# BRUNSWICK CITY
# COMMITTEE-OF-THE-WHOLE

## Agenda

**FEBRUARY 22, 2021**
**6:30 PM**
**Or immediately following the Services, Utilities, Tech. & Cable Committee Meeting**

1. Discussion Items

    (a) The Bell Tower Project from Carl Bilski, President of the Historical Society.

2. Motion Items

    (a) Motion to appoint Clerk of Council Fijabi Julien-Gallam as Designee for all elected officials to attend public records training as required by Section 149.43 and 109.43 of the Ohio Revised Code.

3. Review Legislation

    **RES. NO. 21-2021** - An emergency resolution authorizing the City Manager to enter into a thirty-six (36) month agreement with next era energy services for provision of electricity at the fixed rate amount of $0.0458 per kilowatt hour. - **1st Reading** (To be brought from Committee-of-the-Whole, *Administration/Paul Barnett*)

    **ORD. NO. 22-2021** - An emergency ordinance establishing Section 258.14 of the City of Brunswick Codified Ordinances Military Service Leave of Absence as Attached in Exhibit A. - **1st Reading** (To be brought from Committee-of-the-Whole, *Administration/Todd Fischer*)

4. General Discussion

5. Adjournment

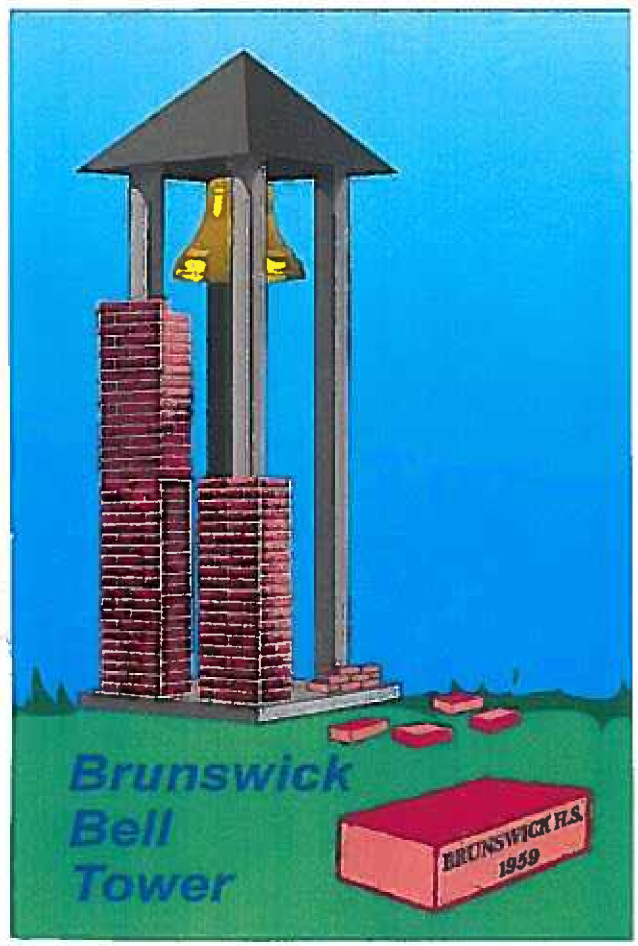
THE CITY OF BRUNSWICK

# DISCUSSION

| | |
|---|---|
| **DATE:** | 2/22/2021 |
| **TO:** | Vice Mayor Michael Abella Jr. and Members of City Council |
| **FROM:** | Michael Abella Jr. |
| **COPY:** | Mayor Ron Falconi |
| **DISCUSSION:** | The Bell Tower Project from Carl Bilski, President of the Historical Society. |
| **BACKGROUND:** | |
| **PURPOSE AND EXPLANATION:** | |
| **IMPLEMENTATION SCHEDULE:** | |
| **FINANCIAL INFORMATION:** | |
| **FINANCIAL SUMMARY:** | |
| **RECOMMENDED ACTION:** | |
| **ADDITIONAL INFORMATION:** | |

Dear Fellow Veterans
And Any Interested Individuals and Business,

I am Carl J. Bilski President of Brunswick area Historical Society. To raise money to complete pay-off of our new building to house the past artifacts of Brunswick for the education of today's youth and new Brunswick – its. I am looking for sponsors to donate a laser engraved old Brunswick school brick with the name of a Brunswick Veteran lost in battle during service! The brick will have the name, rank, and year passed, along with the sponsor's name or business. The lost Veteran's bricks will have a special place in the Bell Tower at the Historical Farm on Laurel road. If you have never been to this wonderful piece of Brunswick history, please make a point to visit it one day! Brick donation is $145.00.




Sincerely,

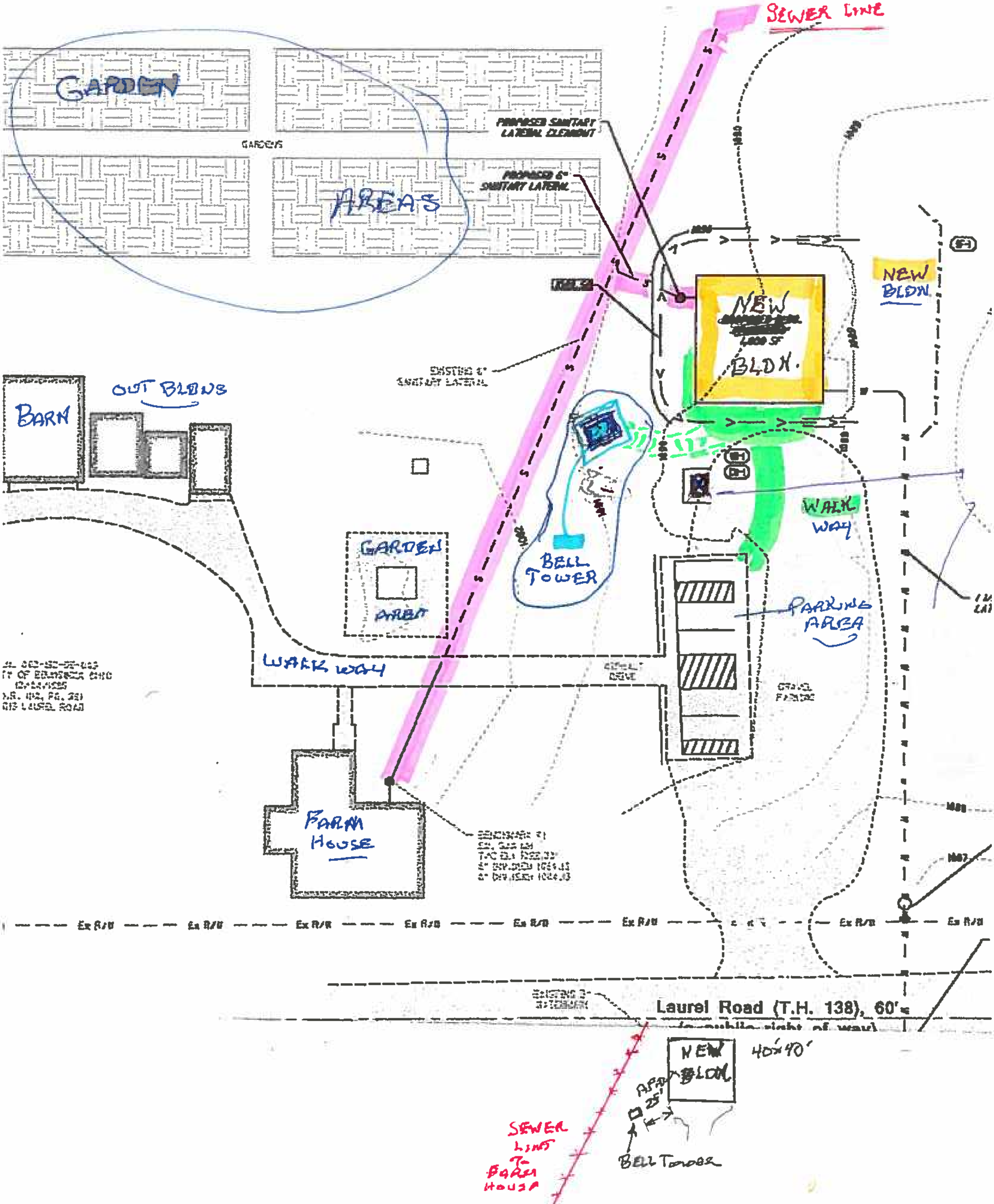
Carl Bilski President
In Memory of All Our Veterans
"Veterans Live Forever"
Thesandman@zoominternet.net
216-780-1309

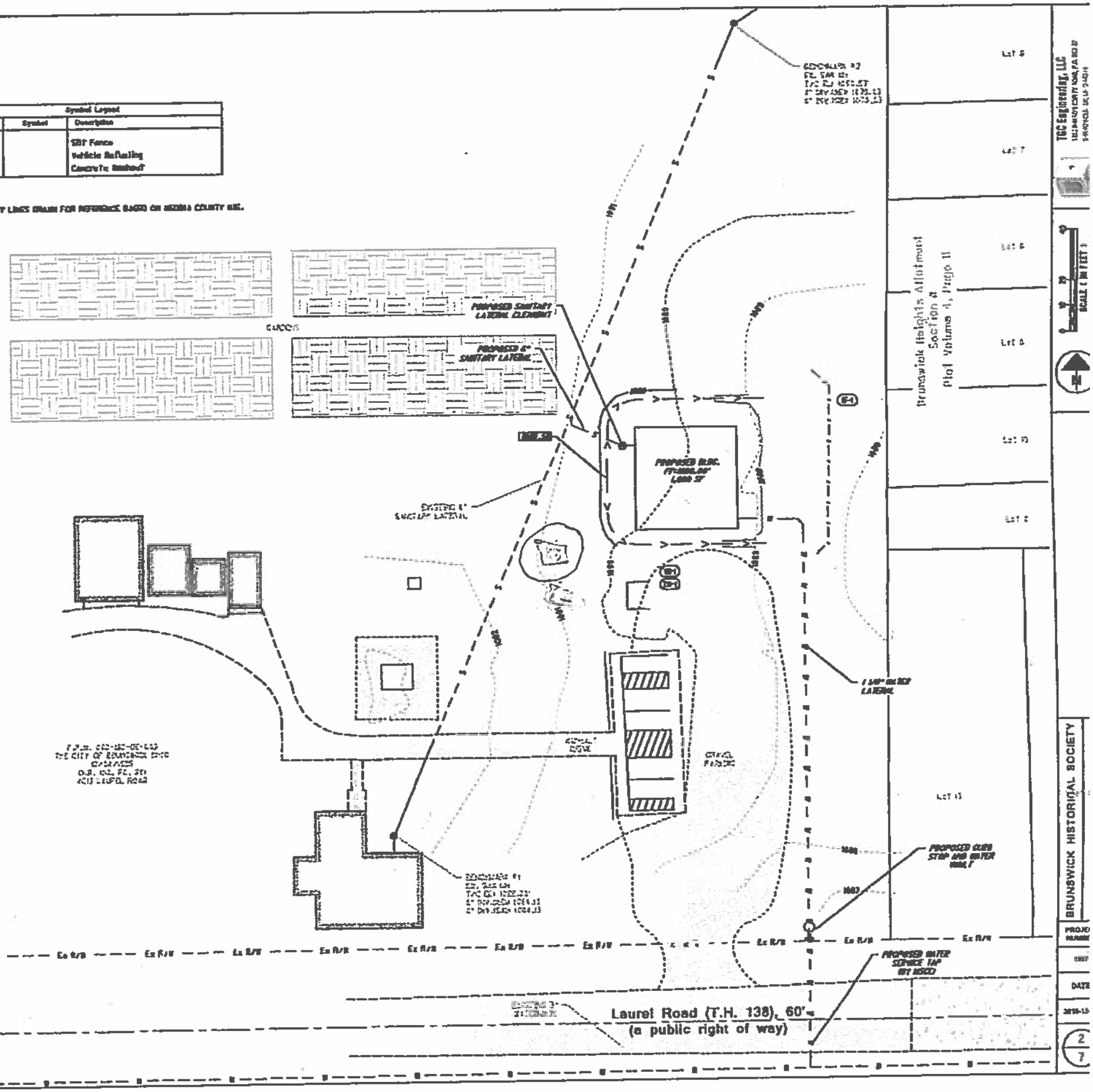
SGT. JOHN DOE 19??
US ARMY

SPONSOR'S NAME ——


SAMPLE ALUMNI BRICK

Carl J. Bilski
216-780-1309






| Symbol Legend | | |
|---|---|---|
| ID | Symbol | Description |
| [illegible] | | Silt Fence |
| [illegible] | | Vehicle Refueling |
| [illegible] | | Concrete Washout |

NOTES:

PROPERTY LINES DRAWN FOR REFERENCE BASED ON MEDINA COUNTY GIS.

## GENERAL NOTES:

1. REFERENCE SITE PLAN AND ARCHITECTURAL PLANS FOR ADDITIONAL GENERAL NOTES.
2. COMPACTION TESTING OF FILL MATERIAL UNDER PROPOSED PAVEMENT AREAS SHALL BE PERFORMED BY OWNERS REPRESENTATIVE AND AS DIRECTED BY OWNERS REPRESENTATIVE. FILL WHICH FAILS TO MEET THE APPLICABLE COMPACTION REQUIREMENTS SHALL BE CORRECTED BEFORE PAVING WILL BE PERMITTED. CONTRACTOR TO PROVIDE OWNERS WITH 48-HOUR ADVANCE NOTICE OF FILL PLACEMENT ACTIVITIES.
3. THE CONTRACTOR IS SOLELY RESPONSIBLE FOR DETERMINING ACTUAL LOCATIONS AND ELEVATIONS OF ALL UTILITIES, INCLUDING SERVICES, PRIOR TO CONSTRUCTION.
4. UNDERDRAINS MAY BE ADDED, IF DETERMINED NECESSARY BY THE ENGINEER OR CONSTRUCTION REPRESENTATIVE, AFTER SUBGRADE IS ROUGH GRADED.
5. UNLESS OTHERWISE INDICATED AT A SPECIFIC LOCATION, ALL FINISHED GRADES AT THE LIMITS OF NEW WORK ARE TO CONFORM TO AND MATCH EXISTING GRADES.
6. THE CONTRACTOR SHALL RESTORE ANY STRUCTURE, PIPE, UTILITY, PAVEMENT, CURBS, SIDEWALKS, LANDSCAPED AREAS, ETC. DISTURBED DURING CONSTRUCTION TO THE ORIGINAL CONDITION OR BETTER.
7. THE CONTRACTOR SHALL PRESERVE EXISTING VEGETATION WHERE POSSIBLE AND/OR AS NOTED ON DRAWINGS.
8. ALL DISTURBANCE INCURRED TO COUNTY OR PERSONAL PROPERTY DUE TO CONSTRUCTION SHALL BE RESTORED TO ITS PREVIOUS CONDITION OR BETTER, TO THE SATISFACTION OF THE LOCAL AGENCY.
9. ALL WORK, INCLUDING GRADING, TO COMPLETE THE INSTALLATION OF THE PROPOSED BUILDINGS, PARKING AREA, AND UTILITIES MUST OCCUR ON THE SUBJECT PARCEL UNLESS WRITTEN PERMISSION IS RECEIVED FROM THE ADJOINING PARCEL OWNER AND SUBMITTED TO THE CITY OF MEDINA. CITY OF MEDINA PLAN APPROVAL IN NO WAY GRANTS PERMISSION TO ENTER ONTO ANY ADJOINING PROPERTY.
10. PER MCSE, THE CONTRACTOR SHALL TELEVISE THE EXISTING SANITARY LATERAL CONNECTION. THE [illegible] OF THIS SEWER CONNECTION SHALL BE SUBMITTED TO MCSE FOR REVIEW.

## FILL/ BACKFILL REQUIREMENTS:

ANY FILL OR BACKFILL [illegible] WITHIN BUILDING AND PAVEMENT LIMITS SHOULD BE SELECT MATERIAL, AS APPROVED BY A QUALIFIED GEOTECHNICAL ENGINEER. FOR ALL FILLING OPERATIONS, THE FOLLOWING SHOULD BE OBSERVED:

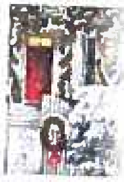
1. PRIOR TO USE, THE APPROVED FILL MATERIAL SHOULD BE TESTED AS OUTLINED IN ASTM D-698 TO DETERMINE THE MAXIMUM DRY DENSITY AND OPTIMUM MOISTURE CONTENT FOR SILTY OR COHESIVE SOILS, OR ASTM D-4253 AND D-4254 FOR CLEAN GRANULAR SOILS. FOR EACH CHANGE IN BORROW MATERIAL, ADDITIONAL TESTS WILL BE REQUIRED.
2. THE FILL MATERIAL SHOULD BE PLACED ON THE APPROVED SUBGRADE IN CONTROLLED LIFTS, WITH EACH LIFT COMPACTED TO A STABLE CONDITION, AND TO A MINIMUM OF 98% MAXIMUM DRY DENSITY PER ASTM D-698 AT A MOISTURE CONTENT BETWEEN 3% OR BELOW TO 1.5% OVER OPTIMUM MOISTURE. CONTROLLED LIFTS OF GRANULAR MATERIAL SHOULD BE COMPACTED TO [illegible] RELATIVE DENSITY PER ASTM D-4254.
3. ALL FILLING OPERATIONS SHOULD BE OBSERVED BY A QUALIFIED SOILS TECHNICIAN WITH FIELD DENSITY TESTS MADE, TO ASSURE COMPACTION TO SPECIFICATION.

1

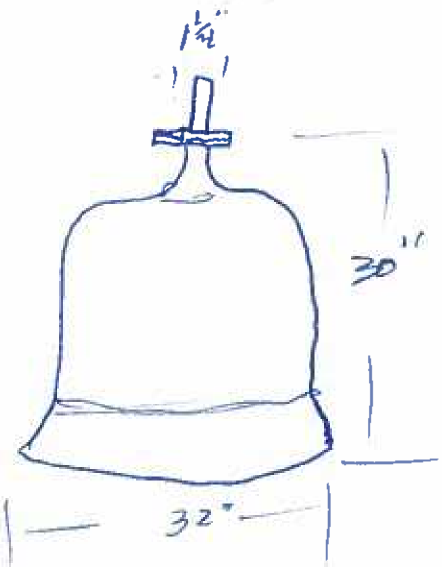
2

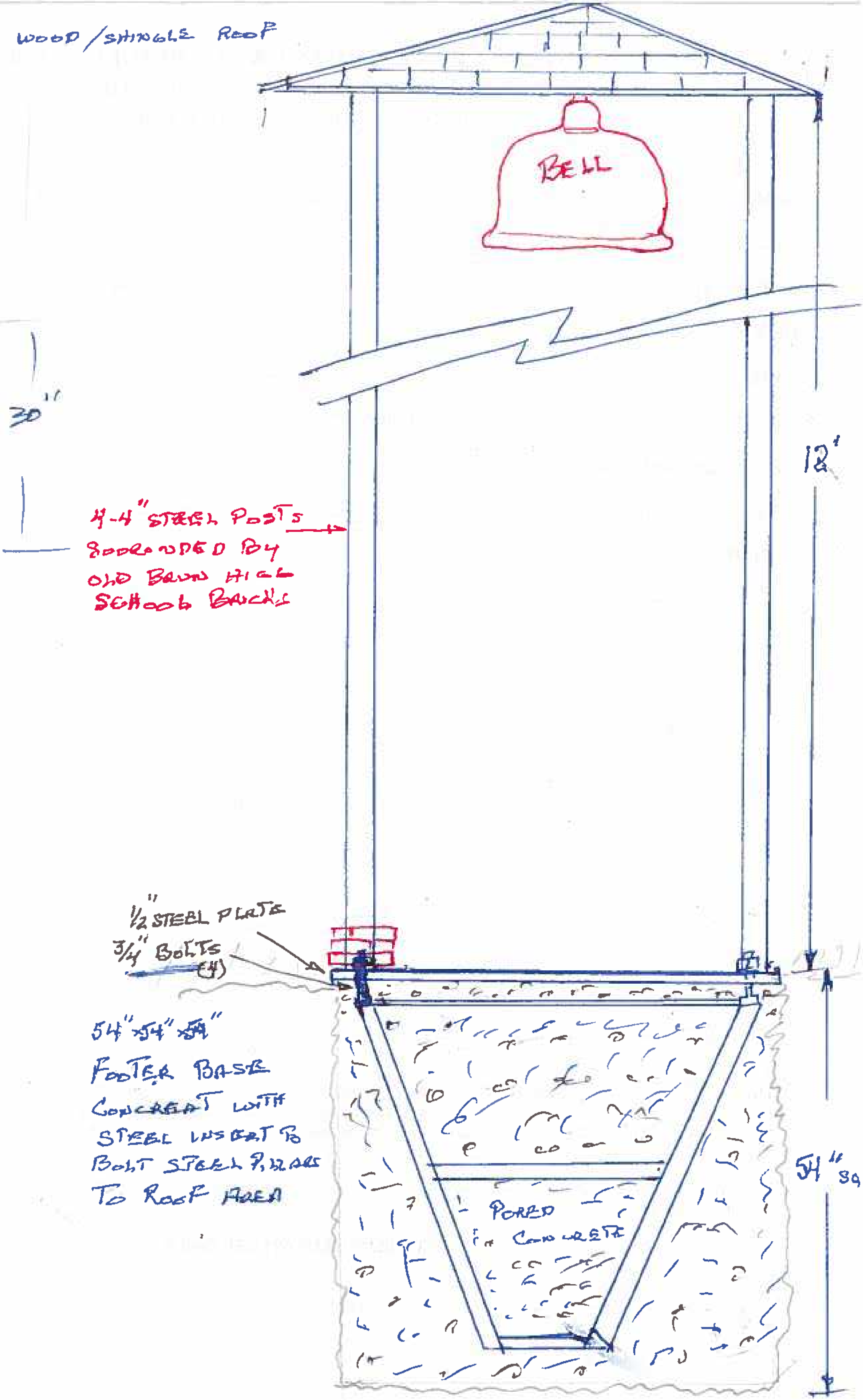
THIS BELL TOWER WILL SET ON A 52" STEEL BASE PLATE MOUNTED TO A CONCRETE 54"x 54" x 54" DEEP FOOTER W/STEEL REINFORCEMENT AND BOLTS. TOWER IS 4"x ¼" WALL x 12' STEEL TUBING (4) W/ 2"x 4" L TOP ANGLE IORN TO SUPPORT THE 365 LB BELL & WOOD ROOF.

OLD HIGH SCHOOL BRICKS WITH BRUNSWICK ALUMNI AND VETERANS LOST IN DEFENDING OUR COUNTRY WILL SORROUND THE STEEL TUBES, (SEE TOWER PIC) #3



Mr. Carl Bilski
4274 Marks Rd
Medina, OH 44256




Carl J. Bilski
216-780-1309

THE CITY OF BRUNSWICK

# PROPOSED MOTION

| | |
|---|---|
| **DATE:** | 2/22/2021 |
| **TO:** | Vice Mayor Michael Abella Jr. and Members of City Council |
| **FROM:** | Carl S. DeForest, City Manager |
| **COPY:** | Mayor Ron Falconi |
| **MOTION:** | Motion to appoint Clerk of Council Fijabi Julien-Gallam as Designee for all elected officials to attend public records training as required by Section 149.43 and 109.43 of the Ohio Revised Code. |
| **BACKGROUND:** | 149.43 Availability of public records for inspection and copying:<br><br>(E)(1) To ensure that all employees of public offices are appropriately educated about a public office's obligations under division (B) of this section, all elected officials or their appropriate designees shall attend training approved by the attorney general as provided in section 109.43 of the Revised Code. A future official may satisfy the requirements of this division by attending the training before taking office, provided that the future official may not send a designee in the future official's place. |
| **PURPOSE AND EXPLANATION:** | |
| **IMPLEMENTATION SCHEDULE:** | |
| **FINANCIAL INFORMATION:** | |
| **FINANCIAL SUMMARY:** | |
| **RECOMMENDED ACTION:** | |
| **ADDITIONAL INFORMATION:** | |

**THE CITY OF BRUNSWICK**

# PROPOSED LEGISLATION

**DATE:** 2/22/2021

**TO:** Vice Mayor Michael Abella Jr. and Members of City Council

**FROM:** Carl S. DeForest, City Manager
Paul Barnett

**COPY:** Mayor Ron Falconi

**LEGISLATION:** **RES. NO. 21-2021** - An emergency resolution authorizing the City Manager to enter into a thirty-six (36) month agreement with next era energy services for provision of electricity at the fixed rate amount of $0.0458 per kilowatt hour. - **1st Reading** (To be brought from Committee-of-the-Whole, *Administration/Paul Barnett*)

**BACKGROUND:** Currently all City electrical supply is in an electrical supply program with Next Era Energy Services thru NOPEC at a rate of $0.04904 Kwh for a term of 42 months. This existing agreements fixed rate concludes on February 28, 2021. If the agreement is not terminated it will move into a variable rate for providing electric. Enclosed is an analysis of current rates with other suppliers. The anticipated rate of $0.05 Kwh is the lowest and best rate currently available. Note that the market constantly changes and the final rate may be slightly higher or lower at the time that we are able to sign the proposed agreement.

**PURPOSE AND EXPLANATION:** The purpose of this legislation is to purchase electric at the lowest possible price in order to save money.

**IMPLEMENTATION SCHEDULE:** The new rate will start on March 1, 2021.

**FINANCIAL INFORMATION:** Next Era Energy Services - - $0.05 Kwh - - - 0

**FINANCIAL SUMMARY:** The rate for the last 42 months has been $0.04851 Kwh. The proposed rate is $0.05 Kwh. Electrical usage varies annually and are charged to the respective utility lines based on the Department and the Council appropriations in place.

**RECOMMENDED ACTION:**

One Reading Yes

| | |
|---|---|
| Two Readings | No |
| Three Readings | No |
| Emergency | Yes |
| Suspension of Rules | Yes |

If emergency or suspension of the rules, why the request?

It is requested that legislation is passed by emergency measure with suspension of the rules for the immediate preservation of the public peace, property, health, safety, or welfare, and so that the legislation will be enacted and a fixed electrical rate can be set for the next 36 months beginning March, 1, 2021.

**ADDITIONAL INFORMATION:**

CITY OF BRUNSWICK, OHIO
RESOLUTION NO. 21-2021

BY: Committee-of-the-Whole

AN EMERGENCY RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A THIRTY-SIX (36) MONTH AGREEMENT WITH NEXT ERA ENERGY SERVICES FOR PROVISION OF ELECTRICITY AT THE FIXED RATE AMOUNT OF $0.0458 PER KILOWATT HOUR.

WHEREAS: The City has negotiated terms for the provision of electricity with Next Era Energy Services through NOPEC at the fixed rate amount of $0.0458 per kilowatt hour for thirty-six (36) months.

WHEREAS: THE COUNCIL OF THE CITY OF BRUNSWICK HEREBY RESOLVES:

SECTION 1: That the City Manager is hereby authorized and directed, upon approval of the Law Director, to enter into a thirty-six (36) month agreement with Next Era Energy Services for provision of electricity at the fixed rate amount of $0.0458 per kilowatt hour.

SECTION 2: That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety or welfare, and for the additional reason that immediate passage is necessary as the current agreement with Next Era Energy Services expires on February 28, 2021. Therefore, the same shall be in full force and effect from and after its passage by the required number of votes or from the earliest time allowed by law.

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PASSED: 1st Reading ______________________

Rules Suspended: AYES _____ NAYS _____

ADOPTED: ______________ AYES _____ NAYS _____

ATTEST: _______________________
Clerk of Council
Fijabi Julien-Gallam, CMC

NEXTera ENERGY SERVICES

# COMPETITIVE RETAIL ELECTRIC SERVICE CONTRACT

OHIO
Preferred NOPEC Municipal Pricing Program Standard Variable Product (Non-Aggregation)

This Competitive Retail Electric Service Contract ("Agreement") is between NextEra Energy Services Ohio, LLC ("Supplier") and ("Customer") (each a "Party" hereunder). Supplier shall provide Customer with Service under all of the terms and conditions stated in this Agreement, including the Terms of Service ("TOS"), attached hereto and made a part hereof, for the Electric Distribution Utility ("EDU") accounts ("Accounts") identified in Addendum A, attached hereto and made a part hereof.

| | Supplier Contact Information | Customer Contact Information |
|---|---|---|
| INTERNET: | www.nexteraenergyservices.com | |
| EMAIL: | contracts@nexteraenergyservices.com | |
| MAILING ADDRESS: | NextEra Energy Services Ohio, LLC<br>20455 State Highway 249 Suite 200<br>ATTN: Contract Administration<br>Houston, TX 77070 | |
| TELEPHONE: | 877.528.2890 | |
| FAX: | 800.627.8813 | |
| HOURS: | 9:00 am ET - 6:00 pm ET | |

**24 HOUR SERVICE OUTAGE REPORTING:** Should an outage or other service disruption occur, Customer should contact the appropriate Electric Distribution Utility: Call 1-888-544-4877 for Cleveland Electric Illuminating Company, Ohio Edison and Toledo Edison. For AEP Ohio call 1-800-672-2231.

**PRODUCT DESCRIPTION:** The product is full requirements electric generation service ("Service").

**PRICE:** The Price for Service during the Initial Term shall be $ per kilowatt hour ("kWh"). The Price includes costs and charges for electric energy, and estimated costs and charges for the following additional components of Service: congestion, line losses, renewable energy credits, ancillary services, generation deactivation, capacity and similar generation resource adequacy plans, and transmission services (where applicable), subject to any adjustments resulting in Pass-Through Charges (as defined in the TOS). The Price excludes any EDU charges, Pass-Through Charges, and Taxes as described in the Payments provision of this Agreement.

**INITIAL TERM:** 36 months, beginning after the date Service starts as to each Account and ending upon the meter read date in such end month, subject to any applicable EDU terms and conditions.

**ESTIMATED START MONTH:**

**HOLDOVER PRICE:** Holdover Price means the price set forth at https://www.nexteraenergyservices.com/aggregations/communities-we-serve/ohio/holdover for the utility in which Service is provided. The Holdover Price shall apply for Service provided by Supplier after the Initial Term if Supplier and Customer do not enter into a new or renewal agreement and Supplier continues to provide Service.

**PAYMENTS**: Customer shall pay the total monthly charge for Service ("Supplier Electricity Charge") as billed during the term of this Agreement. The Supplier Electricity Charge is the sum of (i) the product of Customer's total metered energy usage for the Accounts during an EDU billing cycle and the Price or Holdover Price, whichever is applicable, (ii) any Pass-Through Charges, and (iii) Taxes, if applicable.

| Customer | Supplier |
|---|---|
| Authorized Signature: ______________________ | Authorized Signature: ______________________ |
| Print Name: ______________________ | Print Name: ______________________ |
| Title: ______________________ | Title: ______________________ |
| Date: ______________________ | Date: ______________________ |



Doc. No. ECOMNEOHNOPECCRESC062719
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**Term.** This Agreement shall be effective upon the date it has been executed by both parties ("Effective Date"). Notwithstanding the "Estimated Start Month," if Customer is switching to Supplier, service from Supplier shall commence upon the date the EDU switches each Account to Supplier and continue through expiration of the Initial Term, and if Customer is renewing, then service hereunder shall commence with the first billing cycle following expiration of the term of the prior agreement. If Customer is not a Mercantile Customer, prior to expiration of the Initial Term we will send a notice to Customer explaining what will happen upon expiration of the Initial Term. **After the Initial Term expires, this Agreement shall continue on a month-to-month basis at the variable Holdover Price without Customer's affirmative consent even when there is a change in the price or other terms and conditions unless and until either Party terminates this Agreement upon at least thirty (30) days written notice to the other, in which event such termination shall be effective on the date following the date of such notice on which the EDU successfully switches Customer's Account(s) to another competitive electricity supplier or to the EDU's electric supply.** Supplier is permitted in its sole discretion to change the Holdover Price to a different price determined in its sole discretion without prior notice.

**Special Termination.** If, prior to expiration of the Initial Term, Customer withdraws from membership in the Northeast Ohio Public Energy Council ("NOPEC") or from NOPEC's electricity program, then this Agreement shall terminate as of the first EDU meter read date immediately following any such withdrawal or termination, and Customer shall pay Liquidated Damages to Supplier.

**Rescission.** The EDU will send a written notice to Customer confirming Customer's decision to enroll with Supplier. If Customer is not a Mercantile Customer, it will have the right to rescind this Agreement without penalty within seven (7) calendar days of receiving the confirmation letter from the EDU by contacting the EDU according to the instructions contained in the letter. If Customer is not a Mercantile Customer and does not rescind, or if it is a Mercantile Customer, Customer's acceptance of electricity from Supplier constitutes Customer's further acceptance of these Terms of Service.

**Switch of Service.** Supplier will work with the EDU to switch Service to each Account to Supplier in accordance with the applicable EDU tariff. Because of EDU processing, Supplier cannot guarantee the date by which switching of any Account may be completed. The EDU may charge switching fees to the Customer.

**Customer's Service.** Customer shall receive Service for each Account in accordance with the terms of this Agreement and authorizes Supplier to cause the EDU to transfer the Accounts to Supplier. Customer hereby provides Supplier with all necessary authority to obtain Customer's current and historical electricity cost and usage data from the EDU, and Customer's payment and credit history and other information reasonably requested by Supplier. Customer agrees, upon request, to provide Supplier with facility descriptions, operating information, Account numbers and service locations, and such other information available to Customer and reasonably requested by Supplier. Customer represents and warrants that Customer is not a residential customer as defined by Ohio law. To the extent allowable under PUCO rules and applicable law, Customer hereby waives Customer's rights under the PUCO rules applicable to electricity supply by CRES providers except as otherwise provided in this Agreement.

**Mercantile Customer.** "Mercantile Customer" means a commercial or industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than seven hundred thousand kilowatt hours per year or is part of a national account involving multiple facilities in one or more states.

**Adjustments.** "Pass-Through Charges" means new or increased costs and charges with respect to the purchase, sale, acquisition, delivery, transmission and/or distribution of electricity including, without limitation, those arising from MCU Events, or any event under the Legal Changes and Compliance section below, all of which shall be passed through to Customer by Supplier. Depending on the bill format, Pass-Through Charges may appear on Customer's bill as a line item or Price adjustment.

**Taxes.** "Taxes" means all federal, state, municipal or other governmental taxes, duties, fees, levies, premiums, assessments, surcharges, withholdings, or any other charges of any kind, if applicable, to Customer, any or all of which relate to the sale, purchase or delivery of electricity, together with all interest, penalties or other additional amounts imposed thereon, but excluding taxes on net income. If Customer is exempt from any Taxes, it is responsible for timely requesting an exemption by filing with Supplier and or the Utility all required documentation as such was filed with the Ohio Department of Taxation. If Customer fails to do so, Customer will be billed as if it is not exempt.

**Billing.** Customer consents to billing through one of the following options, as permitted by law, at Supplier's discretion: (i) Customer will receive one invoice from the EDU that includes the Supplier Electricity Charge, the EDU Delivery Charges and applicable Taxes (the "Consolidated Billing Option"); or (ii) Customer will receive two invoices, one from Supplier for the Supplier Electricity Charge and one from the EDU for the EDU delivery charges, each with applicable Taxes (the "Dual Billing Option"). Under the Consolidated Billing Option, Customer shall submit payment of the Supplier Electricity Charge directly to the EDU pursuant to the applicable EDU tariff. Under the Dual Billing Option, Customer shall pay the Supplier Electricity Charge directly to Supplier on or before sixteen (16) days after the billing date on Customer's invoice or the postmark date, whichever is later. If the EDU fails to timely obtain or transmit a meter reading, Supplier may issue or cause to be issued a bill to Customer based on its estimated energy usage and charges. In the event of a billing error, Supplier may issue a corrective invoice which Customer shall pay. Customer has the right to request from Supplier, twice within a twelve month period, up to twenty-four months of Customer's payment history without charge. If Customer fails to pay any amount when due, it shall pay a late fee for all past due amounts equal to the lesser of 1.5% per month or the maximum charge allowed by law.

**Credit Support.** If at any time Supplier determines in its reasonable discretion that Customer cannot demonstrate satisfactory creditworthiness, there has been a material adverse change in Customer's creditworthiness, or Customer fails to timely pay amounts when due or is otherwise in default of its obligations under this Agreement, then Supplier may require Customer to provide Supplier with a cash deposit or other credit support in an amount and form reasonably acceptable to Supplier. Credit review will typically be performed using credit agency reports (e.g. Dun & Bradstreet, Standard & Poor's and/or Moody's), if available, and deposits will typically not exceed 2 months of expected Customer billings. If utilized, any deposit balance remaining will be returned to Customer.

**Material Change in Usage ("MCU").** Customer shall provide Supplier at least thirty (30) days advance notice whenever Customer has reason to believe that, for reasons other than weather, Customer's estimated monthly aggregate usage will increase or decrease by more than 25% (each such material change being an "MCU Event"), and shall provide good faith estimates of such usage changes. For each MCU Event, regardless of whether notice is provided, Customer shall pay Supplier for any losses, or new or increased costs and charges, reasonably associated with such MCU Event and incurred by Supplier. Such losses, and/or costs and charges may be charged to Customer by Supplier as Pass-Through Charges.

**Legal Changes and Compliance.** "Change in Law" means a change in Applicable Law. "Applicable Law" means any law, regulation, rule, ordinance, order or decree by a governmental authority or the Regional Transmission Operator ("RTO")/Independent System Operator ("ISO"), including, without limitation, EDU tariffs (including, without limitation, rate class definitions and/or delivery voltage/service level requirements), RTO/ISO rules or protocols (including, without limitation, those affecting any fees, costs, or charges imposed by the RTO/ISO), market rules, load profiles, methods by which the EDU or the RTO/ISO calculates usage, nodal and zonal definitions, and/or ISO boundaries. A "change" includes, without limitation, any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness or any change in construction, interpretation or outcome. Notwithstanding any provision in this Agreement to the contrary, if there is a Change in Law and such Change in Law results in Supplier incurring material new or increased costs or charges in providing the Services contemplated herein, or if there are any material new or increased costs or charges incurred by Supplier, including costs or charges for renewable energy credits, capacity and/or network integrated transmission service, to comply with Applicable Law, such new or increased costs or charges shall be paid by Customer as Pass-Through Charges.

**Title.** Title to and risk of loss of the electric energy, ancillary services, renewable energy credits, and every other component of the Service provided hereunder shall pass to Customer at the point at which Supplier provides such component to the EDU.

**Force Majeure.** Neither Party will be in breach or liable for any delay or failure in its performance under this Agreement (except with respect to any payment obligations under this Agreement) to the extent such performance is prevented or delayed due to a Force Majeure Event. For purposes of this Agreement, a "Force Majeure Event" shall mean any act or event that (i) renders it impossible or impractical for the affected Party to perform its obligations under the Agreement, and (ii) is beyond the reasonable control of the affected Party, including, but not limited to, storms or floods, lightning, earthquakes and other acts of God, wars, civil disturbances, revolts, terrorist activity, sabotage, theft, vandalism or other actions by third parties, fires, explosions, failures of suppliers, utility action or inaction and actions of a governmental authority. In no event shall Supplier's ability to sell electricity at a higher price, or Customer's ability to purchase electricity at a lower price, constitute a Force Majeure Event under this Agreement.

**Limits on Liability; Disclaimer.** EACH PARTY'S LIABILITY TO THE OTHER UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES AS THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES AND DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, INCLUDING LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER IN TORT OR CONTRACT, OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT OR SERVICE. SUPPLIER EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER WRITTEN OR ORAL, OR EXPRESSED OR IMPLIED.

**Liquidated Damages.** Liquidated Damages means, as to each terminated Account(s), an amount equal to the product of: (i) the excess, if any, of the Price over the market price that is commercially available to Supplier for the same electricity usage which would have been supplied hereunder for the remainder of the Initial Term, all as reasonably determined by Supplier, and (ii) the estimated electricity usage which would have been supplied hereunder for the remainder of the Initial Term. To determine the "market price that is commercially available to Supplier," as used above, Supplier may consider, among other things, settlement prices of applicable NYMEX futures contracts, quotations from leading dealers in energy swap contracts and other bona fide offers from parties participating in the wholesale and/or retail power markets, which may include Supplier and/or its affiliates, all as commercially available to Supplier and all as adjusted for the length of the remaining Initial Term and otherwise as is commercially reasonable. Supplier will not be required to enter into any replacement transaction in order to determine such market price or actual damages.

**Termination by Customer.** Subject to the Special Termination provisions above, Customer may terminate this Agreement, in whole or as relating to any Account(s), without liability for Liquidated Damages so long as Customer is not in default of any material obligation under this Agreement, but Customer shall be obligated to pay for the electricity and related services provided to Customer pursuant to this Agreement prior to the date that such termination becomes effective, including applicable late payment fees.

**Termination by Supplier.** Supplier reserves the right to terminate this Agreement if Customer: (i) fails to make timely payment of all amounts due Supplier; or (ii) fails to post a security deposit under the provisions of the Credit Support section within ten (10) days of a written request for deposit; or (iii) breaches any warranty or representation to Supplier; or (iv) defaults on any material other obligation under this Agreement; or (v)(A) makes an assignment for the benefit of creditors, (B) files a petition or otherwise authorizes the commencement of a proceeding under the Bankruptcy Code or similar law for protection of creditors, or has such petition filed against it, (C) otherwise becomes bankrupt or insolvent, or (D) is unable to pay its debts as they fall due. In the event Service is terminated in accordance with this Section prior to expiration of the Initial Term, Customer shall pay Supplier the Liquidated Damages.

**Assignment.** Supplier may assign its rights and obligations under this Agreement to a third party. Customer may not assign its rights and obligations under this Agreement to a third party without the prior written consent of Supplier, which consent shall not be unreasonably withheld. Supplier may deny such assignment based on the creditworthiness of the assignee, as determined by Supplier in its reasonable discretion. Any attempted assignment in violation of this Agreement shall be null and void.

**Confidentiality.** Supplier will not release your account number(s), social security number, or any of your information without your express written consent except in accordance with Rules of Ohio Administrative Code. The Parties agree to keep all terms and provisions of this Agreement and the Service confidential and not to disclose its terms to any third parties without the prior written consent of the other Party; <u>provided</u>, however, each Party shall have the right to make any such disclosures to (i) a third party service provider who has a need to know such confidential information to provide services to the disclosing Party and is prohibited from disclosing to another party such Party's confidential information, (ii) governmental agencies, (iii) its own agents, attorneys, auditors, accountants and shareholders or members. If disclosure is sought through process of a court, or a state or federal regulatory agency, the Party from whom the disclosure is sought shall provide reasonable notice thereof to the other Party, and (iv) comply with applicable Ohio open records laws. If disclosure is sought through process of a court, a state or federal regulatory agency or open records law, the Party from whom the disclosure is sought shall provide reasonable notice thereof to the other Party.

PGB 2/12/202

~~**Collection Costs.** To the fullest extent permitted under Ohio law, Customer agrees to pay Supplier its reasonable attorneys' fees, expenses, and any other collection costs related to Customer's past due amounts.~~

**Complaints.** If your complaint is not resolved after you have called your electric supplier and/or your electric utility, or for general utility information, residential and business customers may contact the public utilities commission of Ohio (PUCO) for assistance at 1-800-686-7826 (toll free) from eight a.m. to five p.m. weekdays, or at http://www.puco.ohio.gov. Hearing or speech impaired customers may contact the PUCO via 7-1-1 (Ohio relay service).

**Governing Law and Venue.** This Agreement shall be governed by and construed, enforced and performed in accordance with the laws of the State of Ohio. The exclusive venue for any suit, claim, action or other proceedings, whether at law or in equity, relating to this Agreement, shall be in the state or federal courts of competent jurisdiction sitting in Cleveland, Ohio.

**Misc. Entire Agreement.** This Agreement embodies the entire Agreement and understanding between the Parties, and supersedes all prior agreements and understandings between the Parties, whether written or oral, with respect to the subject matter hereof.

**Forward Contract.** The Parties agree that this Agreement is a "forward contract" and that Supplier is a "forward contract merchant" for purposes of the United States Bankruptcy Code, as amended, and any payment related hereto will constitute a "settlement payment" as defined in Section 101 (51A) thereof.

**Environmental Disclosure.** Customer agrees that Supplier may make the required annual and quarterly environmental disclosures electronically by making such disclosures available for viewing at the Supplier's website: https://www.nexteraenergyservices.com/legal-notices-and-terms/ and, under "Environmental Disclosures," clicking on "Ohio."

**NextEra Energy Services Ohio, LLC**
**CRES Certificate Number 08-145E**

**Addendum A to**
**Competitive Retail Electric Service Contract**

**ACCOUNTS INCLUDED IN AGREEMENT**

**Customer Name:**
**Electric Distribution Utility:**

| EDU Account No. | Service Address City, State and Zip | Billing Address City, State and Zip | New Account or Renewal? |
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Customer Initials: ________ Date: ________________

NextEra Energy Services Ohio Initials: _______ Date: ________________

| | Retail Supplier | $/ | Rate Type | Renewable Content | Introductory Price | Term Length (Months) | Early Termination Fee | Monthly Fee | Promotional Offers |
|---|---|---|---|---|---|---|---|---|---|
| ☑ | New Wave Energy Corp<br>410 Main Street<br>Buffalo,NY 14202<br>(855) 998-9283<br>Company Url<br>Offer<br>Terms of Service<br>Sign Up | 0.0500 | Fixed | 0% | No | 36 mo. | $199 | $0 | No |
| ☑ | AEP Energy Inc<br>303 Marconi Blvd<br>Suite 400<br>Columbus,OH 43215<br>(877) 648-1936<br>Company Url<br>Offer<br>Terms of Service<br>Sign Up | 0.0510 | Fixed | 0% | No | 36 mo. | $10 | $0 | No |
| ☑ | Public Power LLC<br>P.O. Box 660823<br>Dallas,TX 75266-0823<br>(888) 354-4415<br>Company Url<br>Offer<br>Terms of Service<br>Sign Up | 0.0609 | Fixed | 30% | No | 36 mo. | $150 | $0 | No |
| ☑ | Statewise Energy Ohio, LLC<br>5005 Rockside Road, Suite 600<br>Independance,OH 44131<br>(855) 862-1185<br>Company Url<br>Offer<br>Terms of Service<br>Sign Up | 0.0938 | Fixed | 0% | Yes<br>1 mo. | 36 mo. | $7.5 | $4.98 | Yes |
| ☑ | Statewise Energy Ohio, LLC<br>5005 Rockside Road, Suite 600<br>Independance,OH 44131<br>(855) 862-1185<br>Company Url<br>Offer<br>Terms of Service<br>Sign Up | 0.0739 | Fixed | 0% | Yes<br>1 mo. | 36 mo. | $5 | $4.98 | Yes |
| ☑ | AEP Energy Inc<br>303 Marconi Blvd<br>Suite 400<br>Columbus,OH 43215<br>(877) 648-1936<br>Company Url<br>Offer<br>Terms of Service<br>Sign Up | 0.0539 | Fixed | 100% | No | 36 mo. | $10 | $0 | No |

2/9/2021 www.EnergyChoice.Ohio.Gov/ApplesToApplesComparison

| | Retail Supplier | $/ | Rate Type | Renewable Content | Introductory Price | Term Length (Months) | Early Termination Fee | Monthly Fee | Promotional Offers |
|---|---|---|---|---|---|---|---|---|---|
| ☑ | Energy Service Providers Inc<br>P.O. Box 660403<br>Dallas,TX 75266-0433<br>(888) 947-7880<br>Company Url<br>Offer<br>Terms of Service<br>Sign Up | 0.0759 | Fixed | 0% | No | 36 mo. | $150 | $0 | No |
| ☑ | Energy Service Providers Inc<br>P.O. Box 660403<br>Dallas,TX 75266-0433<br>(888) 947-7880<br>Company Url<br>Offer<br>Terms of Service<br>Sign Up | 0.0799 | Fixed | 100% | No | 36 mo. | $150 | $0 | No |

**THE CITY OF BRUNSWICK**

# PROPOSED LEGISLATION

| | |
|---|---|
| **DATE:** | 2/22/2021 |
| **TO:** | Vice Mayor Michael Abella Jr. and Members of City Council |
| **FROM:** | Carl S. DeForest, City Manager<br>Todd Fischer |
| **COPY:** | Mayor Ron Falconi |
| **LEGISLATION:** | **ORD. NO. 22-2021** - An emergency ordinance establishing Section 258.14 of the City of Brunswick Codified Ordinances Military Service Leave of Absence as Attached in Exhibit A. - **1st Reading** (To be brought from Committee-of-the-Whole, *Administration/Todd Fischer*) |
| **BACKGROUND:** | The City does not currently have a Codified Ordinance Section pertaining to Military Service Leave of Absence. The City Administration has conducted a Military Service Leave of Absence policy and related practice, however, that policy and practice was never previously formalized through the Codified Ordinances adopted by City Council. |
| **PURPOSE AND EXPLANATION:** | See background section. |
| **IMPLEMENTATION SCHEDULE:** | Consideration for passage on February 22, 2021 as an emergency with suspension of the rules.. |
| **FINANCIAL INFORMATION:** | |
| **FINANCIAL SUMMARY:** | No change |
| **RECOMMENDED ACTION:** | |

| | |
|---|---|
| One Reading | Yes |
| Two Readings | No |
| Three Readings | No |
| Emergency | No |
| Suspension of Rules | No |

If emergency or suspension of the rules, why the request?

In order to formalize the City's Military Leave of Absence Policy and practice through City Council and to maintain consistency and application of the Administration practice for the past 20+ years, it is recommended that this piece of legislation be considered for emergency with suspension of the rules.

**ADDITIONAL INFORMATION:**

CITY OF BRUNSWICK, OHIO
ORDINANCE NO. 22-2021

BY: Committee-of-the-Whole

AN EMERGENCY ORDINANCE ESTABLISHING SECTION 258.14 OF THE CITY OF BRUNSWICK CODIFIED ORDINANCES BY ESTABLISHING A MILITARY SERVICE LEAVE OF ABSENCE/BENEFITS POLICY.

WHEREAS: THE COUNCIL OF THE CITY OF BRUNSWICK HEREBY ORDAINS:

SECTION 1: That Section 258.14 of the Codified Ordinances is hereby established to read as follows:

"258.14 MILITARY SERVICE LEAVE OF ABSENCE; BENEFITS DURING SERVICE.

(a) Full-Time employees of the City who serve in the National Guard, U.S. Air Force Reserve, U.S. Army Reserve, U.S. Marine Corps Reserve, U.S. Coast Guard Reserve or U.S. Naval Reserve are entitled to a leave of absence from their respective positions without loss of pay for when ordered to temporary active duty, inactive duty training or when ordered to military training exercises conducted in the field, for periods of up to one (1) month, for each federal fiscal year in which they are performing service in the uniformed services.

(b) As used in this section:

(1) "Year" means federal fiscal year (October 1st – September 30th).

(2) "Month" means twenty-two (22) eight (8) hour work days or one hundred seventy-six (176) hours within one (1) federal fiscal year.

(3) "Full-Time employee" means any person holding a position of employment with the City with an average of 40 hours or more per week on a regular schedule of twenty-six (26) consecutive biweekly pay periods, or any other regular schedule of comparable consecutive pay periods, which is not limited to a specific season or duration. "Full-Time employee" does not include student help; intermittent, seasonal, or external interim employees; part-time employees, individuals covered by personal services contracts, or employees not meeting the definition of a "Full-Time employee".

(4) "Without Loss of Pay" means a full-time employee is entitled to an amount equal to his/her gross monthly base wage less the sum of his/her gross military pay and allowances received during that

same month. No full-time employee shall receive payment if the sum of his/her gross military pay and allowances received in the month exceeds his/her gross monthly base wage in the month for any leave granted in this section.

(c) Any full-time employee of the City, who is entitled to the leave provided under division (a) of this section, and who is called or ordered to military duty for longer than a month, for each federal fiscal year in which military duty is performed, because of an executive order issued by the President of the United States or an act of Congress, or because of an order to perform duty issued by the governor pursuant to RC 5919.29 is entitled, during the period designated in the order or act, to a leave of absence and paid leave, during each monthly pay period of that leave of absence: The amount of leave payment during each month for this additional leave of absence shall be the lesser of: (1) the difference between the full-time employee's gross monthly base wage and the sum of his/her military pay and allowances received that month or (2) five hundred dollars ($500).

(d) Each full-time employee who is entitled to leave provided under division (a) or (c) of this section shall submit both (1) their military leave and earnings statement covering the military duty period and (2) the published order authorizing the military duty or a written statement from the appropriate military commander authorizing that service, prior to being credited with paid leave as defined in this section. The full-time employee shall submit the military leave earnings statement and the published order/statement to his/her supervisor and the City's Payroll Department no later than forty-five days (45) from returning from military duty.

(e) A full-time employee on a military leave of absence shall be deemed to be in the service of the City. Employee cost share for any required benefit remains the employee's responsibility during any military leave of absence."

SECTION 2: That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety or welfare, and for the additional reason that immediate passage is necessary to immediately formalize the City's military leave of absence policy and to maintain consistency of application of the such policy per the City's prior practices. Therefore, the same shall be in full force and effect from and after its passage by the required number of votes or from the earliest time allowed by law.

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PASSED: 1st Reading ______________________

Rules Suspended: AYES _____ NAYS _____

ADOPTED: ______________ AYES _____ NAYS _____

ATTEST: ____________________________

Clerk of Council
Fijabi Julien-Gallam, CMC

## EXHIBIT A

### 258.14 Military Service Leave of Absence; Benefits During Service

(a) Full-Time employees of the City who serve in the National Guard, U.S. Air Force Reserve, U.S. Army Reserve, U.S. Marine Corps Reserve, U.S. Coast Guard Reserve or U.S. Naval Reserve are entitled to a leave of absence from their respective positions without loss of pay for when ordered to temporary active duty, inactive duty training or when ordered to military training exercises conducted in the field, for periods of up to one (1) month, for each federal fiscal year in which they are performing service in the uniformed services.

(b) As used in this section:

(1) "Year" means federal fiscal year (October 1st – September 30th).

(2) "Month" means twenty-two (22) eight (8) hour work days or one hundred seventy-six (176) hours within one (1) federal fiscal year.

(3) "Full-Time employee" means any person holding a position of employment with the City with an average of 40 hours or more per week on a regular schedule of twenty-six (26) consecutive biweekly pay periods, or any other regular schedule of comparable consecutive pay periods, which is not limited to a specific season or duration. "Full-Time employee" does not include student help; intermittent, seasonal, or external interim employees; part-time employees, individuals covered by personal services contracts, or employees not meeting the definition of a "Full-Time employee".

(4) "Without Loss of Pay" means a full-time employee is entitled to an amount equal to his/her gross monthly base wage less the sum of his/her gross military pay and allowances received during that same month. No full-time employee shall receive payment if the sum of his/her gross military pay and allowances received in the month exceeds his/her gross monthly base wage in the month for any leave granted in this section.

(c) Any full-time employee of the City, who is entitled to the leave provided under division (a) of this section, and who is called or ordered to military duty for longer than a month, for each federal fiscal year in which military duty is performed, because of an executive order issued by the President of the United States or an act of Congress, or because of an order to perform duty issued by the governor pursuant to RC 5919.29 is entitled, during the period designated in the order or act, to a leave of absence and paid leave, during each monthly pay period of that leave of absence: The amount of leave payment during each month for this additional leave of absence shall be the lesser of: (1) the difference between the full-time employee's gross monthly base wage and the sum of his/her military pay and allowances received that month or (2) five hundred dollars ($500).

(d) Each full-time employee who is entitled to leave provided under division (a) or (c) of this section shall submit both (1) their military leave and earnings statement covering the military duty period and (2) the published order authorizing the military duty or a written statement from the appropriate military commander authorizing that service, prior to being credited with paid leave as defined in this section. The full-time employee shall submit the military leave earnings statement and the published order/statement to his/her supervisor and the City's Payroll Department no later than forty-five days (45) from returning from military duty.

(e) A full-time employee on a military leave of absence shall be deemed to be in the service of the City. Employee cost share for any required benefit remains the employee's responsibility during any military leave of absence.