's Customer Notification

Prior to performing an electric meter installation, Gardiner and Aclara SGS will attempt to:

- 2.5.9.1 Notify System Owner's customers at single-family dwellings prior to exchanging the meter by knocking at the door or ringing doorbell.
- 2.5.9.2 Notify the building or property manager for multiple dwelling units.
- 2.5.9.3 Aclara SGS will proceed with meter exchange if customer/building or property manager do not respond.

2.5.10 Appointments

- 2.5.11 Water meters are indoors and will require appointments to gain access.
- 2.5.12 Gardiner and Aclara SGS will undertake the following steps to secure an appointment:
 - 2.5.12.1 Aclara SGS will send postcards to all residents notifying of the need to schedule an appointment.
 - 2.5.12.2 Aclara SGS will make up to 2 phones, including 1 after hours, and 1 physical attempt to access the meter.

2.5.13 When appointments are required, Aclara SGS shall make customer appointments with the expectation of meeting a 4 hour or less window. If Aclara SGS cannot perform during the appointment window, Aclara SGS shall call the customer to inform them of a delay and give them the opportunity to reschedule.

2.5.14 For situations where accurate phone data is not available and Aclara SGS requires this information to set a customer appointment, Aclara SGS will RTU these installations.

2.5.15 Pre-Installation Postcards

Gardiner and Aclara SGS shall mail a postcard to customers informing them of the upcoming meter exchange and requesting that customers with indoor meters contact Aclara SGS to schedule an appointment. The language and specifics of this postcard shall be determined during the Installation Workshops.

2.5.16 Photographs

2.5.16.1 When taking photographs, the Installer shall document and digitally capture, store photographs, which are available in ProField. Photographs shall include a date and time stamp, as supported by the ProField handheld and software.

2.5.16.2 Electric Installations. Aclara SGS will take five (5) photos: 1.) Pre-installation site; 2.) Before (legacy meter); 3.) Empty socket; 4.) After (new meter); 5.) Post-installation site.

2.5.16.3 Water Installations. Aclara SGS will take four (4) photos: 1) Pre-installation site photo; 2) Before (legacy meter/module face); 3) After (new meter/module face); 4) Post-installation site photo.

2.5.17 Booted Meters

For Client, if a boot (sleeve) is found on an electric meter during an AMI electric meter exchange, the newly installed meter shall also be booted. The Installer shall not reuse existing boots but install new boots provided by Client.

2.5.18 Cutting/Grinding Locks

Gardiner and Aclara SGS will perform cutting or grinding of locks on electric meters if required for up to 5% of the electric meter population. The Lock Cutting Fee listed on line 7.14 in Exhibit B will apply when this work is performed for any meter in excess of this 5%.

2.5.19 Exception Processes

In situations in which the meter cannot be installed, the Installer is responsible for accurately logging the issue by selecting the appropriate escalation code and documenting the situation with photographic evidence and supporting notes. During Installation Workshops, escalation codes will be identified.

2.6 Warehousing and Offices

2.6.1 Client shall provide warehouse as described in Section 3.2.3, which shall contain sufficient space in which Gardiner and Aclara SGS representatives can work.

2.6.2 Gardiner and Aclara SGS shall be responsible for inventory management only in a dedicated Gardiner/Aclara SGS section of System Owner's warehouse.

2.7 Inventory and Supply Chain Management

2.7.1 Gardiner and Aclara SGS shall manage warehousing and inventory including:

2.7.1.1 Electric and water meters and MTUs

2.7.1.2 Project-related consumables provided by Client as necessary.

2.7.2 Other Gardiner duties include:

2.7.2.1 Receive and inspect incoming shipments of electric meters.

- 2.7.2.2 If required, quarantine received meters to not allow installation of the devices until receiving notification from Client of the successful completion of sample testing.
- 2.7.2.3 Account for inventory on a monthly basis.
- 2.7.2.4 Enter inventory changes into ProField.
- 2.7.3 Gardiner and Aclara SGS shall be responsible for the care and proper handling of new and removed meters from delivery receipt, storage, deployment, transporting (from the field to the warehouse), re-packing to safely transport back to the meter shop or designated shipping point.
- 2.7.4 Gardiner and Aclara SGS will work with the Client to manage the process for any RMA or return of warranty defects of Aclara meters during the meter installation deployment period. Meters that have failed during installation will be classified as defective or damaged. Aclara SGS will package, stage and post failed meter quantities in its Inventory Management System.
- 2.7.5 If meters are received defective from the manufacturer, they are designated as defective and handled as such.

2.8 Call Services

Aclara SGS shall provide call services for scheduling of meter installation appointments for which Aclara SGS is responsible and for responding to incoming calls from consumers relating to the Project. Services shall include the ability to perform bi-directional warm transfers between Aclara SGS and Clients call centers. Aclara SGS calling hours of operation shall align with the hours of deployment services.

2.9 Fleet/Vehicles

All Aclara SGS vehicles shall display the appropriate Aclara SGS labeling to include a Client logo as approved by Client/System Owner.

2.10 Claims

Aclara SGS shall follow a claims resolution process mutually agreed upon during the Installation Workshops to handle customer claims associated with the services of this SOW.

2.11 Staffing Provisions

- 2.11.1 Gardiner and Aclara SGS shall be responsible for hiring, training, equipping, and managing field workers during the deployment.
- 2.11.2 To support the services outlined herein, Aclara SGS shall provide sufficient project management, field, warehouse and back-office personnel.
 - 2.11.2.1 Installation activities will be overseen by a local Field Supervisor who will manage the day-to-day operations of the installers, inventory assignments, field issue escalations, and be the primary point of contact with the Client on meter installation related operational and field issues.
- 2.11.3 Gardiner has used the following Prevailing Wage Rates to calculate meter installation prices for this project:
 - 2.11.3.1 Electric meter installations will be performed using Labor Class "Laborer Heavy Highway 2" for Trumbull County, OH at an hourly rate of \$32.05 with an additional hourly fringe rate of \$11.25 plus statutory costs.
 - 2.11.3.2 Residential water meter installations (size 1" or below) will also be performed using Labor Class "Laborer Heavy Highway 2" for Trumbull County, OH at an hourly rate of \$32.05 with an additional hourly fringe rate of \$11.25 plus statutory costs.

- 2.11.3.3 Commercial water meter installations (size 1.5" or above) will be performed either by the Aclara SGS Field Supervisor or using Labor Class "Plumber Pipefitter Local 396" for Trumbull County, OH at an hourly rate of \$43.16 with an additional fringe rate of \$25.73 plus statutory costs.
- 2.11.3.4 Should the City or State alter the Prevailing Wage Rates required to perform any portion of this work, Gardiner will issue a Change Order to Client to cover the additional costs incurred.
- 2.11.4 Gardiner reserves the right to subcontract any portion of meter installation or other work.
- 2.11.5 Gardiner and Aclara SGS shall provide personnel with the requisite knowledge and skill sets to perform meter installation functions.
- 2.11.6 Gardiner shall be familiar with and observe established and accepted labor practices, procedures, and project agreements.
- 2.11.7 Gardiner shall have full responsibility for the conduct of employees employed on or in connection with the services (including the employees of any subcontractor) and will ensure that there is adequate, daily supervision of services.
- 2.11.8 Gardiner shall be responsible for ensuring personnel maintain any professional qualifications, licenses, permits, certifications and skills appropriate for the Services to be performed.
- 2.11.9 All employees hired or sub-contracted by Gardiner to provide the services listed in this document shall undergo and pass a pre-employment background check conducted under the auspices of Gardiner.
- 2.11.10 Gardiner and Aclara SGS shall comply with the federal Drug-Free Workplace Act of 1988 and maintain a Substance Abuse Program.
- 2.11.11 Gardiner and Aclara SGS Personnel shall be subject to drug testing upon hire.
- 2.11.12 Gardiner and Aclara SGS shall test its employees as appropriate throughout the performance of Services in accordance with its Substance Abuse Program.
- 2.11.13 Gardiner and Aclara SGS will provide IT resources on an on-going basis to support day to day operations during the field deployment throughout the course of the contract.

2.12 Training

- 2.12.1 Gardiner and Aclara SGS shall be responsible for training employees to perform the services outlined herein. Training shall include but is not limited to:
 - 2.12.1.1 Proper meter installation.
 - 2.12.1.2 Ability to identify:
 - 2.12.1.2.1 Electric Meters. Meter sockets (socket types, forms, etc.), service voltages, and service sizes.
 - 2.12.1.2.2 Water Meters. Meter sizes, lay lengths, and service line materials.
 - 2.12.1.3 Correct reading of meter registers.
 - 2.12.1.4 Operating and maintaining data transfer systems.
 - 2.12.1.5 Training on customer communication including managing customer contacts during the installation of meters. Aclara SGS shall train on procedures for managing difficult customer situations and resolutions.
 - 2.12.1.6 Recognize and respond properly to dangerous conditions and emergency situations.
 - 2.12.1.7 Recognize and report suspected theft of service (tampering).
 - 2.12.1.8 Report abnormal operating conditions as defined during Workshops.

2.12.1.9 Recognize damaged services and respond appropriately to safety, service, and repair issues.

2.12.1.10 Identify energized meter enclosures and other unsafe meter situations.

2.12.2 Aclara SGS shall train up to five (5) Client staff on the use of ProField.

2.13 Safety Program

2.13.1 Gardiner shall maintain a documented safety program.

2.13.2 Gardiner shall provide personal protective equipment, uniforms, photo ID badges, and vehicle signage. Personal protective equipment must meet industry standards.

2.14 Quality Assurance

2.14.1 Gardiner will consistently follow its quality assurance program, use its best skill, judgment and efforts in providing Services and support to Client.

2.14.2 Gardiner and Aclara SGS's quality audit program consists of:

2.14.2.1 In-progress audits performed by field supervisors; in the first 3-5 days of a new Installer starting to perform meter replacements, 20% of work is checked while in progress.

2.14.2.2 In-progress and post-installation audits performed by field supervisors on an ongoing basis throughout the project.

2.14.2.3 Installation data audit performed by back-office staff on a.) 100% of legacy meter reads and b.) up to 10% sample-based check of image quality.

2.14.3 If required to perform services inside of a property/home, Aclara SGS shall be courteous when entering the property/home and exercise care not to damage or soil flooring or other property.

3. Client Services and Responsibilities

Failure to provide the items below which result in interruptions or delays to installation schedule or otherwise increase Gardiner's costs will result in a Change Order to the Client.

3.1 Supply of Meters and Materials

3.1.1 Client will maintain a supply of meters to Aclara SGS adequate for supporting a minimum of 30-days of scheduled meter exchanges.

3.1.2 Client will provide all consumables required for installing Meters including but not limited to:

3.1.2.1 Electric. Locking rings, meter base covers, disconnect boots, meter bands, locking devices.

3.1.2.2 Water. Screws, covers, seals, wires, gaskets, washers.

3.2 Client Responsibilities

Client will work directly with Gardiner and Aclara SGS to provide the items below.

3.2.1 Pilot Installations

Client or System Owner will perform any pilot meter installations.

3.2.2 Disposal

Client shall be responsible for disposal of old materials and of any related hazmat.

3.2.3 Warehousing and Offices

3.2.3.1 Client will provide adequate space in System Owner's shared warehouse for Gardiner's and Aclara SGS's exclusive use and control (i.e., an area designated for Aclara SGS), including the necessary equipment, including fork lifts, pallet

- jacks, internet connection, and utilities.
- 3.2.3.2 The warehouse space will have ample secured parking for Gardiner and Aclara SGS's vehicles.
- 3.2.3.3 The warehouse space will have office facilities, equipment staging areas, bathroom facilities, etc., for use by Gardiner and Aclara SGS.
- 3.2.3.4 Should Aclara SGS deem the warehouse unacceptable from an operations or Environmental, Health, and Safety (EHS) standpoint, Client shall provide and pay for an acceptable warehouse space.

3.2.4 Black Out Periods

Client shall notify Gardiner and Aclara SGS prior to the commencement of the Project by route and by cycle of each blackout period that will occur during the Project.

3.2.5 Client Interactions and Data

- 3.2.5.1 Scheduling. Client shall work with Aclara SGS on appointment scheduling efforts, including providing enforcement language for communication materials that require residents to comply with appointment schedule efforts and shut-off notices.
- 3.2.5.2 Scripts. Client shall provide the scripts to be used in interactions with Clients end customers including, but not limited to, FAQ sheets, customer interaction prior to exchanging meters, appointment scheduling, and call center dialogue.
- 3.2.5.3 Problem Tickets. Client shall respond to ProField Problem Tickets within three (3) business days.
- 3.2.5.4 CIS Data.
 - 3.2.5.4.1 Following the Installation Workshop, Client shall provide Aclara SGS with an initial CIS file no less than four weeks from the agreed upon completion date of the ProField build.
 - 3.2.5.4.2 Client shall provide to Aclara SGS the CIS data needed to determine the location of meters to be installed as well as various other parameters, including but not limited to, accurate contact information, customers on life support, customers requiring appointments, CIS Service Order number, and customers with "booted" meters. Client shall cause System Owner to provide Aclara SGS a daily database re-fresh of the CIS data.

3.2.6 Repairs

Client will be responsible for performing repairs discovered during the installation process, which shall be escalated to Client via ProField.

4. Pricing

4.1 The Hourly Rate in the pricing sheet applies to the following circumstances:

- 4.1.1 When Aclara SGS's field staff is required to standby at a customer location awaiting instructions from the System Owner or arrival of their staff.
- 4.1.2 When Gardiner and Aclara SGS is asked to exchange or investigate a meter outside of Aclara SGS's deployment plan.
- 4.1.3 Troubleshooting properly installed equipment.

5. Changes

Any change to this Statement of Work shall be subject to mutual written agreement of the parties and shall be made in accordance with Attachment 5 hereto, Change Order, which is hereby incorporated by

reference. Gardiner and Aclara SGS shall not commence work on any such change unless and until the change has been agreed to in writing by both parties.

Exhibit 1 to Attachment 2

ProField Licensing

Aclara Smart Grid Solutions, LLC ("Aclara SGS" or "Contractor") is the developer and owner of an industry-leading proprietary mobile workforce management software ("ProField System"). Contractor also offers certain services associated with the ProField System. As such, CUSTOMER ("Client" or "Licensee") Client wishes to license specified modules of the ProField System, for the purpose of managing and tracking a workforce performing services for Client or Client's customer ("Project"). Client also wishes to obtain through Contractor certain 3rd party components such as hardware, software and data for the full use of the functionality and features of Licensed Software (as defined in Section A.1 hereafter). Accordingly, the terms under which the ProField software solution is licensed by Contractor to Client shall be governed by the terms set forth in this ProField Licensing Schedule ("Software Schedule").

Licensed Software. The modules of the ProField System licensed under this Agreement are identified below:

ProField Modules	Included
ProFieldCORE: OpsCenter, OnSite, Inventory, Reports	<input checked="" type="checkbox"/>
SafetyFirst	<input checked="" type="checkbox"/>
TrainingPlus	<input checked="" type="checkbox"/>
DayRoute	<input checked="" type="checkbox"/>
CustomerCare	<input checked="" type="checkbox"/>
VoltageRecording	<input type="checkbox"/>
ThermalImaging	<input type="checkbox"/>
AccuRead	<input type="checkbox"/>
SocketAnalysis	<input type="checkbox"/>

The Licensed Software is supplied in the following license components:

ProField Server, an application server;

ProField Web, web applications intended for use by management and supervisors, on personal computers.

3rd Party Software.

Client may obtain "Third Party Software" directly from the third parties or through Contractor. Use of the full feature set of the ProField System requires that certain third- party software. Whether obtained by Client directly from the third parties or through Contractor, Client will in each case be the Client of the Third- Party Software and is solely responsible for compliance with applicable license terms and conditions.

The 3rd Party components obtained through Contractor by Owner under this Agreement are set forth below:

3 rd Party Software	Included
ProFieldCORE	
Bing	<input checked="" type="checkbox"/>
Soti	<input checked="" type="checkbox"/>

Type of License.

Licensed Software will be hosted on Contractor's private cloud.

License

Grant of Licenses. Subject to the terms and conditions of this Software Schedule, including without limitation the pricing, types and quantities of ProField System modules and the timely and full receipt of payment in accordance with the terms of this Software Schedule, Contractor grants to Licensee a non-exclusive, non-transferable, non-sublicensable, non-assignable, fully paid-up, royalty-free licenses to access and use the Licensed Software for the sole purpose of performing work on the Project.

Licensee End Users. Prior to commissioning the Licensed Software, Licensee shall supply a list of the names of all users who are authorized to use the Licensed Software. Licensee shall keep the list current at all times and promptly inform Contractor of any change in Licensee End Users. Licensee will strictly enforce each Licensee End User's user identification and password controls, to ensure that Licensee End User's identity is not used to access the Licensed Software by any other person.

License Restrictions. Notwithstanding anything to the contrary contained in this Software Schedule, Licensee acknowledges and agrees that it shall not, directly or indirectly: (i) sublicense, assign, sell, lease or otherwise transfer the rights to use all or any part of the Licensed Software; (ii) alter or permit a third party to alter all or any part of the Licensed Software; (iii) disassemble, decompile, reverse engineer or otherwise attempt to derive source code or other trade secrets from all or any part of the Licensed Software; (iv) modify, translate, adapt, alter or create derivative works from all or any part of the Licensed Software (v) allow access to all or any part of the Licensed Software by anyone that is not a designated Licensee End User; (vi) use all or any part of the Licensed Software in a manner that interferes with, degrades, or disrupts the integrity or performance of any Contractor technologies, services, systems or other offerings, including data transmission, storage and backup; (vii) circumvent or disable any security features or functionality associated with all or any part of the Licensed Software; (viii)

input or otherwise use in conjunction with all or any part of the Licensed Software any Licensee information that actually or potentially infringes or misappropriates a copyright, trade secret, trademark or other intellectual property right of any third party; (ix) input or otherwise use in conjunction with all or any part of the Licensed Software any Licensee information that constitutes or contains anything that is obscene, defamatory, harassing, offensive or malicious, including malicious code, adware, viruses, Trojan horses or other malware; (x) use all or any part of the Licensed Software to provide service bureau facilities or commercial time-sharing services to any third party or supporting operations for any third party through the access and/or use of all or any part of the Licensed Software; or (xi) use all or any part of the Licensed Software in any manner prohibited by law.

Pricing and Payment Schedule

Licensee will pay the amounts and in accordance with the terms specified in the applicable Statement of Work, dated SOW-DATE, as applicable.

Proprietary Rights

Ownership of Licensed Software. Title, ownership rights, and intellectual property rights in the Licensed Software are, and shall at all times remain, with Contractor. Licensee acknowledges such ownership and intellectual property rights and will not take any action to jeopardize, limit or interfere in any manner with Contractor's ownership of or rights with respect to the Licensed Software. The Licensed Software and the ProField System are protected by copyright, patent, trade secret and other intellectual property laws and by international treaties. Licensee expressly acknowledges and agrees that it obtains no intellectual property rights or licenses in or to the Licensed Software, any ProField modules, or the ProField System except for the rights expressly granted herein. All trademarks used in connection with the Licensed Software, the ProField modules and ProField System are owned by Contractor and no license to use any such trademarks is provided hereunder.

Licensee Data. Licensee is solely responsible for collecting, inputting, and updating all data and content related to Licensee's use of the Licensed Software ("**Licensee Data**"). The Licensee Data shall be regarded to be Licensee Confidential Information. As between Contractor and Licensee, Contractor expressly acknowledges and agrees that Licensee shall own all right, title and interest in and to any Licensee Data, and that Contractor shall access, store or use Licensee Data only for the purpose of enabling Licensee to make use of the Licensed Software as specified herein (and for no other purpose) and shall not disclose Licensee Data to any third party except as may be expressly directed by Licensee in advance in writing.

Feedback. Suggestions or ideas provided by Licensee pertaining to the Licensed Software or the ProField System or any modification or implementation thereof ("**Feedback**"), once given, shall become the property of Contractor, and nothing in this Software Schedule or in the Parties' dealings arising out of or related to this Software Schedule will restrict Contractor's right to use, profit from, disclose, publish, or otherwise exploit any Feedback, without compensating Licensee. Licensee agrees that its provision of Feedback does not afford it any intellectual property or any other right, title, or interest in or to software, inventions, or other assets created by Contractor.

Disclaimer of Warranties

NEITHER PARTY MAKES ANY REPRESENTATIONS AND GRANTS NO WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, OR EXPRESS OR IMPLIED. In particular, Licensee acknowledges and agrees that the Licensed Software may be subject to interruption, limitations, delays, and other problems inherent in the use of software applications, especially when used in conjunction with data plans provided by third parties and Third- Party Software. Contractor is not responsible for any such delays, delivery failures, or any other damage resulting from events beyond Contractor's reasonable control, without regard to whether such events are reasonably foreseeable by Contractor. CONTRACTOR DOES NOT WARRANT THAT THE LICENSED SOFTWARE OR ANY THIRD- PARTY SOFTWARE UTILIZED BY LICENSEE SHALL BE PROVIDED WITHOUT ERROR.

Term

This Software Schedule shall commence on the date set forth in the Statement of Work No. 1 and shall continue in full force and effect for the term set forth therein.

Actions upon Expiration or Termination of the Software Schedule

Cessation of Use of Licensed Software. Upon expiration or termination of the Software Schedule, Licensee shall immediately cease to use the Licensed Software.

Return of Leased Hardware. In the event that Licensee has opted to lease Hardware from Contractor, Licensee shall promptly (but in no event longer than five (5) business days after expiration or termination of the Contract return all such leased Hardware to Contractor. Returned Hardware shall be in working order, and in their original condition as provided to Licensee, with reasonable wear and tear consistent with their normal use excepted. Licensee shall be solely responsible for any cost or expense associated with the repair or replacement of any damaged or lost Hardware, and Contractor shall not charge any premium therefor, but shall pass such cost or expense through to Licensee at Contractor's actual cost.

Attachment 3
to
Exhibit A Statement of Work

Energy Management

1. Building LED Lighting Retrofit

The following scope of work shall apply to all buildings included in the detailed audit sheets. Materials to be furnished and work to be performed shall include:

- Supply all necessary lamps, ballasts and fixtures to complete work
- Provide one (1) set of product literature for all components Installed.
- All fixtures and lenses that are replaced or retrofitted must be wiped clean.
- All miscellaneous material and labor including but not limited to wire, wire nuts, replacement sockets, tombstones.
- Travel and disposal cost will be included in the price.
- Work shall be performed in such a manner so as to cause minimum disruption to the normal operation of the City. The requirement of work undertaken during times other than normal working hours shall be included as necessary.
- GARDINER to provide any lifts, scaffolds, booms and ladders, etc.
- The lighting renovation shall include the replacement of the existing ballasts (where applicable) with electronic ballasts and T8 lamps.
- Replacement of yellowed or broken lenses shall be included as a part of this work
- Broken sockets shall also be replaced with new.
- All work areas shall be completely clean following completion of the work in that area. Disposal of all lamps and ballasts are the responsibility of this GARDINER.

Lighting Scope of Work

City Hall Building Area	Fixture Type	Lamps	Fixture Qty	Proposed
Wall-packs	MH-MH175-1	1	2	NEW LED LG WALL PACK
Wall-packs	MH-MH250-1	1	3	NEW LED LG WALL PACK
Ground Floods	LED-L40-1	1	2	***LEAVE AS IS***
Wall-pack	MH-MH150-1	1	1	NEW LED LG WALL PACK
Flood	HPS-HPS400-1	1	1	NEW LED SLIPFITTER MOUNTED FLOOD
Police Garage	HAL-H75-1	1	5	LED A LAMP SCREW-IN
Wall sconces	F-F40T12-2	2	2	DIRECT WIRE 4' 2-LAMP LED TUBE
Front walkway First Floor	LIN-LED-L20T8LED-4	4	5	DIRECT WIRE 4' 4-LAMP LED TUBE
Front walkway First Floor	LED-L40-1	1	1	***LEAVE AS IS***

Courtroom	UFL-FU31T8/6-2	2	33	DIRECT WIRE 4' 2-LAMP LED TUBE U-TUBE
Judges Quarters Restroom	INCAN-I80-1	1	4	LED A LAMP SCREW-IN
Hallway	F-F32T8-2	2	2	DIRECT WIRE 4' 2-LAMP LED TUBE
Office rooms by courtroom	F-F32T8-2	2	8	DIRECT WIRE 4' 2-LAMP LED TUBE
Clerk courts area	2X4 FLAT	1	14	***LEAVE AS IS***
TV Room	F-F40T12-4	4	2	DIRECT WIRE 4' 4-LAMP LED TUBE
Restroom	INCAN-I60-1	1	1	LED A LAMP SCREW-IN
Vault	F-F40T12-2	2	1	DIRECT WIRE 4' 2-LAMP LED TUBE
City Manager's Office	F-F32T8-2	2	4	DIRECT WIRE 4' 2-LAMP LED TUBE
City Clerks	F-F32T8-2	2	6	DIRECT WIRE 4' 2-LAMP LED TUBE
City Manager Hallway	F-F32T8-2	2	2	DIRECT WIRE 4' 2-LAMP LED TUBE
Closet city manager	CFL-CFQ26W-1	1	1	LED A LAMP SCREW-IN
Law enforcement hallway	F-F40T12-4	4	2	DIRECT WIRE 4' 4-LAMP LED TUBE
Law enforcement hallway	INCAN-I60-1	1	1	LED A LAMP SCREW-IN
Law enforcement	F-F40T12-4	4	3	DIRECT WIRE 4' 4-LAMP LED TUBE
Mayors office	F-F40T12-4	4	2	DIRECT WIRE 4' 4-LAMP LED TUBE
Second Floor Hallway	F-F32T8-3	3	3	DIRECT WIRE 4' 3-LAMP LED TUBE
Second Floor Hallway	F-F32T8-4	4	3	DIRECT WIRE 4' 4-LAMP LED TUBE
Restroom second Floor Hallway	F-F40T12-2	2	2	DIRECT WIRE 4' 2-LAMP LED TUBE
Second Floor Closet	INCAN-I60-1	1	1	LED A LAMP SCREW-IN
Stairwell	F-F32T8-4	4	2	DIRECT WIRE 4' 4-LAMP LED TUBE
Stairwell	F-F32T8-2	2	1	DIRECT WIRE 4' 2-LAMP LED TUBE
Stairwell	LIN-LED-L18t8LED-4	4	3	DIRECT WIRE 4' 4-LAMP LED TUBE
First Floor Closet	INCAN-I60-1	1	1	LED A LAMP SCREW-IN
Fire House Garage	F-F40T12-2	2	20	DIRECT WIRE 4' 2-LAMP LED TUBE
Fire House Garage	F-F96T12-2	2	12	DIRECT WIRE 4' 4-LAMP LED TUBE
Fire house hallway	F-F40T12-2	2	1	DIRECT WIRE 4' 2-LAMP LED TUBE
Fire House	F-F32T8-4	4	6	DIRECT WIRE 4' 4-LAMP LED TUBE
Fire House Kitchen	F-F40T12-2	2	1	DIRECT WIRE 4' 2-LAMP LED TUBE
Fire House Kitchen	INCAN-I60-1	1	1	LED A LAMP SCREW-IN
Fire House Restroom	F-F40T12-2	2	2	DIRECT WIRE 4' 2-LAMP LED TUBE
Fire House Restroom	INCAN-I60-1	1	2	LED A LAMP SCREW-IN
First Floor Restroom	F-F40T12-2	2	1	DIRECT WIRE 4' 2-LAMP LED TUBE
Police Department	F-F32T8-4	4	2	DIRECT WIRE 4' 4-LAMP LED TUBE
Police Department records Area	F-F32T8-4	4	3	DIRECT WIRE 4' 4-LAMP LED TUBE
Police Department BAC	F-F32T8-3	3	2	DIRECT WIRE 4' 3-LAMP LED TUBE
Police Mail Room	F-F32T8-4	4	1	DIRECT WIRE 4' 4-LAMP LED TUBE
Police Holding Cells	F-F32T8-4	4	2	DIRECT WIRE 4' 4-LAMP LED TUBE
Police Holding Cells	CFL-CF36W-1	1	3	LED A LAMP SCREW-IN
Chiefs Area	F-F32T8-4	4	2	DIRECT WIRE 4' 4-LAMP LED TUBE
Sergeant Office	F-F32T8-4	4	1	DIRECT WIRE 4' 4-LAMP LED TUBE
Before Chiefs Office	F-F32T8-4	4	1	DIRECT WIRE 4' 4-LAMP LED TUBE
Chiefs Office	F-F32T8-4	4	2	DIRECT WIRE 4' 4-LAMP LED TUBE
Police Vault	F-F40T12-2	2	1	DIRECT WIRE 4' 2-LAMP LED TUBE
Basement Hallway	LIN-LED-L18t8LED-4	4	2	DIRECT WIRE 4' 4-LAMP LED TUBE
Basement evidence Room	F-F40T12-4	4	4	DIRECT WIRE 4' 4-LAMP LED TUBE
Weight room basement	CFL-CF36W-1	1	2	LED A LAMP SCREW-IN
Weight room basement	CFL-CF36W-1	1	2	LED A LAMP SCREW-IN
Old Evidence Room	INCAN-I80-1	1	4	LED A LAMP SCREW-IN
Old Evidence Room	F-F40T12-2	2	1	DIRECT WIRE 4' 2-LAMP LED TUBE

Water Treatment Plant

Fixture

No.of

Building Area	Type	Lamps	Qty	Proposed
Wall-packs	HPS-HPS400-1	1	4	NEW LED LG WALL PACK
Entry	LED-L16-1	1	2	***LEAVE AS IS***
Entry	INCAN-I80-1	1	2	LED A LAMP SCREW-IN
Flood	HAL-H75-2	2	3	LED PAR38 SCREW-IN
Flood	MH-MH150-1	1	5	NEW LED KNUCKLE MOUNT FLOODLIGHT
Door light	INCAN-I100-1	1	2	LED A LAMP SCREW-IN
Security	MH-MH250-1	1	1	***REMOVE***
Entry Hallway	LIN-LED-L15T8LED-2	2	8	DIRECT WIRE 4' 2-LAMP LED TUBE
Lab	LIN-LED-L15T8LED-2	2	6	DIRECT WIRE 4' 2-LAMP LED TUBE
Office	LIN-LED-L15T8LED-2	2	3	DIRECT WIRE 4' 2-LAMP LED TUBE
Restroom	LIN-LED-L15T8LED-2	2	2	DIRECT WIRE 4' 2-LAMP LED TUBE
Filter operating Room	LED-L40-1	1	4	***LEAVE AS IS***
Filter operating Room	MH-MH250-1	1	4	NEW LED TRUNNION MOUNT FLOOD
Carbon building	F-F32T8-2	2	5	DIRECT WIRE 4' 2-LAMP LED TUBE
Tank Dome	CFL-CFT13W-2 PIN	1	4	NEW 2PIN LED PLUG-IN LAMP
Tank Dome	HAL-H75-1	1	2	LED PAR38 SCREW-IN
Filter Room	F-F32T8-2	2	4	DIRECT WIRE 4' 2-LAMP LED TUBE

Waste Water Plant Building Area	Fixture Type	No.of Lamps	Qty	Proposed
Wall-packs	MH-MH250-1	1	9	NEW LED LG WALL PACK
Poles	HPS-HPS400-1	1	6	NEW LED POLE SHOEBOX ROUND BRONZE
Wall-pack	MH-MH250-1	1	15	NEW LED LG WALL PACK
Security light above outdoor holding tanks	MH-MH250-1 POLE SLIP	1	34	NEW LED POLE FLOOD
Poles	MH-MH400-1	1	3	NEW LED POLE SHOEBOX ROUND BRONZE
Pump garage	MH-MH200-1 CANOPY	1	2	NEW LED SURFACE CANOPY
Lab	LIN-LED-L15T8LED-2	2	12	DIRECT WIRE 4' 2-LAMP LED TUBE
Stairwell	LED-L40-1	1	3	***LEAVE AS IS***
Generator room	F-F40T12-2	2	2	DIRECT WIRE 4' 2-LAMP LED TUBE
Restrooms	LED-L40-1	1	2	<< ENTER PRODUCT CODE >>
Closet	INCAN-I60-1	1	1	LED A LAMP SCREW-IN
Lab hallway	LIN-LED-L11T8LED-2 2X2	2	2	***LEAVE AS IS***
Administration	CFL-CF13W-1	1	7	NEW 2PIN LED PLUG-IN LAMP
Administration	LIN-LED-L15T8LED-2	2	4	DIRECT WIRE 4' 2-LAMP LED TUBE
Breakroom	LIN-LED-L15T8LED-2	2	4	DIRECT WIRE 4' 2-LAMP LED TUBE
Office administration	LED-L16-1	1	1	***LEAVE AS IS***
Office administration	LIN-LED-L15T8LED-2	2	3	DIRECT WIRE 4' 2-LAMP LED TUBE
Stairwell	INCAN-I60-1	1	5	LED A LAMP SCREW-IN
Basement	LED-L25-1 4' VAPORTITE	1	17	NEW 4' LED STRIP
Basement	F-F40T12-2	2	1	DIRECT WIRE 4' 2-LAMP LED TUBE
Basement	LED-L25-1 8' CHANNEL	1	5	NEW 8' LED STRIP
Basement	LED-L25-1 4' CHANNEL	1	1	NEW 4' LED STRIP
Grit Area building	LED-L100-1	1	7	NEW LED SURFACE CANOPY
Primary pumps Room	F-F32T8-2	2	18	DIRECT WIRE 4' 2-LAMP LED TUBE
Aeration Room	F-F32T8-2	2	8	DIRECT WIRE 4' 2-LAMP LED TUBE
RAS Building	F-F32T8-2	2	6	DIRECT WIRE 4' 2-LAMP LED TUBE
Equipment Garage	LED-L25-1	2	6	***LEAVE AS IS***
Equipment Garage	F-F32T8-2	2	1	DIRECT WIRE 4' 2-LAMP LED TUBE
Vehicle Garage	LED-L25-1	1	12	***LEAVE AS IS***

Vehicle Garage	F-F32T8-3	3	9	DIRECT WIRE 4' 3-LAMP LED TUBE
Vehicle Garage	F-F40T12-2	2	1	DIRECT WIRE 4' 2-LAMP LED TUBE

Grounds Maintenance Buildings Building Area	Fixture Type	No. of Lamps	Qty	Proposed
800 Bldg	F-F96T12/HO-2	2	8	NEW 8' LED STRIP
Salt Shed	MH-MH250-1	1	1	NEW LED TRUNNION MOUNT FLOOD
700 bldg	F-F96T12/HO-2	2	10	NEW 8' LED STRIP
900 bldg	F-F96T12/HO-2	2	12	NEW 8' LED STRIP
900 bldg	INCAN-I100-1	1	1	LED A LAMP SCREW-IN
600 bldg	F-F96T12/HO-2	2	10	NEW 8' LED STRIP
500 bldg	F-F96T12/HO-2	2	10	NEW 8' LED STRIP
400 bldg	F-F96T12/HO-2	2	9	NEW 8' LED STRIP
400 bldg	LIN-LED-L15T8LED-2	2	2	DIRECT WIRE 4' 2-LAMP LED TUBE
300 bldg	F-F96T12/HO-2	2	10	NEW 8' LED STRIP
200 bldg	F-F96T12/HO-2	2	10	NEW 8' LED STRIP
100 bldg	F-F96T12/HO-2	2	10	NEW 8' LED STRIP

2. Building Automation

The following scope of work shall apply to all buildings included in the detailed audit sheets. Materials to be furnished and work to be performed shall include:

A. Municipal/Administration Building

Gardiner will install KMC App-Stats for the furnaces & UH'S and replace the Carrier VVT system with the KMC Changeover bypass system. Each HVAC unit will be stand-alone control (not networked)

- Firehouse – (2) Gas Fired UH'S.
- Basement – (2) Gas Fired Furnaces with Split DX.
- 2nd floor - (3) Gas Fired Furnaces with Split DX.
- Carrier Gas Fired Furnaces (Twinned) – carrier VVT System with (6) Zones & (1) Bypass.

Attachment 4

to

Exhibit A Statement of Work

Expected Financial Benefits

Exhibit 1. Projected Annual Cash Flows from AMI and Energy Management Projects

Project Annual Cash Flow Sheet

	Increased Revenues	Ops Savings	Total Annual Savings
<i>Construction</i>	\$167,610		\$167,610
1	\$372,467	\$78,943	\$451,410
2	\$379,916	\$78,943	\$458,859
3	\$387,515	\$78,943	\$466,458
4	\$395,265	\$78,943	\$474,208
5	\$403,170	\$78,943	\$482,113
6	\$411,234	\$78,943	\$490,177
7	\$419,458	\$78,943	\$498,401
8	\$427,848	\$78,943	\$506,791
9	\$436,404	\$78,943	\$515,347
10	\$445,133	\$78,943	\$524,076
11	\$454,035	\$78,943	\$532,978
12	\$463,116	\$78,943	\$542,059
13	\$472,378	\$78,943	\$551,321
14	\$481,826	\$78,943	\$560,769
15	\$491,462	\$78,943	\$570,405
Total	\$6,608,837	\$1,184,145	\$7,792,982

Exhibit 2. Construction Period Savings = 45% of Annual Savings from Exhibit 3

Source of Project Benefits	Annual Increased Utility Revenue
Meter Reading Staff Reduction	
Avoided Utility Theft (1% of Electric, water ,sewer)	\$38,497.05
LED Lighting Operationsl Savings	
HVAC/LED Lighting Energy Savings	
increased Electrical billable useage (3%)	\$72,558.00
Increased Water Billable Useage (3%)	\$23,485.05
Increased Sewer Billable Useage (3%)	\$18,287.55
Elimination of Meter Re-Reads (electrical)	
Elimination of Meter Re-Reads (water)	
Trumbull County /Braceville meter	\$14,782.50
Elimination of Shut-offs/ turn on Electrical	
TOTAL INCREASED UTILITY REVENUE	\$167,610.15

Exhibit 3. Measured Project Benefits (non-Guaranteed)

The project benefits identified below shall be Measured Project Benefits (non-guaranteed) under this exhibit. Gardiner will supply an annual report on the achievement of the expected measured project benefits.

Source of Project Benefits	Annual Increased Utility Revenue	Annual Operational Savings	Description
Meter Reading Staff Reduction		\$3,000.00	
Avoided Utility Theft (1% of Electric, water ,sewer)	\$85,549.00		AWWA Standard
LED Lighting Operationsl Savings		\$2,536.00	
HVAC/LED Lighting Energy Savings		\$25,407.00	Calculated through Audit
increased Electrical billable useage (3%)	\$161,240.00		
Increased Water Billable Useage (3%)	\$52,189.00		
Increased Sewer Billable Useage (3%)	\$40,639.00		
Elimination of Meter Re-Reads (electrical)		\$21,120.00	449/year - 2 FTE's@10/day = 44 days@ \$480/Day
Elimination of Meter Re-Reads (water)		\$21,120.00	449/year - 2 FTE's@10/day = 44 days@ \$480/Day
Trumbull County /Braceville meter	\$32,850.00		Per new revenue results
Elimination of Shut-offs/ turn on Electrical		\$5,760.00	120/year - 2 FTE's@10/month=12 days@480/Day
TOTAL INCREASED UTILITY REVENUE	\$372,467.00	\$78,943.00	
TOTAL ALL REVENUE/SAVINGS SOURCES	\$451,410.00		

Attachment 5
to
Exhibit A Statement of Work
Change Order Procedure

Any change to a Statement of Work must be agreed upon in writing by both parties. The following procedure (whether requested by the Gardiner, Client or Aclara) will be used to control all changes. All Requests for Change ("RFC") to the applicable Statement of Work must be made in writing and shall be submitted by the appropriate Project Manager. Each request should contain the following information:

- The requested change;
- The impact, if any, on the existing work product;
- Estimated impact, if any, on Project schedule;
and
- Estimated change, if any, in Services fee

The Project Manager shall review and accept or reject the RFC. If rejected, the RFC shall be returned to the submitting party with written reasons for rejection and, as appropriate, any alternatives. All approved RFC's will be incorporated into the Change Order to this Statement of Work. Gardiner and its subcontractors will not perform any Services outside of the Statement of Work until the RFC has been signed by both parties.

- 1. Describe the requested change: _____

- 2. Define the impact, if any, on existing work product: _____

- 3. Define additional work product required as a result of the requested change, if any: _____

- 4. Define the impact, if any, to the existing Project schedule. Provide an updated Project schedule, if appropriate. _____

- 5. Provide an updated work product and payment schedule, if appropriate. _____

Accepted By:

Gardiner

By: _____
Print name: _____
Title: _____
Date: _____

Accepted By:

City of Newton Falls Light and Power

By: _____
Print name: _____
Title: _____
Date: _____

Attachment 6
to
Exhibit A Statement of Work

Gardiner Intelligent Services Support

Intelligent Service

Intelligent Service Agreement

CONTRACT PRESENTED TO:

City of Newton Falls

19 North Canal St.
Newton Falls, OH 44444



PROJECT AND/OR LOCATION:

City of Newton Falls

Various Locations

Agreement No:

SERVICE AGREEMENT PRICING AND ACCEPTANCE

PROJECT & LOCATION: **Newton Falls City Hall** **Newton Falls Waste Water Treatment Plant**
 Newton Falls Water Plant **Newton Falls Finance Building**

Automated Meter Infrastructure

GARDINER COMPANY, herein referred to as the Service Company, agrees to furnish services in accordance with the "General Terms and Conditions" and attached "Schedules". This AGREEMENT shall become valid only upon acceptance by **CUSTOMER** and approved by the Service Company.

The agreement price is as follows:

	Annual Amount	Monthly Amount
Base Agreement – One Year	\$22,127	\$1,844
Option – Year Two and Three	\$20,527 ea.	\$1,711

Any repairs of equipment are provided outside the scope of this agreement. Upon execution of this Agreement, the customer shall be responsible for determining proper Ohio sales tax. If you are tax exempt, please include your tax exemption certificate. This price is to be adjusted in future years as herein provided.

This agreement is effective from _____ **through** _____, and shall remain in effect from year to year unless terminated by either party at the end of the anniversary date by giving at least thirty (30) days written notice.

Note: This price includes provisions for safety under standard industry & Gardiner safety guidelines. Any special additional safety training, equipment, or processes required by your organization could affect the project scope and/or hours and may result in a price adjustment. If you have any specific safety practices or requirements, please alert your sales representative immediately so we ensure that our proposal fully meets your requirements.

SUBMITTED BY: Kevin Pugely Date:
 Sustainability Services

CUSTOMER ACCEPTANCE:

SERVICE COMPANY APPROVAL:

Signature: _____

Signature: _____

Title: _____

Title: Kevin Pugely
Sustainability Services

Acceptance Date: _____

Purchase Order No: _____

GARDINER COPY

SCOPE OF SERVICE – INTELLIGENT SERVICES

PROJECT & LOCATION: **Newton Falls City Hall** **Newton Falls Waste Water Treatment Plant**
 Newton Falls Water Plant **Newton Falls Finance Building**

Automated Meter Infrastructure

OPERATIONAL SUPPORT	INTELLIGENT SERVICES
<ul style="list-style-type: none">● Field Support<ul style="list-style-type: none">● On-Site Operational Reviews – Semi Annually● Remote Operational Reviews● Help Desk Support● Water and Electric AMI Analytics – Semi-Annually	<ul style="list-style-type: none"><input checked="" type="checkbox"/><input checked="" type="checkbox"/><input checked="" type="checkbox"/><input checked="" type="checkbox"/>

INTELLIGENT SERVICES

Field Support

The operator interface is the key to the performance of the building temperature control, automation system and Automated Meter Infrastructure (AMI) and ultimately the energy efficiency and the productivity of the facility. The Operational Reviews are designed to allow the Intelligent Services technician to inspect the database to help ensure proper operation. Time-of-day equipment scheduling, date, time, temperature settings, and alarm logs will be reviewed and any minor changes will be made as directed. In the event there are immediate needs of the City, the technician's time can be spent troubleshooting known issues.

On-Site Operational Reviews – City Hall, WWTP, Water Plant, Finance Building, AMI

- Investigate documented issues from the client
- Review and take corrective action on issues discovered through client review.
 1. Programming modification
 2. Sensor calibration / verification (if necessary)
 3. Set-point modifications
 4. Evaluate faulted AMI components
- Training
- Recommended Software maintenance and upgrades
- Provide a written report of completed work, and indicate any uncorrected deficiencies.

Help Desk Support – All Buildings

The Help Desk is staffed during normal business hours (8:00am – 5:00pm) to provide qualified technical assistance with minor questions related to the operation of the facilities and AMI systems. They can help assist with such things as:

- Set point changes
- Changing time schedules
- Setup of trends and calculations
- Changing user authorization settings
- Understanding the buildings operation
- Informal training

INTELLIGENT SERVICES

Water and AMI Analytics

Gardiner will supply 2 semiannual reports documenting results of the Automated Meter Infrastructure (AMI) program. Gardiner Energy Engineers will analyze and interpret data into recommended action items to improve your improve AMI performance.

Results and recommendations will be presented in summary reports including the following areas:

- Meter reading staff reductions or Re-allocations
 - Vehicle Cost reductions
 - Replacement of Neptune Reading Devices
 - Water Meter Replacement Costs
 - Electric meter Replacement Costs
 - Avoided Utility Theft
 - Avoided Bad Debt write-offs
 - Increased Department efficiencies
 - Increase in water meter accuracy
 - Increase in electric meter accuracy
 - Decrease in net water loss billable
- **Annual Report**
 - Detailed Energy Saving utility report on all buildings that are part of the base project.

ACCEPTANCE

If your order is an acceptance of a written proposal, on a form provided by Gardiner Service Company LLC dba GARDINER ("GSC"), without the addition of any other terms and conditions of sale or any other modification, this document shall be treated solely as an acknowledgment of such order, subject to credit approval. If your order is not such an acceptance, then this document is GSC's offer, subject to credit approval, to provide the goods and/or work solely in accordance with the following terms and conditions of sale. Customer's acceptance of goods and/or work by GSC on this order will in any event constitute an acceptance by Customer of these terms and conditions. This proposal shall remain valid for a period of 30 days from the date of proposal.

PAYMENT TERMS

Customer shall pay GSC's invoices within net thirty (30) days of invoice date. GSC will invoice Customer for all equipment or material furnished, whether delivered to the installation site or to an off-site storage facility and for all work performed on-site or off-site on a monthly basis. All amounts outstanding 10 days beyond the due date are subject to a service charge not to exceed 1.5% of the principal amount due or the maximum allowable legal interest rate, retroactive to the due date. Customer shall pay all costs (including attorneys' fees) incurred by GSC in attempting to collect amounts due.

ASBESTOS & HAZARDOUS MATERIALS

GSC's work and other services in connection with this Agreement expressly excludes any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos, polychlorinated biphenyl ("PCB"), or other hazardous materials (hereinafter, collectively, "Hazardous Materials").

INDEMNIFICATION

GSC and Customer shall mutually, in proportion to their respective degree of fault, indemnify, defend and hold each other harmless from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or tangible personal property, to the extent caused by the negligence or misconduct of the indemnifying party, and /or its respective employees or agents. With respect to any claims based on facts or conditions that occurred prior to expiration or termination of this agreement, the duty to indemnify will continue in full force and effect notwithstanding expiration or early termination.

NO-HIRE; NO-SOLICITATION

Customer hereby covenants and agrees that, without the prior written consent of the Company, he/it will not, directly or indirectly (including, without limitation, through any affiliate or related party), (for a period of two (2) years after the date hereof solicit the employment of, offer employment to or hire, any employee of the Company, or any individual whose employment with the Company ended less than one hundred eighty (180) days prior to such solicitation or offer. Customer acknowledges that in the event of a violation of the covenants contained in this Section, the Company's damages will be difficult to ascertain and the Company's remedies at law will be inadequate. Accordingly, the Customer agrees that, in addition to such remedies as the Company may have at law, the Company shall be entitled to specific performance of such covenants and to an injunction to prevent any continuing violation thereof.

WARRANTY

GSC guarantees service work and all materials of GSC's manufacture against defects in workmanship for 365 days from date of completion of work and will repair or replace such products or components as GSC finds defective. This warranty does not include cost of handling, shipping or transportation involved in supplying replacements for defective components. This warranty does not include the replacement of refrigerant lost from the system. On

machinery and materials furnished by GSC, but manufactured by others, the only warranty provided is that of the manufacturer. THE WARRANTY AND LIABILITY SET FORTH IN THE PRECEDING PARAGRAPH ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR FITNESS FOR A PARTICULAR PURPOSE.

LIMITATION OF LIABILITY

All claims, causes of action or legal proceedings against GSC arising from GSC performance under this contract must be commenced by Customer within the express warranty period specified above. Failure to commence any such claim, cause of action or legal proceeding within such period shall constitute a voluntary and knowing waiver thereof of Customer. IN NO EVENT SHALL GSC'S LIABILITY FOR DIRECT OR COMPENSATORY DAMAGES EXCEED THE PAYMENTS RECEIVED BY GSC FROM CUSTOMER UNDER THIS CONTRACT, NOR SHALL GSC BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES. THESE LIMITATIONS ON DAMAGES SHALL APPLY UNDER ALL THEORIES OF LIABILITY OR CAUSES OF ACTION, INCLUDING BUT NOT LIMITED TO, CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY. GSC DISCLAIMS ANY LIABILITY FOR DAMAGES OR ANY KIND ARISING FROM MOLD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR ANY OTHER CONTAMINATES.

DISPUTES & CHOICE OF LAWS

This contract shall be deemed to have been entered into and shall be governed by the laws of the State of Ohio. All claims, disputes, and controversies arising out of or relating to this contract, shall be submitted to mediation, pursuant to the Commercial Dispute Resolution Procedures ("CDRP") of the American Arbitration Association. The mediation shall take place in Cleveland, Ohio within thirty (30) days of the date the dispute arises. If mediation is unsuccessful, the dispute shall proceed to binding arbitration, pursuant to the CDRP, in Cleveland, Ohio, no later than sixty (60) days after the mediation is concluded. Any judgement upon the arbitration award may be confirmed in any court having jurisdiction thereof. The parties agree that any party to the arbitration shall be entitled to discovery from the other party as provided by the Ohio Rules of Civil Procedure. All discovery shall be completed within (4) months from the date the Demand for Arbitration is filed with the American Arbitration Association. Unless otherwise agreed, the arbitration shall be completed no later than six (6) months after the arbitration commenced.

ENTIRE AGREEMENT

These terms and conditions, and the terms and conditions on the reverse side hereof, constitute the entire agreement between GSC and Customer. If there is a conflict with any other terms and conditions, these terms and conditions, together with those on the reverse side hereof, shall control. No course of dealing or performance, or prior, concurrent or subsequent understanding, agreements or representations become part of this contract unless expressly agreed to in writing by an authorized representative of GSC.

CONTRACT AMOUNT: \$ 3,041,203.00
CONTRACT AMOUNT: \$ 22,127.00 (1st year IS agreement)

ASSIGNMENT

Neither GSC nor Customer may assign, transfer, or convey this Agreement, or any part hereof, or its right, title or interest herein, without the written consent of the other party.

CUSTOMER SIGNATURE OF ACCEPTANCE	DATE	_____	_____
GSC REPRESENTATIVE	DATE	_____	_____

RESOLUTION 20-2020

A RESOLUTION AUTHORIZING THE FINANCE DIRECTOR TO ESTABLISH
CAPITAL IMPROVEMENT & DEBT RETIREMENT FUNDS.

*(Sponsored by Mayor Kline, Ward 1 Councilman Zachary Svette, Ward 3 Councilman
Lyle Waddell, Ward 4 Councilman Sandra Breymaier, at-large Councilman Tarry
Alberini)*

WHEREAS, The City of Newton Falls applied for and received bonds to finance several projects; and

WHEREAS, The City wishes to establish Capital Improvement funds for the administration of the monies and track spending of the bond financing projects; and

WHEREAS, The bonds were issued to the City to cover the cost of acquisition and improvement of certain real property for use as a municipal building, acquiring and installing certain site improvements comprised of fences for municipal baseball fields and, acquisition and installation of certain sewer improvements comprising the Medley Avenue sewer project; and

WHEREAS, Council for the City of Newton Falls wishes to authorize the Finance Director to establish said funds.

COUNCIL FOR THE CITY OF NEWTON FALLS, STATE OF OHIO, HEREBY
RESOLVES:

SECTION 1: The Council of the City of Newton Falls hereby authorizes the Finance Director to establish the following funds:

- Fund 407 - Capital Improvement Broad Street City Hall Fund.
- Fund 408 – Capital Improvement Park Fencing Project.
- Fund 409 – Capital Improvement Medley Sewer Project
- Fund 521 – Debt Retirement for Bond Series 2020.

PASSED IN COUNCIL THIS 6th DAY OF JULY 2020.

Mayor, Kenneth A. Kline

ATTEST: _____
City Clerk/Clerk of Council
Kathleen M. King