

1. Agenda Packet

Documents:

[FEBRUARY 29, 2019 AGENDA PACKET.PDF](#)

2. Meeting Materials

Documents:

[COUNCIL ALCOHOLIC BEVERAGE CONTROL BOARD MEETING
MINUTES.PDF](#)
[AFTER ACTION MEMORANDUM.PDF](#)

AGENDA



**CITY OF LENOIR
CITY COUNCIL MEETING
905 WEST AVENUE
TUESDAY, FEBRUARY 19, 2019
6:00 P.M.**



I. CALL TO ORDER

- A. Moment of Silence & Pledge of Allegiance
- B. Oath of Office: The Honorable Richard S. Holloway, District Court Judge, Judicial District 25, will administer the Oath of Office to Timothy J. Rohr for City Attorney.
- C. Presentation: Mayor Gibbons will present a proclamation to Mr. Paul Brandenburg, President, Lenoir Rotary Club, proclaiming Saturday, February 23 as "Rotary Day 2019" throughout the City of Lenoir and Caldwell County.

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

- A. Ordinance; Historic Preservation Commission: A public hearing will be held to consider adoption of a Historic Preservation Commission Ordinance to establish the Lenoir Planning Board to serve as the Lenoir Historic Preservation Commission. This ordinance is proposed at this time in order to establish the legal framework for future requests for local landmarks and/or districts, which may help with long-term planning and redevelopment goals for key historic properties.

III. CONSENT AGENDA ITEMS

- A. Minutes: Approval of the minutes of the City Council Meeting of Tuesday, February 5, 2019, as submitted.
- B. Minutes: Approval of the minutes of the joint City Council & ABC Board Meeting of Tuesday, February 12, 2019, as submitted.
- C. Resolution; MS4 Stormwater Program: Approval of the submitted resolution as requested by the N.C. Department of Environmental Quality (DEQ) in order to demonstrate the City of Lenoir's commitment to take the necessary steps to comply with the with the National Pollutant Discharge Elimination System(NPDES) Municipal Separate Storm Sewer System (MS4) requirements of the Clean Water Act.
- D. Resolution; Hotel Street and Market Street: Approval of a resolution accepting the construction of Hotel Street and Market Street as complete and dedicated for public use, including rights-of-way, underground utilities, stormwater drainage systems, curb and guttering and sidewalk(s).

IV. REQUESTS AND PETITIONS OF CITIZENS

V. REPORTS OF BOARDS AND COMMISSIONS

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

A. Items of Information

1. The Planning Board will meet on Monday, February 25 at 5:30 p.m.
2. The Committee of the Whole will meet on Tuesday, February 26 at 8:30 a.m. at City Hall, Third Floor, former Council Chambers.
3. The Foothills Regional Airport Authority will meet on Wednesday, February 27 at noon.

B. Items for Council Action

1. Contract Agreement; Mueller Systems: Staff recommends City Council enter into a Contract Agreement with Mueller Systems in the amount of \$3,656,097.34 for the implementation of the Advanced Metering Infrastructure (AMI) Upgrade Project. Mr. Andy Honeycutt, MeterSYS, President, will be in attendance to review the project.

Staff further recommends that the City Council grant the City Manager authority to execute the agreements and any necessary change orders associated with the project and report those change orders at the next City Council meeting.

2. Service Agreement; MeterSYS Advanced Metering Solutions: Staff recommends City Council approval to enter into a Service Agreement with MeterSYS Advanced Metering Solutions in the amount of \$339,130.00 to undertake Task Order 3-Project Management and Implementation for the Mueller AMI Meter Reading System.
3. Bid Award; Optimist Park: Staff recommends that Council award the low bid of \$94,615.00 to Camp Electric Company, Inc. for the lighting project at Optimist Park Baseball Field.

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

- A. Board Appointment; Planning Board: Mayor Gibbons will recommend that Kaye Reynolds be appointed to serve a four-year term on the Lenoir Planning Board. Ms. Reynolds will be replacing Merlin Perry who recently retired off of the Board.

Note: This appointment was announced at the February 5 meeting.

- B. Re-Appointments: Mayor Gibbons will recommend the following individuals for Council's consideration of re-appointment to the following Authorities/Boards/Commissions:

Lenoir Tourism Development Authority	Matt Underwood
Lenoir Business Advisory Board	Sean Williams and Kimmie Rogers
Lenoir Housing Authority	Debbie Smith
Parks and Recreation Advisory Board	Michael Dineen and James Robertson

Note: These re-appointments were announced at the January 15 City Council meeting.

IX. REPORT AND RECOMMENDATIONS OF COUNCIL MEMBERS

X. ADJOURNMENT

CITY OF LENOIR, NORTH CAROLINA

OATH OF COUNCIL MEMBER

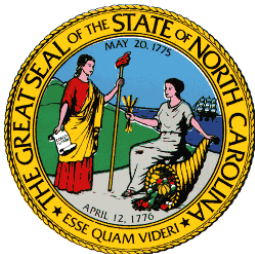
❧ TIMOTHY J. ROHR ❧

I, **TIMOTHY J. ROHR**, solemnly swear that I will support the Constitution and laws of the United States; that I will be faithful and bear true allegiance to the State of North Carolina and to the constitutional powers and authorities which are or may be established for the government thereof; and, that I will endeavor to support, maintain, and defend the Constitution of said state, not inconsistent with the Constitution of the United States.

I, **TIMOTHY J. ROHR**, further swear that I will execute the duties of the office of **CITY ATTORNEY** for the City of Lenoir, North Carolina, to the best of my ability and judgment, so help me, God.

TIMOTHY J. ROHR

Sworn to and subscribed before me this 19th day of February, 2019.



Honorable Richard S. Holloway
District Court Judge, Judicial District 25



CITY MANAGER
SCOTT E. HILDEBRAN

CITY OF LENOIR
NORTH CAROLINA

MAYOR
JOSEPH L. GIBBONS

CITY COUNCIL
J. T. BEAL
T. H. PERDUE
J. I. PERKINS
T. J. ROHR
D. F. STEVENS
C. D. THOMAS
B. K. WILLIS

PROCLAMATION

ROTARY DAY 2019

WHEREAS, Rotary was founded in 1905 in Chicago Illinois, as the world's first volunteer service organization by attorney Paul Harris, and three business associates for the purpose of "developing acquaintance as an opportunity for service," and

WHEREAS, Rotary today is comprised of 1.2 million business and professional leaders in over 200 countries and over 32,000 local Rotary clubs dedicated to providing humanitarian service and to helping build goodwill and peace; and

WHEREAS, through the Rotary Foundation, Rotary International is the largest private provider of international student scholarships, helping over 1,000 students annually; and

WHEREAS, the City of Lenoir is home to two outstanding Rotary Clubs, the Rotary Club of Lenoir, founded in 1930 and the Caldwell Rotary Club founded in 1982; which together contribute thousands of dollars to the community each year through their service endeavors; and

WHEREAS, Rotarians seek to direct their service in six areas of focus: peace and conflict prevention/resolution, disease prevention and treatment, water and sanitation, maternal and child health, basic education and literacy, and economic and community development.

NOW, THEREFORE, I Joseph L. Gibbons, Mayor of the City of Lenoir, and on behalf of the Lenoir City Council, do hereby proclaim Saturday, February 23, 2019, as "*Rotary Day 2019*" throughout the City of Lenoir and Caldwell County, in recognition of the service and contributions of Rotarians to the well-being and betterment of our community and the world.

This the 19th day of February 2019.

Seal

Joseph L. Gibbons, Mayor

ATTEST:

Shirley M. Cannon, City Clerk



CITY OF LENOIR
COUNCIL ACTION FORM: February 19, 2019

I. Agenda Item:

Adoption of an ordinance to establish the Lenoir Planning Board as the Lenoir Historic Preservation Commission.

II. Background Information:

Lenoir is rich in historic architectural resources, as recently documented as a part of the comprehensive historical architectural survey completed last year in partnership with the State Historic Preservation Office. Up until this point, all activity related to historic preservation in Lenoir has been done under state and federal guidelines for the National Register of Historic Places. However, additional preservation tools are available to local governments in North Carolina that adopt local historic preservation commissions.

The attached ordinance does not designate any local historic districts or landmarks, but rather creates the ability for the City to do so in the future, should the Lenoir Planning Board (proposed to also serve as the Lenoir Historic Preservation Commission, which is allowed under state statutes) and the City Council find it desirable to do so. This ordinance is proposed at this time in order to establish the legal framework for future requests for local landmarks and/or districts, which may help with long-term planning and redevelopment goals for key historic properties.

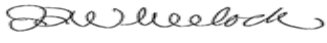
III. Staff and Planning Board Recommendation:

Planning staff and the Planning Board recommend that City Council adopt the Historic Preservation Commission ordinance as presented.

IV. Reviewed by:

City Attorney: _____

Finance Director: _____

Planning Director:  _____

**AN ORDINANCE OF THE CITY COUNCIL OF LENOIR,
NORTH CAROLINA, AMENDING APPENDIX A OF THE
LENOIR CITY CODE TO ADD ARTICLE XVII: HISTORIC
PRESERVATION, RELATED TO THE ESTABLISHMENT OF A
LOCAL HISTORIC PRESERVATION COMMISSION AND
PROCEDURES AND PARAMETERS FOR LANDMARKS,
DISTRICTS AND CERTIFICATES OF APPROPRIATENESS,
PROVIDING FOR CODIFICATION, AND AN EFFECTIVE
DATE.**

Whereas, the historical heritage of the City of Lenoir is a valued and important part of the general welfare; and

Whereas, the conservation and preservation of that heritage, through the documentation and regulation of historic districts or landmarks, or through the acquisition of historic properties, stabilizes and increases property values; and

Whereas, NCGS 160A-400 authorizes the appointment of a Planning Board to serve as the Local Historic Preservation; and

Whereas, the Lenoir Planning Board finds and declares that this ordinance and these amendments consistent with the City's adopted Comprehensive Plan, which calls for the preservation of cultural and historic properties and the establishment of local standards for the renovation and re-use of historic properties; and

Whereas, the Lenoir City Council hereby finds and declares that this ordinance and these amendments are in the best interest of the public health, safety, and welfare; and

NOW, THEREFORE, LET IT BE ENACTED BY THE CITY COUNCIL OF THE CITY OF LENOIR, NORTH CAROLINA, AS FOLLOWS:

SECTION 1. Appendix A of the Code of Ordinances, City of Lenoir, North Carolina, "Zoning" is hereby appended to add Article XVII to read as follows:

Article XVII: HISTORIC PRESERVATION

1700 Purpose.

Whereas the historical heritage of the City of Lenoir is a valued and important part of the general welfare; and whereas the conservation and preservation of that heritage, through the documentation and regulation of historic districts or landmarks, or through the acquisition of historic properties, stabilizes and increases property values, and pursuant to North Carolina General Statute (NCGS 160A-400.1 to 400.14) this ordinance is enacted in order to:

- A. Safeguard the heritage of Lenoir by preserving districts and landmarks therein that embody important elements of its culture, history, architectural history, or prehistory; and
- ~~A-B.~~ Promote the use and conservation of such districts and landmarks for the education, pleasure, and enrichment of the residents of the City of Lenoir and of the State as a whole.

1701 Historic Preservation Commission

1701.1 Creation and Appointment – The Lenoir Planning Board is hereby created as the Lenoir Historic Preservation Commission, pursuant to general statute 160A-400.7, hereinafter referred to as the “Commission.”

1701.2 Qualification of Members – At least three members of the Planning Board must have demonstrated education, experience, special interest, or a combination thereof, in historic preservation, history, architecture, architectural history, archaeology, cultural anthropology, planning, or related field.

1701.3 Rules of Procedure

- A. The Commission shall adopt rules of procedure necessary to the conduct of its affairs and in keeping with the provisions of this ordinance.
- B. The Commission shall meet at least quarterly. All meetings shall conducted in accordance with the North Carolina Open Meetings Law, G.S. Chapter 143, Article 33C (NCGS 143-318.9 to 318.18).
- C. The Commission shall annually present to the local legislative body a report of its activities, budget, findings, recommendations, and actions, which shall be made available to the public.

1701.4 Powers and Duties – The Commission is hereby empowered to undertake such actions as may be reasonably necessary to the discharge and conduct of its duties and responsibilities as set forth in this ordinance and in the North Carolina General Statutes, including, but not limited to:

- A. organizing itself and conducting its business;
- B. receiving and spending funds appropriated by the Lenoir City Council for operating and performing its duties;
- C. conducting an inventory of properties of historical, archaeological, architectural, and/or cultural interest;
- D. recommending to the Lenoir City Council that individual buildings, structures, sites, areas, or objects within its zoning jurisdiction be designated as “historic landmarks” and that areas within its zoning jurisdiction be designated as “historic districts;”
- E. recommending to the Lenoir City Council that designation of any area as a historic district, or part thereof, or of any building, structure, site, area, or object as a historic landmark, be revoked or removed for cause;
- F. reviewing and acting on proposals for
 - 1. exterior alteration, relocation, or demolition of designated his landmarks;
 - 2. exterior alteration, relocation, demolition, or new construction properties within designated historic districts;

- G. negotiating with property owners who propose to demolish or relocate a designated landmark, or a building, structure, site, area, or object within a designated district, in an effort to find a means of preserving such properties, including consulting with private civic groups, interested private citizens, and other public boards or agencies;
- H. instituting action, through the Planning Department enforcement staff, to prevent, restrain, correct, or otherwise abate violations of this ordinance or of ordinances designating historic landmarks or districts;
- I. reviewing and acting on proposals for alterations of interior features of designated historic landmarks, as specified, and for which owner consent was given, in the ordinance establishing designation;
- J. appointing advisory bodies or committees as appropriate;
- K. advising property owners about appropriate treatment(s) for characteristics of historic properties;
- L. proposing to the Lenoir City Council amendments to this or to any other ordinance, and proposing new ordinances or laws relating to historic landmarks and districts or to the protection of the historic resources of the City of Lenoir and its environs.

1702 Inventory – The Commission shall use as a guide to identification, assessment, and designation of historic landmarks and districts an inventory of buildings, structures, sites, areas, or objects which are of historic, prehistoric, architectural, archaeological, and/or cultural significance. The Commission shall take steps as necessary to ensure that the inventory reflects information current to within twenty (20) years.

1703 Historic Landmarks

1703.1 Adoption of Ordinance of Designation

- A. The Lenoir City Council may adopt and, from time to time, amend or repeal an ordinance designating one or more historic landmarks. The ordinance must include the following information:
 - 1. the name or names of the owner or owners of the property;
 - 2. description of each property designated by the ordinance, including the address, if applicable, the physical configuration and orientation of the property so designated;
 - 3. describe those elements of the property which are integral to its historic, architectural, archaeological, and/or cultural significance;
 - 4. provide for each designated historic landmark a suitable sign or plaque indicating that the landmark has been so designated; and
 - 5. any other information deemed necessary, within the authority of this ordinance and the general statutes, as determined by the local governing body .
- B. The landmark designation process may be initiated by either the Commission or at the request of a property owner. No ordinance to designate any building, structure, site, area, or object shall be adopted or amended until all of the requirements of this ordinance and its subsections have been satisfied.

1703.2 Criteria of Designation – To be designated as a historic landmark, a property, building, site, area, or object shall be found by the Commission to possess special significance in terms of its history, prehistory, architecture, archaeology, and/or cultural importance, and to retain the integrity of its design, setting, workmanship, materials, feeling, and/or association.

1703.3 Procedure for Designation

- A. The Commission shall make, or cause to be made, an investigation and designation report that includes:
1. the name of the property to be designated, including both common and historic names if they can be determined;
 2. the name(s) and address(es) of the current owner(s);
 3. the location of the property for which designation is proposed, including the street address and Caldwell County tax map parcel number or parcel identification number;
 4. the dates of original construction and of all later additions or alternations, as applicable;
 5. an assessment of the significance of the building or site as prescribed by this ordinance;
 6. an architectural or archaeological description of the area of the site or structure, including descriptions of all outbuildings and appurtenant features, for which designation is proposed;
 7. a historical discussion of the site or structure within its type, period, and locality;
 8. a photograph showing, to the fullest extent possible, the overall disposition of the property; one photograph of each façade or elevation and supplementary photographs as necessary to illustrate architectural details or ornamentation, siting, scale, proportion, and relationship of features or buildings, structures, or objects to each other; and
 9. a map showing the location of the property, including all outbuildings and appurtenant features.
- B. Pursuant to G.S. 160A-400.6, as amended, the designation report shall be submitted to the North Carolina Department of Cultural Resources, Division of Archives and History, or its successor agency, which, acting through the State Historic Preservation Officer, shall review it and provide written comments and recommendations to the Commission regarding the substance and effect of the proposed designation. Failure of the Department to respond within thirty (30) days following its receipt of the report shall constitute approval of the report by the Department and relieve the City of Lenoir of all responsibility to consider the Department's comments or recommendations concerning the report.
- C. At the expiration of the 30-day review period, the Commission shall hold a public hearing to consider the proposed landmark designation, and shall consider the report and any comments or recommendations from the State Historic Preservation Officer, and shall accept it, amend it, reject it, or defer a decisions until completion of a period of further study, not to exceed 60 days. The Commission shall forward to the Lenoir City Council a copy of the report, copies of written comments received from the Department of Cultural Resources, and a recommendation either to approve or disapprove designation of the property, stating in its recommendation the extent to which the property meets the criteria for designation as set forth in this ordinance. A recommendation for disapproval shall not necessarily prevent any future consideration of a property for designation as a historic landmark.
- D. The Lenoir City Council shall hold a public hearing to consider the proposed ordinance. Reasonable notice of the time and place thereof shall be given. Following the public hearing, the Lenoir City Council shall consider the Commission's designation report, its recommendation(s), the Department of Cultural Resources' recommendation(s), and comments made at the public hearing, and shall adopt the ordinance as proposed, adopt the ordinance with amendments, or reject the ordinance.
- E. Upon adoption of the ordinance, the Planning Department staff shall, within 30 days of adoption:
1. send the owner(s) of the landmark(s) written notice of such designation, explaining the substance of the Commission's decision, via certified mail with a return receipt requested;
 2. file one copy of the ordinance, and any subsequent amendments thereto, in the office of the Register of Deeds of Caldwell County, which office shall index each historic landmark according to the name of the owner in the grantee and grantor indexes.

3. file a second copy of the ordinance, and any subsequent amendments thereto, in the office of the City Clerk , where it shall be made available for public inspection at any reasonable time,
 4. provide a third copy to the Caldwell County building inspector .
 5. notify the tax assessor of County name of the landmark designation.
- F. In disapproving a designation report, a copy of the minutes of the meeting at which such decision to deny was made shall be mailed to the owner of the property proposed for designation, together with a letter explaining the substance of the City's decision.

1704 Historic Districts

1704.1 Adoption of Ordinance of Designation – The Lenoir City Council may adopt and, from time to time, amend or repeal an ordinance designating a historic district. The ordinance shall include information that describes the physical area proposed for designation, its boundaries, and general historic, architectural, archaeological, and/or cultural significance. The district designation process may be initiated by either the Commission or at the request of any number of property owners. No ordinance to designate a district shall be adopted or amended until all of the requirements of this ordinance and its subsections have been satisfied.

1704.2 Criteria for Designation – To be designated as a historic district, an area shall be found by the Commission to possess special significance in terms of its history, prehistory, architecture, archaeology, and/or cultural importance, and to retain the integrity of its design, setting, workmanship, materials, feeling, and/or association.

1704.3 Procedure for Designation

A. The Commission shall make, or cause to be made, an investigation and designation report which includes:

1. an assessment of the significance of the buildings, sites, structures, features, objects, or environs to be included in a proposed district and a description of its boundaries; and
2. a map clearly indicating the boundaries of the district and the properties, showing their County name tax map parcel numbers, contained therein.

B. A district designation report must be submitted to the North Carolina Department of Cultural Resources, Division of Archives and History, or its successor agency, which, acting through the State Historic Preservation Officer, shall review it and provide written comments and recommendations to the local governing body regarding the substance and effect of the proposed designation. Failure of the Department to respond within 30 days following its receipt of the report shall constitute approval of the report by the Department relieve the City of Lenoir of all responsibility to consider the Department's comments or recommendations concerning the report.

C. At the expiration of the thirty (30) day review period, the Commission shall consider the report and any comments or recommendations from the State Historic Preservation Officer, and shall accept it, amend it, reject it, or defer a decision until completion of a period of further study, not to exceed 60 days. The Commission shall also review the report acting in their capacity as the Planning Board, following the procedure for zoning map amendments in Article XIV of the Lenoir Zoning Ordinance. The Commission shall forward to the Lenoir City Council a copy of the report, copies of written comments received from the Department of Cultural Resources, and a recommendation either to approve or disapprove designation of the district, stating in its recommendation the extent to which the proposed area meets the criteria for designation as set forth in this ordinance. A recommendation

for approval shall be accompanied by a proposed ordinance of designation. A recommendation for disapproval shall not necessarily prevent any future consideration of an area for designation as a historic district.

- D. Upon receipt of a recommendation and designation report from the Commission, the Lenoir City Council shall proceed in the same manner as it would for a zoning map amendment in Article XIV of the Lenoir Zoning Ordinance.

1704.4 Revisions to Districts – Changes in the boundaries of an adopted district subsequent to its initial establishment shall be effected as allowed by Sections 1703.1 and 1703.2 of this ordinance and as prescribed in Section 1703.3.

1705 Certificates of Appropriateness

1705.1 Certificate of Appropriateness Required

- A. From and after the designation of a historic landmark or district, no construction, alteration, reparation, rehabilitation, relocation, or demolition of any building, structure, site, area, or object shall be performed upon such landmark or within such district until a Certificate of Appropriateness (or "Certificate") has been granted by the Historic Preservation Commission. A Certificate shall be required for any and all exterior work, including masonry walls, fences, light fixtures, steps and pavement, any other appurtenant features, any above ground utility structures, and any type of outdoor advertising sign.
- B. A Certificate shall be required in order to obtain a building permit, or any other permit granted for the purposes of constructing, altering, moving, or demolishing structures, and shall be required whether or not a building permit or other permit is required. Any building permit or other permit not issued in conformity with this Section shall be invalid.
- C. For the purposes of this Article, "exterior features" shall include architectural style, general design, general arrangement, kind and texture of material, size and scale, and type and style of all windows, doors, light fixtures, signs, any other appurtenant features, historic signs, historic advertising, color, landscape, and archaeological or natural features.
- D. A Certificate shall be required for specific interior features of architectural, artistic, or historic significance in publicly owned landmarks and in privately owned landmarks for which consent to review has been given in writing by the owner. Such consent shall be filed in the Caldwell County Register of Deeds and indexed according to the name of the property owner in the grantee and grantor indexes and shall bind future owners and/or successors in title. The ordinance establishing historic designation of the property shall specify the interior features subject to review and the specific nature of the Commission's jurisdiction over those features.
- E. In approving a Certificate, the Commission may attach reasonable conditions necessary to the proper execution of this ordinance.
- F. Commission staff may issue a Certificate for minor works as defined in the Commission's Rules of Procedure. Minor works shall include the ordinary maintenance or repair of any exterior feature of a historic landmark or property located within a historic district, provided such maintenance or repair does not involve a change in design, material, or appearance thereof.
- G. No application for a minor works Certificate shall be denied without deliberation by the Commission.
- H. Under this section, the Commission shall institute action, through the Lenoir Planning Department, to prevent, restrain, correct, or otherwise abate the construction, reconstruction, alteration, restoration, relocation, or demolition of buildings, structures, appurtenant features, or any other features which would be incongruous with the special character of the landmark or district or violate the provisions of this Section.

1705.2 Review Guidelines

Prior to the designation of any historic landmark or district, the Commission shall prepare and adopt guidelines not inconsistent with G.S. 160A-400.1 – 400.14 for constructing, altering, restoring, rehabilitating, relocating, removing, or demolishing of property designated as historic, which guidelines shall ensure, insofar as possible, that changes in designated landmarks or properties located within designated districts shall be in harmony with the reasons for designation.

1705.3 Certain Changes not Prohibited

Nothing in this ordinance shall be construed to prevent:

- A. the ordinary maintenance or repair of any exterior feature of a historic landmark or property located within a historic district, provided such maintenance or repair does not involve a change in design, material, or appearance thereof;
- B. the construction, alteration, relocation, or demolition of any such feature, building, or structure when Caldwell County Building Inspector certifies to the Commission that such action is necessary to the public health or safety because of an unsafe or dangerous condition;
- C. a property owner from making of his property any use not otherwise prohibited by statute, ordinance, or regulation; or
- D. the maintenance of, or, in the event of an emergency, the immediate restoration of any existing above ground utility structure without approval by the Commission.

1705.4 Delay of Demolition

- A. Except as provided below, a Certificate authorizing the demolition of a designated historic landmark or property located within a designated historic district may not be denied. However, the Commission may delay the effective date of such a Certificate for a period of up to 365 calendar days from the date of approval. The Commission may reduce the period of delay where it finds that the owner would suffer extreme hardship or be deprived permanently of all beneficial use of such property as a result of the delay. During the delay period, the Commission shall negotiate with the property owner and with any other party in an effort to find a means of preserving the property as provided in Section 1701.4.
- B. The Commission may deny an application for a Certificate authorizing the demolition or destruction of any designated landmark, or of any property, building, site, object, area, or structure located within a designated district, which the State Historic Preservation Office has determined to be of Statewide Significance, as defined by the criteria of the National Register of Historic Places, unless the Commission finds that the owner would suffer extreme hardship or be deprived permanently of all beneficial use of the property as a result of the denial.
- C. In the event that the Commission has voted to recommend designation of a property as a landmark, or of an area as a district, and such designation has not yet been made by the Lenoir City Council, the demolition of any building, site, object, area, or structure located on the property of the proposed landmark or within the proposed district may be delayed by the Commission up to 180 calendar days or until the Lenoir City Council takes final action on the proposed designation, whichever occurs first. Should the Lenoir City Council approve the designation prior to the expiration of the 180 day delay period, an application for a Certificate of Appropriateness authorizing demolition must then be filed; however, the maximum delay period of 365 days shall be reduced by the number of days elapsed during the 180 day delay while designation was pending.

1705.5 Demolition through Neglect

Failure of an owner to regularly, consistently, and fully maintain a designated landmark or any property located within a designated district shall constitute demolition, through neglect, without a valid Certificate of Appropriateness and a violation of this ordinance. The Commission shall institute action, through the Planning Department code enforcement staff, to prevent, restrain, correct, or otherwise abate such demolition, provided such action includes appropriate safeguards to protect property owners from undue economic hardship.

1705.6 Applications and Required Procedures

- A. An application for a Certificate shall be obtained from the Lenoir Planning Department. Applications shall be completed in form and in content and filed with the staff at least 20 business days prior to the next regularly scheduled Commission meeting. Late applications shall be deferred until the following regularly scheduled meeting.
- B. The Commission shall have, as detailed in its Rules of Procedure, broad powers to require the submittal, with the application, of pertinent information sufficient to determine an application.
- C. Incomplete applications shall not be accepted.
- D. Before considering an application for a Certificate, the Commission shall notify by mail the owners of any adjacent property. Such notices are convenience of property owners and occupants and no defect or omission therein shall impair the validity of issuing a Certificate or of any subsequent action.
- E. When considering an application for a Certificate, the Commission shall give the applicant and owners of any property likely to be materially affected by the application an opportunity to be heard.
- F. When considering the application, the Commission shall apply the review guidelines required by Section 1705.2 and shall, in approving, approving with conditions, disapproving, or deferring an application, make findings of fact, indicating the extent to which the application is or is not in compliance with review criteria, and shall cause these findings of facts to be entered into the minutes of its meetings. The minutes shall also contain a summary of any citation to evidence, testimony, studies, or other authority upon which the Commission based its decision.
- G. The Commission shall have ninety (90) calendar days following submittal of a complete application within which to act. Failure by the Commission to take final action within such period shall constitute approval of the application as submitted. This period may be extended by mutual agreement between the Commission and the applicant.
- H. A Certificate shall be valid for 180 calendar days from date of issuance, or, in the case of a Certificate for demolition, from the effective date. If the authorized work has not commenced within that period, or has been discontinued for more than 365 calendar days from the date of issuance, such Certificate shall immediately expire and the applicant shall be required to reapply.
- I. If the Commission denies a Certificate, a new application affecting the same property may be submitted, provided a substantial change is proposed in the plans.
- J. An appeal of a final action by the Commission may be made to the Lenoir City Council. Written notice of intent to appeal must be sent to the Commission, postmarked within twenty (20) calendar days following the Commission's decision. Appeals must be filed with the Lenoir City Clerk within sixty (60) calendar days following the Commission's decision and shall be in the nature of certiorari. A decision by Lenoir City Council may be appealed to the superior court of Caldwell County.
- K. A Certificate shall be required for designated landmarks or buildings, structures, sites, areas, or objects within designated districts which are owned by the State of North Carolina or any of its agencies, political subdivisions, or instrumentalities, subject to the regulations of this ordinance and in accordance with North Carolina General Statute 160A-400.9(f).
- L. In the case of any building, structure, site, area, or object designated as a historic landmark or of any property located within a designated historic district being threatened with demolition, as the result of

willful neglect or otherwise, material alteration, rehabilitation, or removal, except in compliance with this ordinance, the Commission, the local governing body, or any other party aggrieved by such action may institute any appropriate action or proceeding to prevent, restrain, correct, or otherwise abate such violation, or to prevent any illegal act or conduct with respect to such property.

1706 Conflict with Other Laws

Whenever the provisions of this ordinance are in conflict with any other statute, charter provision, ordinance, or regulation of the City of Lenoir, the more restrictive ordinance or regulation shall govern.

SECTION 2. CODIFICATION. The City Clerk shall cause the Code of Ordinances of Lenoir, North Carolina to be amended as provided by this ordinance and may renumber, re-letter, and rearrange the codified parts of this ordinance if necessary to facilitate the finding of the law.

SECTION 3. EFFECTIVE DATE. This ordinance takes effect upon adoption.

DONE, THE PUBLIC NOTICE, in a newspaper of general circulation in the City of Lenoir, North Carolina, by the City Clerk of the City of Lenoir, North Carolina, this 8th day of February and this 15th day of February, 2019.

DONE, THE PUBLIC HEARING, AND ENACTED ON FINAL PASSAGE, by an affirmative vote of the a majority of a quorum present of the City Council of the City of Lenoir, North Carolina, at a regular meeting, this 19th day of February, 2019.

BY THE MAYOR/MAYOR PRO TEMPORE OF THE CITY OF LENOIR, NORTH CAROLINA:

Mayor/Mayor Pro Tempore

ATTEST, BY THE CLERK OF THE CITY COUNCIL OF THE CITY OF LENOIR, NORTH CAROLINA:

City Clerk

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**LENOIR CITY COUNCIL
TUESDAY, FEBRUARY 5, 2019
5:00 P.M.**

PRESENT: Mayor Gibbons presiding. Councilmembers present were Beal, Perdue, Perkins, Rohr, Stevens, and Willis. Also in attendance were City Manager Hildebran, City Clerk Cannon and City Attorney Blair.

ABSENT: Councilmember Thomas.

I. CALL TO ORDER

- A. The meeting was opened by a moment of silence followed by the Pledge of Allegiance led by Mayor Gibbons.

**APPOINTMENT OF CITY
ATTORNEY:**

- A. Pursuant to N.C.G.S. §160A-173 and the City's Code of Ordinances, Chapter 2, Administration, Section 2-96, City Council will appoint a City Attorney who shall be licensed to engage in the practice of law in the state of North Carolina. City Council will also consider approval of a General Counsel Agreement between the City of Lenoir and the City Attorney which will become effective March 1, 2019.

Councilmember Rohr asked to be recused prior to Council's discussion regarding the appointment and the proposed contract.

Motion

Upon a motion by Councilmember Stevens, Council voted 5 to 0 to recuse Councilmember Rohr from the discussion of appointing a City Attorney.

On behalf of City Council, Mayor Gibbons stated it was the consensus of City Council to appoint Timothy J. Rohr as the new City Attorney. This appointment shall become effective on March 1, 2019. Mayor Gibbons further stated Mr. Rohr will take his oath of office on Tuesday, February 19 and a reception will be held on Tuesday, March 5 prior to the Council meeting for Mr. Rohr and Mr. Blair.

Motion

Upon a motion by Mayor Pro-Tem Willis, Council voted 5 to 0 to appoint Timothy J. Rohr as the City Attorney and also approved the General Counsel Agreement as presented.

RESIGNATION FROM CITY COUNCIL:

T.J. ROHR:

- B. Councilmember Timothy J. Rohr officially tendered his resignation effective immediately from City Council to accept the role of City Attorney. Mr. Rohr expressed appreciation to City Council for their confidence in him and stated

that Attorney Blair set a great standard during his tenure. Mr. Rohr shared the City has made much progress during his fifteen years on City Council. He further stated he is proud to have been a part of local government and looks forward to continuing to serve as City Attorney.

On behalf of City Council, Mayor Gibbons commended Mr. Rohr for his years of service to the community and stated that Council looks forward to working with him in this new role.

Motion

Upon a motion by Councilmember Perdue, Council voted 5 to 0 to accept Councilmember Rohr's resignation from City Council as requested.

Councilmember Perdue also asked Mayor Gibbons to review the process that Council followed to fill this position.

Mayor Gibbons reviewed a timeline regarding the process City Council followed for the selection of City Attorney. He reported the City received two applications for this position. The timeline is as follows:

- November 20, 2018 - City Attorney Ed Blair announced his retirement
- November 21, 2018 - City submitted a Request for Proposals (RFP) for legal services to be published in the *News-Topic*
- November 23, 2018 - City published legal ad on City website for legal services
- December 10, 2018 - Deadline for proposals
- January 15, 2019 - Interview of applicant
- February 5, 2019 - Formal Appointment

City Attorney Blair thanked City Council for the opportunity to serve and remarked he has enjoyed his tenure as City Attorney for the past 26+ years. Mr. Blair stated that Council has made a good choice for his replacement and expressed appreciation for being able to be a part of so many worthwhile projects over the years.

On behalf of City Council, Mayor Gibbons commended Mr. Blair for all of his accomplishments and for advising the Council so well. He further thanked Mr. Blair for his service and dedication along with how well he has worked for the City in so many different capacities. He stated everyone would miss him and wished him all the best.

Mayor Gibbons also emphasized Mr. Rohr is both interested in and qualified for this position, but pointed out he will be greatly missed on City Council. He stated that Mr. Rohr has made us a better Council by having us consider all the aspects of a matter before a decision is made.

Attorney Blair also clarified that Mr. Rohr's resignation from Council was effective immediately.

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

CONTINUED; ORDINANCE; CONDITIONAL ZONING DISTRICT; 211 ARROWOOD STREET:

A. Mayor Gibbons reminded everyone the public hearing was closed at the January 15 City Council meeting for any additional public comments. He stated the current meeting is to receive Council discussion and/or a motion regarding adoption of an Ordinance designating 211 Arrowood Street comprised of 48.5 acres, more or less, as Conditional Zoning District #5 (CZ-5) on the City's Official Zoning Map; directing amendment of the Official Zoning Map; providing for severability, and an effective date.

A copy of the ordinance is hereby incorporated into these minutes by reference. (Refer to pages 56-61).

Planning Director Wheelock stated Council was previously concerned about the development of the property and pointed out the proposed ordinance would have allowed for development up to 7.2 dwelling units per acre "by right" and additional density allowance of up to 10 dwelling units per acre when supported by a traffic study. In response to citizen comments made during the public hearing on January 15, Council directed Staff to revise the language in the ordinance to reflect densities currently allowed for single family development in the R-12 district which is 3.6 dwelling units per acre, with a lower maximum density cap when supported by a traffic study (108 units, consistent with an expired 2003 approval on the subject site). Director Wheelock mentioned she feels the proposed range for apartments may be in the 80 to 90 range and emphasized this is a more reasonable development program. The submitted ordinance reflects the motion approved by Council in that meeting, which tabled action on the item until the February 5 meeting.

Director Wheelock restated a traffic study of 500 trips is a more reasonable development program and stated traffic would be greatly reduced. Director Wheelock reported the ordinance does include a "trigger" for issues regarding 30 dwelling units or higher and mentioned the required fire code would have to be followed. She noted that any development that was more intense would require another access. Director Wheelock verified that large lot homes could currently be built "by-right" without having to open up the Faw Street access. She stated, depending on the proposal, the developer would have to work through the access issue. In addition, Director Wheelock pointed out a better survey of the property is needed.

Mayor Gibbons closed the public hearing and thanked Director Wheelock for taking Council's request into consideration and making a recommendation. Councilmember Perdue stated Director Wheelock has addressed the second ingress and egress issue and reiterated the developer could currently build what they wanted to now. He further stated the ordinance allows for both the clubhouse and restaurant to be utilized.

Motion

Upon a motion by Councilmember Perdue, Council voted 5 to 0 to adopt the submitted Ordinance designating 211 Arrowood Street comprised of 48.5 acres, more or less, as Conditional Zoning District #5 (CZ-5) on the City's Official Zoning Map as presented by City Staff.

III. CONSENT AGENDA ITEMS

A. Upon a recommendation by City Manager Hildebran, the following Consent Agenda items were submitted for approval:

1. Minutes: Approval of the minutes of the City Council Meeting of Tuesday, January 15, 2019, as submitted.
2. Minutes: Approval of the minutes of the closed session minutes of Tuesday, January 15, 2019 as reviewed by the City Attorney, City Manager and City Council.
3. Minutes: Approval of the minutes of the Committee of the Whole Meeting of Tuesday, January 22, 2019 as submitted.
4. Resolution; Gryphon Environmental, LLC: Approval of the Resolution to Pre-Procure Dryer Equipment from Gryphon Environmental, LLC, for the City's Biosolids Facility at the Lower Creek Wastewater Treatment Plant. (A copy of the Resolution is hereby incorporated into these minutes by reference. Refer to page 62).

Upon a motion by Mayor Pro-Tem Willis, Council voted 5 to 0 to approve the above listed items on the Consent Agenda as presented and as recommended by City Manager Hildebran.

IV. REQUESTS AND PETITIONS OF CITIZENS

V. REPORTS OF BOARDS AND COMMISSIONS

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

A. Items of Information

BLACK HISTORY MONTH EVENT;

MOVIE: 1. The movie "Green Book" will be shown at the Martin Luther King, Jr. Center on Saturday, February 9 beginning at 5:00 p.m. in commemoration of Black History Month.

CITY/SERVICES

COMMITTEE: 2. The City/County Services Committee will meet on Monday, February 11 at 11:45 a.m.

CALDWELL COUNTY EDC

COMMISSION: 3. The Caldwell County Economic Development Commission will meet on Tuesday, February 12 at 8:00 am.

ABC BOARD: 4. The Lenoir ABC Board will meet on Thursday, February 14 at 2:00 p.m.

LENOIR TOURISM DEVELOPMENT

AUTHORITY: 5. The Lenoir Tourism Development Authority will meet on Thursday, February 14 at 4:00 p.m.

LENOIR BUSINESS ADVISORY

BOARD: 6. The Lenoir Business Advisory Board will meet on Thursday, February 14 at 6:00 p.m.

CITY COUNCIL PLANNING

RETREAT: 7. The City Council will hold its annual Planning Retreat on Friday, February 15 at 8:30 a.m. in the meeting room at Blue Ridge Energy's Corporate Office.

PARKS & RECREATION ADVISORY

BOARD: 8. The Parks and Recreation Advisory Board will meet on Monday, February 18 at 6:00 p.m. at the Optimist Park Clubhouse.

B. ITEMS FOR COUNCIL ACTION

BID AWARD; FIRE STATION

NO. 3: 1. Bids were received on Monday, February 4 for the proposed Fire Station No. 3. Staff recommended that Council award the low bid of \$342,400 to Brushy Mountain Builders to upfit the new proposed Fire Station No. 3.

A copy of the bid tab is hereby incorporated into these minutes by reference. (Refer to page 63).

City Manager Hildebran advised Council that, as you are aware in late 2018, the City acquired a 0.910 acre lot located at 1015 Wilkesboro Boulevard that included two (2) recently constructed buildings. The purchase contract required an access road to Taylorsville Road be platted and constructed, including any necessary associated water and storm water appurtenances, and the two (2) buildings be modified, if necessary, to meet or exceed a Risk Category IV building code standard. The purchase price was \$1,028,612.

The architect's opinion of the total construction project cost was estimated to be approximately \$375,000. It is anticipated that once a contract is executed, work will take approximately 120 days to complete. The City has budgeted \$400,000 for this phase of the renovation project.

Additional furniture, fixtures, equipment, and miscellaneous items are estimated at \$176,215, of which the City has budgeted \$207,000.

Councilmember Perdue then requested to be recused from the vote as he receives a benefit from the low bidder (Brush Mountain Builders).

Motion

Councilmember Stevens moved to recuse Mr. Perdue from voting on this item. This motion carried 4 to 0.

Motion

Upon a motion by Councilmember Beal, Council voted 4 to 0 to award the low bid of \$342,400 to Brushy Mountain Builders for the proposed new fire station as recommended by City Staff.

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

**ANNOUNCEMENT; VACANCY; LENOIR
PLANNING BOARD:**

- A. Mayor Gibbons announced for the general public the appointment of Patricia Kaye Reynolds to serve a term on the Lenoir Planning Board. This appointment will be placed on the February 19 agenda for consideration of approval by City Council. Ms. Reynolds will be replacing Merlin Perry who recently retired off of the Board.

Mayor Gibbons further announced that vacancies exist on the Lenoir Tourism Development Authority and the Lenoir Housing Authority.

IX. REPORT AND RECOMMENDATIONS OF COUNCIL MEMBERS

X. ADJOURNMENT

- A. There being no further business, the meeting was adjourned at 5:30 p.m.

Shirley M. Cannon, City Clerk

Joseph L. Gibbons, Mayor

**AN ORDINANCE OF THE CITY COUNCIL OF LENOIR,
NORTH CAROLINA, DESIGNATING CERTAIN LAND
GENERALLY LOCATED SOUTH OF WILKESBORO BLVD.,
NORTH AND EAST OF ARROWOOD ST., AND WEST OF FALL
ST., AND COMPRISED OF 48.66 ACRES, MORE OR LESS, AS
CONDITIONAL ZONING DISTRICT #5 (CZ-5) ON THE CITY'S
OFFICIAL ZONING MAPS; DIRECTING AMENDMENT OF
THE OFFICIAL ZONING MAP; PROVIDING FOR
SEVERABILITY, AND AN EFFECTIVE DATE.**

Whereas, at its regularly scheduled meetings of December 17, 2018, the Lenoir Planning Board considered zoning application case number CZ-5, requesting the Conditional Zoning district designation, for approximately 48.66 acres of land, described by the legal description attached to this ordinance as **Exhibit "A"** (hereinafter the "Property"); and

Whereas, the property owner desires to allow the re-use of the existing commercial building on the property, and provide for the development of the remainder of the property with multi-family housing, necessitating the need for Conditional Zoning; and

Whereas, based upon the evidence presented to the Lenoir Planning Board, including the information and analysis contained in the staff report for application case number CZ-5, and subject to certain conditions, the Lenoir Planning Board recommended that the Lenoir City Council approve said conditional zoning application and adopt an ordinance in accordance therewith; and

Whereas, the Lenoir Planning Board has found that approval of the application is consistent with the City's adopted Comprehensive Plan, which calls for creation of more housing opportunities for people

at all stages of life and concentrating density away from environmental sensitive and flood-prone areas; and

Whereas, the Lenoir City Council hereby finds that this ordinance is consistent with the intent and purpose of the Conditional Zoning designation as established by Appendix A, Article V, Section 502, Lenoir City Code; and

Whereas, the Lenoir City Council hereby finds and declares that this ordinance and these amendments are in the best interest of the public health, safety, and welfare; and

NOW, THEREFORE, LET IT BE ENACTED BY THE CITY COUNCIL OF THE CITY OF LENOIR, NORTH CAROLINA, AS FOLLOWS:

SECTION 1. ZONING. After due notice and public hearing, and pursuant to Appendix A, Article XIV of the Lenoir City Code, and other relevant portions of the Lenoir City Code, the zoning designation for the Property is hereby changed from the R-15 and R-12 zoning districts to Conditional Zoning district on the City's Official Zoning Map (to be denoted as "CZ-5").

SECTION 2. OTHER DEVELOPMENT LAWS. Except as expressly provided otherwise by this ordinance, the CZ-5 zoning district remains subject to all applicable federal, state, and local laws, and nothing in this ordinance shall be construed to exempt the Property from the lawful authority or jurisdiction of any federal, state, or local agency.

SECTION 3. DEFAULT ZONING DISTRICT. Except as expressly provided otherwise by this ordinance, the Property shall be governed by the land development regulations of the R-12 zoning district.

SECTION 4. SPECIAL CONDITIONS. The Conditional Zoning district for the Property is subject to the following special conditions:

1. **Concept Plan.** Subject to any modifications expressly contained in the text of this ordinance, development and maintenance of the Property must be consistent with the concept plan attached to this ordinance as **Exhibit "B"** (hereinafter the "Concept Plan"). In the event of a conflict between the text of this ordinance and the Concept Plan, the text of this ordinance shall control. References in this ordinance to lots, parcels, buildings, phases, and other development features refer to such features as identified on the Concept Plan.
2. **Variances.** Zoning variances to the standards of the default zoning district not modified by this ordinance may be approved pursuant to the procedures set forth in Appendix A, Article XIII, Section 1312.1 of the Lenoir City Code.
3. **Modification.** The special conditions specific to the CZ-5 zoning district may only be modified by application for a zoning map amendment following the procedures outlined in Appendix A, Article VIII, Section 820 of the Lenoir City Code.
4. **Permitted Uses.** In addition to the uses allowed in the R-12 zoning district, the following additional uses are permitted:

- a. Existing Building (Labeled "A" on Concept Plan): Club house, country club, restaurant (with or without on-premise alcohol), non-residential amenities for residential development (computer labs, community rooms, etc.), offices, light retail, and day care uses.
 - b. Upland Property (Labeled "D" on Concept Plan): Cluster developments, multi-family developments, bungalow courts, patio homes, duplexes, zero-lot-line single family developments, townhomes, assisted living facilities, and nursing homes.
 - c. Floodway Property (Labeled AE-FW on the Concept Plan): The only permitted uses of the floodway property, except for the existing development, are passive recreation/open space, walking trails, and golf courses.
5. **Density.** Residential uses shall be limited to a maximum density of 3.6 dwelling units/acre, except when a Traffic Impact Analysis is submitted to the City Planning Director showing that higher densities will not have adverse impacts on the surrounding transportation networks. In no case shall the total number of residential units exceed 108 units. Density calculation shall be based on the land area outside of the AE-FW Special Flood Hazard Area (approximately 24 acres). For assisted living facilities and nursing homes that have shared kitchen facilities and common areas, with either single occupancy or shared occupancy rooms, each 2 patient beds shall be considered one dwelling unit.
6. **Minimum Lot Size and Frontage.** There shall be no minimum lot size or public roadway frontage required for individually platted residential lots (i.e. townhomes, patio homes, etc.), as long as the parent tract for the residential development maintains a minimum frontage of 40 ft. on Arrowood Street. If private roads are developed in conjunction with platted lots, a homeowner's association must be established to provide for the ongoing maintenance of private roads. If the northern portion of the parcel containing the existing building is to be subdivided separately an access easement along the private driveway for use by both the upland acreage and the existing building will be required.
7. **Traffic Study Required.** Any residential development generating more than 500 daily trips (based on ITE trip generation rates for the proposed development type) or exceeding 3.6 du/acre requires a Traffic Impact Analysis and all traffic improvements necessary to mitigate the impacts of the development on the surrounding street network shall be considered a part of the requirements of this section. This requirement shall only be waived by the City Council, after recommendation by the Planning Board, through the Conditional Use Permit process.
8. **Ingress and Egress.** The access point from Arrowood Street shall be maintained, and shall be available for use by the existing building as well as future residential development. A secondary access point must be provided for any development containing 30 or more residential units, which may be a private street. Fall St., labeled as "E" on the Concept Plan, is the preferred location for the secondary access. An alternative location for ingress/egress may be approved in lieu of opening Fall St., when supported by a Traffic Impact Analysis.
9. **Bufferyards and Maintenance.** A 15-foot vegetated buffer will be maintained or established around the entire upland portion of the site (excluding ingress/egress points) planted in accordance with the bufferyard standards of the Lenoir Zoning Ordinance. See buffer areas labeled "F" on the Concept Plan.
10. **Special Flood Hazard Areas.** Development shall not be expanded in the portions of the site located within the AE-FW Special Flood Hazard Area, except as allowed by the Lenoir Flood Damage Prevention Ordinance.
11. **Lighting.** All new and replacement light fixtures shall be fully cut-off and shielded so as to prevent light spill-over onto adjacent properties.
12. **Design.** Residential uses shall meet the open space and recreational space requirements of the Lenoir Zoning Ordinance. All units shall have either a covered entrance with a front-gabled roof or a front porch. Buildings containing more than one residential dwelling shall be articulated using a combination of architectural features, material changes, changes in roof lines, and projections and recesses to break up the massing of the building. Minimum roof pitch shall be 4:12. For detached dwellings, a minimum of 3 variations of front facades must be used, and no two immediately adjacent structures shall have the same façade.

13. **Sidewalks.** A 5-ft. wide sidewalk shall be provided to give direct pedestrian access from the upland portion "D" of the site to the existing building "A." A 5-ft. wide sidewalk shall be provided to give a direct pedestrian connection to Arrowood Street. 8 ft. wide asphalt greenways may be utilized as an alternative to 5-ft. standard sidewalks.
14. **Signage.** Building-mounted signage shall follow the sign rules of the B-2 zoning district for the existing non-residential building. All other development shall follow the sign standards for residential districts. On Arrowood Street, in order to accommodate ground-mounted signage for the existing building and upland residential development, one monument sign up to 8 ft. tall and 50 sq. ft. of copy area is permitted. On Fall St., or any other secondary access point located at least 300 ft. away from the existing driveway, an additional monument sign is permitted at a maximum height of 6 ft. with a maximum copy area of 32 sq. ft. The signs allowed under this section for both the commercial and residential portions of the site may be located within easements for private roads opened to serve this development and still be considered to be "on premise" signs.

SECTION 5. SEVERABILITY. If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

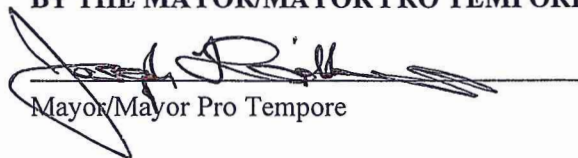
SECTION 6. EFFECTIVE DATE. This ordinance takes effect upon adoption.

DONE, THE PUBLIC NOTICE, in a newspaper of general circulation in the City of Lenoir, North Carolina, by the City Clerk of the City of Lenoir, North Carolina, the 4th day of January and the 11th day of January, 2019.

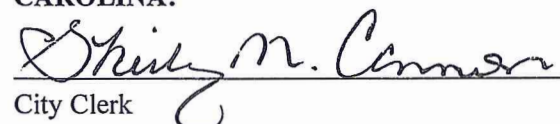
DONE, THE PUBLIC HEARING, at a regular meeting, the 15th day of January, 2019.

DONE, ENACTED ON FINAL PASSAGE, by an affirmative vote of the a majority of a quorum present of the City Council of the City of Lenoir, North Carolina, at a regular meeting, this 5th day of February, 2019.

BY THE MAYOR/MAYOR PRO TEMPORE OF THE CITY OF LENOIR, NORTH CAROLINA:


Mayor/Mayor Pro Tempore

ATTEST, BY THE CLERK OF THE CITY COUNCIL OF THE CITY OF LENOIR, NORTH CAROLINA:


City Clerk

****[Remainder of page intentionally left blank.]****

BEGINNING at a PK Nail (set) in a bridge over Lower Creek on Arrowood Street (SR-1709), said PK Nail being located S 47° 26' 00" E, 201.26 feet from a PK Nail in the centerline of Arrowood Street at the edge of Hwy. 18 (Wilkesboro Blvd.)

Preceding thence from said PK Nail (set), the point of beginning, leaving Arrowood Street and with Lower Creek for 3 calls: N 47° 53' 43" E, 575.92 feet; N 31° 45' 24" E, 463.18 feet; N 51° 10' 56" E, 294.45 feet to a point in Lower Creek and a common corner with the Gregory B. Barlow (694/29) property; thence leaving Lower Creek and with the Barlow property, N 24° 55' 06" W, passing a 3/4" Rebar at 225.16 feet and continuing 27.70 feet for a total distance along this bearing of 252.86 feet to a point in Hwy 18; thence with Hwy 18, N 62° 52' 52" E, 20.00 feet to a point in Hwy 18; thence leaving Hwy 18, S 24° 55' 06" E, passing a 3/4" Iron Pipe Set at 40.00 feet and continuing with the Barlow property, 208.69 feet for a total distance along this bearing of 248.69 feet to a point in Lower Creek and a common corner with the Barlow property; thence with Lower Creek for 2 calls: N 62° 39' 38" E, 87.97 feet; N 63° 31' 08" E, 113.87 feet to a point in Lower Creek and a common corner with the William Simmons (1047/1082) property; thence leaving Lower Creek and with the Simmons property, N 29° 39' 53" W, passing a 3/4" IPF at 25.00 feet and continuing 185.21 feet for a total distance along this bearing of 210.21 feet to a PK Nail in the margin of Hwy 18 and being a common corner with the Simmons property and NCDOT (1047/1015) property; thence with NCDOT, N 62° 32' 10" E, 160.70 feet to a 3/4" IPS in the margin of Hwy 18 and a common corner with the NCDOT property and the Basil G. Carswell (1086/443) property; thence leaving the margin of Hwy 18 and with the Carswell property, S 24° 55' 06" E, passing a 3/4" IPS at 160.00 feet and continuing 17.50 for a total distance along this bearing of 177.60 feet to a point in Lower Creek and a common corner with the Carswell property; thence with Lower Creek for 19 calls: N 58° 49' 23" E, 90.65 feet; N 56° 56' 09" E, 43.14 feet; N 50° 26' 53" E, 36.08 feet; N 30° 50' 42" E, 46.12 feet; N 60° 54' 26" E, 68.25 feet; N 56° 38' 43" E, 29.78 feet; N 74° 11' 13" E, 34.22 feet; S 83° 46' 03" E, 37.84 feet; N 72° 55' 34" E, 58.61 feet; N 74° 47' 39" E, 60.45 feet; N 77° 30' 06" E, 31.06 feet; S 85° 28' 00" E, 58.15 feet; S 87° 22' 33" E, 54.72 feet; N 86° 16' 49" E, 44.15 feet; N 82° 21' 27" E, 40.02 feet; N 73° 32' 39" E, 30.36 feet; S 82° 25' 20" E, 90.08 feet; S 57° 54' 09" E, 46.31 feet; S 70° 01' 37" E, 17.76 feet to a point in Lower Creek; thence leaving Lower Creek and with the Herbert E. Bryant (1066/221) property, S 22° 64' 02" W, passing a 3/4" IPS at 24.00 feet and continuing 380.61 feet for a total distance along this bearing of 404.61 feet to a 42" Ash tree in a fence line and a common corner with the Betty Jean Vines (907/201) property; thence with the Vines property, S 08° 44' 25" E, 1238.19 feet to a 1" IPF in the fence line and being a common corner with the Vines property and the Bryan K. Carlton (367/291) property; thence S 08° 51' 18" E, 223.80 feet to a 1/2" IPF; thence S 78° 41' 05" W, 533.75 feet to an axle in the line of the Thomas Pipes (411/641) property; thence with the Pipes property, N 24° 26' 46" W, 189.30 feet to a 4" I Beam and a common corner with the Pipes property and the Benny Bowen (1185/1252) property; thence with the Bowen property, N 23° 41' 03" W, 209.49 feet to a 1/2" IPF and being a common corner with the Bowen property and the J.F. Barnett (217/621) property; thence with the Barnett property, N 23° 48' 41" W, 186.26 feet to a Concrete (886/207) property; thence with the Carlton property, N 21° 11' 18" W, 330.84 feet to a 3/4" IPS; thence continuing with the Carlton property, along a ditch line, S 32° 53' 34" W, 40.00 feet to a 3/4" IPS; S 61° 25' 08" W 248.65 feet, S 61° 43' 52" W, 334.95 feet; S 53° 02' 58" W, 129.97 feet; S 45° 16' 41" W, 295.95 feet to a PK Nail in Arrowood Street; thence with Arrowood Street, N 50° 10' 00" W 495.90 feet to the point of Beginning.

Containing 2155341.587 ± square feet, or 49.48 ± Acres, by Computer, as surveyed by D & D Land Surveyors, 05/27/97.

Being the same property as conveyed from James E. Parlier and wife, Ellen Louise Parlier to R & R Enterprises, a North Carolina General Partnership, by Deed dated May 30, 1997, and recorded in Book 1192, at Page 783, Caldwell County Registry.

- A: Existing building, originally developed as a club house for Camelot Golf Club
- B: Existing Parking lot developed for Camelot Golf Club
- C: Primary ingress/egress
- D: Upland property reserved for permitted residential uses in accordance with CZ-5
- E: Private road to be opened to provide secondary access point for residential development
- F: Bufferyard areas — to be maintained and/or installed with residential development

Page 6 of 6
CZ-4



CITY MANAGER
SCOTT E. HILDEBRAN

CITY OF LENOIR
NORTH CAROLINA

MAYOR
JOSEPH L. GIBBONS

CITY COUNCIL
J. T. BEAL
T. H. PERDUE
J. I. PERKINS
T. J. ROHR
D. F. STEVENS
C. D. THOMAS
B. K. WILLIS

**RESOLUTION TO PRE-PROCURE DRYER EQUIPMENT FOR THE
BIOSOLIDS FACILITY IMPROVEMENTS PROJECT**

WHEREAS, the City of Lenoir owns, operates, and maintains the Lower Creek Wastewater Treatment Plant to serve the citizens of Lenoir and surrounding communities; and

WHEREAS, Lower Creek Wastewater Treatment Plant includes biosolids treatment equipment; and

WHEREAS, the City of Lenoir has received a low-interest State Reserve loan to construct an upgrade to the Biosolids Facility; and

WHEREAS, the Biosolids Facility project involves the addition of a biosolids dryer system, and that after equipment comparisons and site visits, City staff has determined that Gryphon Environmental LLC's dryer system best meets the City's needs for biosolids processing. The Gryphon Dryer has five (5) patents involving thermodynamic and mechanical advancements. Those patents provide unique benefits for the City of Lenoir in the following areas: (1) short start-up and shut-down times, (2) unique evaporative and pressure differential process, (3) inherent safety and maintenance features, and (4) equipment cost and scale. N.C. General Statute 143-129(e)(6) allows for procurement of equipment that is "available from only one source of supply".

NOW, THEREFORE, BE IT RESOLVED THAT THE LENOIR CITY COUNCIL does hereby decide to pre-procure drying equipment from Gryphon Environmental, LLC for the Biosolids Facility project, all as deemed in the best interest of the City of Lenoir.

Adopted this the 5th day of February, 2019 at Lenoir, North Carolina.

(SEAL)


Joseph L. Gibbons, Mayor

ATTEST:


Shirley M. Cannon, City Clerk



J B PLASTER ARCHITECT

BID ACKNOWLEDGEMENT

DATE: February 4, 2019

PREPARED FOR:

Scott Hildebran
City Manager
City of Lenoir

PROJECT:

Lenoir Fire Department
Station 3
1015 Wilkesboro Boulevard
Lenoir, NC 28645

Mr. Hildebran,

This afternoon, February 4, 2019, at 2 pm, we received bids for the renovation of the property at 1015 Wilkesboro Boulevard, Lenoir, NC for the purposes of a new satellite fire station. The bids were received as follows:

Brushy Mountain Builders	\$342,400
Precision Contracting Company	\$351,288
Wilkie Construction Company	\$357,000

Precision Contracting Company did not include proof of a bid bond, and is considered incomplete. The other two bids were complete. All three bids are attached for your review.

Respectfully,

Jesse Plaster, RA

MINUTES

ABC BOARD & CITY COUNCIL MEETING TUESDAY, FEBRUARY 12, 2019 6:00 PM.

PRESENT: ABC Board Members: Jerry Brooks, Chairman, John Tye, Betsy Wilson, ABC Staff: Mike Suddreth, Manager, Richard Hagen, Finance Manager, and Steve Huntley, CPA.

Others present were City Manager Hildebran, City Clerk Cannon, Mayor Gibbons, Mayor Pro-Tem Willis, and Councilmember Beal.

ABSENT: Councilmembers Todd Perdue, Ike Perkins, David Stevens and Crissy Thomas. **Note:** Councilmembers Perdue and Stevens participated via telephone at the end of the meeting and during the vote to approve the report.

I. CALL TO ORDER

A. Mayor Joe Gibbons welcomed everyone and called the meeting to order.

II. ABC Board Report

A. Chairman Brooks stated the City of Lenoir's ABC stores experienced their third best year since 1978 and also reported Lenoir has the second lowest capita per consumption. Mr. Brooks stated the Board and Staff are proud of this accomplishment. He shared the City of Lenoir received a \$255,000 distribution payment in FY2017-2018.

In addition, Chairman Brooks briefly mentioned the issue of privatization and pointed out, if all of the ABC Boards were consolidated, there would only be one Board per County. Mr. Brooks emphasized that over 2,000 employees would also lose their jobs. As information, Mr. Brooks shared that North Carolina, Virginia and Pennsylvania are all state controlled Boards.

Steve Huntley, CPA, presented an overview of their annual audit report which was conducted by the firm of Benson, Blevins & Associates, P.L.L.C. (A copy of the audit report is on file in the City Clerk's office.)

Mr. Huntley presented the following information:

- Net Sales \$2,700,759
- Gross Profit \$ 866,736
- Net Assets Ending \$ 851,459
- Net Position \$ 877,221

Next, Mr. Huntley presented the distribution of income:

- City of Lenoir \$ 255,000
- Caldwell Schools \$ 31,281
- Law Enforcement \$ 12,029
- Alcoholic Education \$ 16,840

Mr. Huntley reiterated sales have increased and their total current assets are \$681,578. Mr. Huntley noted their change in net position is \$25,762. The Board's actual working capital as of June 30, 2018 is \$445,348. He also shared the Board's restricted working capital amount is \$103,875.

Additionally, Mr. Huntley reported the audited financial statements consist of the Management's Discussion and Analysis, Basic Financial Statements, Required Supplementary Information-Local Governments Employees' Retirement System along with Additional Information Required by the ABC Board.

Mr. Huntley further reported their total operating budget increased by \$124,619 for a total operating budget of \$3,496,165. Mr. Huntley also explained the Board's proportionate share of the net pension liability using a discount rate of 7.2% is \$34,068. A 1% decrease amount is \$102,274 which is a 6.2% percentage rate and a 1% increase or (8.20%) is (\$22,862). Mr. Huntley explained the state Treasurer's office determines the percentage rate.

A brief discussion followed regarding the proposed increases to the state and local government's pension plans over the next several years.

In conclusion, Mr. Huntley clarified the Board did not have any violations during FY2017-2018 and restated that revenue increased. He also stated they did not have any depreciation or capital outlay, but reiterated the change in their contribution rate for the state's pension fund.

Mike Suddreth, Store Manager, reported the quality of their products has improved which he thinks has helped with increased sales. Mr. Suddreth reported their new products are very popular and he anticipates both stores will do well in the upcoming year.

Motion

Upon a motion by Councilmember Beal, Council voted 4 to 0 to accept the ABC Board's Audit Report as presented. **Note:** Councilmembers Todd Perdue and David Stevens participated electronically via telephone for the vote.

On behalf of City Council, Mayor Gibbons thanked the Board and Mr. Huntley for the good report.

III. ADJOURN

There being no further business, the meeting was adjourned at 6:22 p.m.

CITY OF LENOIR
COUNCIL ACTION FORM: February 19, 2019

I. Agenda Item:

Resolution affirming the City of Lenoir's support for a compliant Stormwater Management Program.

II. Background Information:

The City of Lenoir is required under the Clean Water Act to maintain a National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit. The Planning Department implements the requirements of this permit for the City of Lenoir, as well as for the towns of Gamewell, Cahah's Mountain, Hudson, Sawmills, and Granite Falls, which until recently were considered "co-permittees" under the same permit. In late 2018, the Environmental Protection Agency (EPA) and the NC Department of Environmental Quality (DEQ) audited our program and noted several deficiencies.

In order to come back into compliance with the Clean Water Act, DEQ is requiring that the City and the other co-permitted municipalities each adopt separate stormwater management plans and apply for separate NPDES permits (currently, we enforce the program under a Caldwell County ordinance and all of the towns are permitted under one permit).

Adoption of the attached resolution is requested by the DEQ in order to demonstrate the City's commitment to take the necessary steps to comply with the MS4 requirements of the Clean Water Act.

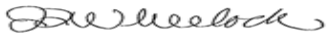
III. Staff Recommendation:

Adoption of the attached resolution.

IV. Reviewed by:

City Attorney: _____

Finance Director: _____

Planning Director:  _____

**RESOLUTION AFFIRMING THE CITY OF LENOIR'S SUPPORT
REGARDING IMPLEMENTATION OF A COMPLIANT NPDES MS4 STORMWATER PROGRAM**

A RESOLUTION to develop and implement a compliant stormwater management program that meets the requirements of the City of Lenoir's National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit number NCS000474 to discharge stormwater, inclusive of the required Stormwater Management Plan to be prepared by the City of Lenoir and approved by the North Carolina Department of Environmental Quality.

WHEREAS, Section 402(p) of the federal Clean Water Act required NPDES permits for stormwater discharges from municipal separate storm sewer systems; and

WHEREAS, in North Carolina, NPDES Permits are issued by the North Carolina Department of Environmental Quality; and

WHEREAS, the North Carolina Department of Environmental Quality issued the City of Lenoir its third NPDES MS4 Permit for discharge of stormwater on February 20, 2017; and

WHEREAS, the City of Lenoir was issued Notice of Violation number NOV-2019-PC-0022 on January 24, 2019 for noncompliance with the issued NPDES MS4 Permit; and

WHEREAS, the City of Lenoir acknowledges the specific Notice of Violation requirement to obtain an individual NPDES MS4 Permit which does not include co-permittees; and

WHEREAS, the City of Lenoir acknowledges the specific Notice of Violation requirement to adopt a Council Resolution to implement a compliant and enforceable stormwater management program as defined by both the NPDES MS4 Permit number NCS000474 and the required approved Stormwater Management Plan, and said resolution is to be submitted to the North Carolina Department of Environmental Quality no later than March 29, 2019; and

WHEREAS, the City of Lenoir acknowledges the specific Notice of Violation requirement to develop and implement a Stormwater Management Plan in accordance with Section 402(p)(3)(B)(iii) of the Clean Water Act, 40 CFR 122.34(b) and NPDES MS4 Permit requirements and to submit its Stormwater Management Plan to the North Carolina Department of Environmental Quality for approval no later than July 27, 2019; and

WHEREAS, the City of Lenoir acknowledges the requirement to provide adequate funding and staffing to implement a Stormwater Management Program that complies with its NPDES MS4 Permit and approved Stormwater Management Plan; and

WHEREAS, the City of Lenoir acknowledges that North Carolina Department of Environmental Quality enforcement action and penalties could result from non-compliance with the specific requirements in Notice of Violation number NOV-2019-PC-0022; and

WHEREAS, the City of Lenoir acknowledges that any North Carolina Department of Environmental Quality enforcement action and penalties may not prohibit the U.S. Environmental Protection Agency from taking its own enforcement action for non-compliance with the issued NPDES MS4 Permit.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Lenoir hereby affirm its support for development and implantation of a compliant NPDES MS4 Stormwater Program.

Adopted this the 19th day of February, 2019.

Joseph L. Gibbons, Mayor

Scott E. Hildebran, City Manager

ATTEST:

Shirley M. Cannon, City Clerk

CITY OF LENOIR
COUNCIL ACTION FORM

I. Agenda Item:

Resolution accepting construction of Hotel Street and Market Street as complete and dedicated for public use, including rights-of-way, underground utilities, stormwater drainage systems, curb and guttering, and sidewalk(s)

II. Background Information:

Hotel Street and Market Street, as part of the Hampton Inn project, were previously dedicated for public use through acceptance of a final plat recorded in Plat Book 33, Page 79, on April 25, 2017 (plat attached). Construction of Hotel Street and Market Street has been completed, including all appurtenances, and staff finds the construction to be in accordance with City standards.

III. Staff Recommendation:

Adopt a resolution officially accepting the construction of Hotel Street and Market Street as complete and accepted for public use and maintenance.

IV. Reviewed by:

City Attorney: _____

Finance Director: _____

Public Works/Public Utilities Director:_____



Public Works Director

**A RESOLUTION ACCEPTING PETITION FOR DEDICATION OF
STREET(S)/INFRASTRUCTURE
IN THE CITY OF LENOIR**

THAT WHEREAS, the Developer of Hotel Street & Market Street, Lenoir, Caldwell, North Carolina was desirous of dedicating said street's rights-of way, water and sewer utilities, stormwater structures within rights of way and utility easements to the City of Lenoir; and

WHEREAS, the recorded plat for P.B. Realty, Inc. (Market Street & Hotel Street) recorded in Plat Book 33 Page 79 depicts the street and utility easements within the subdivision as being dedicated for public use; and

WHEREAS, construction of Market Street and Hotel Street, including all underground utilities, stormwater drainage systems, asphalt paving, and concrete curb and guttering and sidewalks, has been completed; and

WHEREAS, the street, water and sewer utilities and stormwater structures were constructed in accordance with city standards and the Director of Planning and Community Development, Public Works and Utilities Director and City Manager recommend that the City officially accept the street, water and sewer utilities, stormwater structures and utility easements so that the City can be legally responsible for the maintenance and upkeep of the street, water and sewer utilities and stormwater structures;

NOW, THEREFORE, BE IT RESOLVED AND ESTABLISHED by the Lenoir City Council of the City of Lenoir, North Carolina this 19rd day of February, 2019, as follows:

SECTION I. That, pursuant to N.C.G.S. Chapter 160A, Articles 15 and 16, the street and rights-of-way, water and sewer utilities, stormwater structures and utility easements offered for dedication as shown on a map entitled: "P.B. Realty, Inc. Subdivision" prepared by Western Carolina Surveyors, P.A. dated April 24, 2014, a copy of said map being incorporated herein, and by reference made a part hereof. Said map also being recorded in Plat Book 33 Page 79 of the Caldwell County Registry is hereby accepted as public facilities of the City of Lenoir, NC.

SECTION II. That this Resolution shall be and the same is hereby effective from and after the date of its adoption.

This the 19th day of February, 2019.

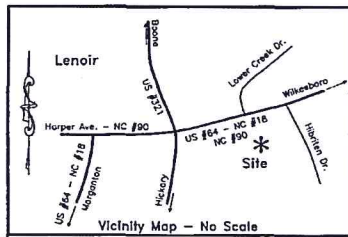
SEAL

Joseph L. Gibbons, Mayor

ATTEST:

Shirley M. Cannon, City Clerk

Fee \$21.00

Caldwell County North Carolina
Wayne L. Rash, Register of Deeds

- Notes:
- 1) Property is zoned B-2 (General Business) by the City of Lenoir.
 - 2) Minimum building setbacks:
Front = 10' from street / R/W; Side = 30' abutting residential, none abutting non-residential; 25' abutting side street; Rear = 30' abutting residential, 20' abutting non-residential.
 - 3) Total number of lots = 3.
 - 4) Minimum lot area = 1.271 acres; total area = 7.140 acres gross (includes proposed street).
 - 5) Property is not located within a WS IV watershed area.
 - 6) Areas were determined by coordinate geometry.
 - 7) Size & location of underground structures or utilities are approximate.
 - 8) All development on lots shown herein shall comply with the development standards of Section 3 of the Caldwell County Phase II Stormwater Ordinance.

Flood Information

According To FIRM Map Panel H-3710275900J
The Property Shown (is) Not Located
Within A 100 Year Flood Hazard Boundary.
Effective Date: 7/7/2009.

REVIEW OFFICER'S CERTIFICATE

STATE OF NORTH CAROLINA
COUNTY OF CALDWELL
I, Kim Carter, REVIEW OFFICER OF
Caldwell County, CERTIFY THAT THE MAP
OR PLAN TO WHICH THIS CERTIFICATION IS ATTACHED MEETS
ALL STATUTORY REQUIREMENTS FOR RECORDING.
DATE 4-25-17

Certificate Of Acceptance Of Dedication And Recording

I, hereby certify that the Subdivision Plat shown herein
has been found to comply with the Subdivision Regulations
for Lenoir, North Carolina, and has been approved by
the City Council for recording in the office of the
Register of Deeds of Caldwell County. The City accepts
the dedication of streets, easements, and public parks,
but the City assumes no responsibility to open or
maintain any streets, easements, rights-of-way, or other
lands thereon and accepted hereby for public purposes
until in the opinion of the Lenoir City Council it is
in the public interest to do so. The approval of this plat
shall be null and void if the said plat is not recorded
with the Caldwell County Register of Deeds within
sixty (60) days of the date of approval.

Date 4-25-17
City Clerk

Certificate Of Approval By The Planning Board

The City of Lenoir Planning Board hereby approves the Final Plat for the
Subdivision.

Date 4-24-2017
Chairman, Lenoir Planning Board

Certificate Of Ownership And Dedication

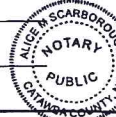
I (We), hereby certify that I am (we are) the owner (s)
of the property shown and described herein, which is
located in the subdivision jurisdiction of the City
of Lenoir and that I (we) hereby adopt this plan of
subdivision with free consent, establish minimum
building setback lines and dedicate all streets, walks
parks, and other sites and easements to public use
as noted.

Date 4/25/17
Owner

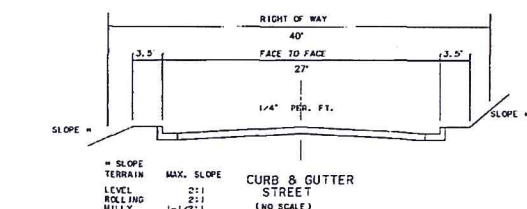
Boyd C. Wilson, Jr., Manager
Owner

Owner

Owner



North Carolina
Caldwell County
I, a Notary Public of the County and State
aforesaid, certify that Boyd C. Wilson, Jr.
personally appeared before me this day and
acknowledged the execution of the foregoing
instrument. Witness my hand and official stamp or
seal, this 25th day of April,
2017.
Notary Public
By commission expires 4/15/2020



POB (CM) is located:
S 42°31'40"E 1,798.59' from NCOS Station
"B"
NCOS Grid Co-ordinates: (MAD 83 - Feet)
POB:
NW 797,185.793 E = 1,255,866.503
"B":
N 798,511.263 E = 1,252,650.751
"Low":
N 802,438.021 E = 1,251,978.448
Grid Factor = 0.9998925 & is applied to
Use line only.

Lenoir Golf Club, Inc.
Deed Book 865 Page 697
Deed Book 1179 Page 697

Utility Legend

M.H. Manhole
F.H. Fire Hydrant
V.P. Vent Pipe
G.V. Gas Valve
W.M. Water Meter
H.H. Hose House
P.P. Power Pole
L.P. Lamp Pole
C.B. Catch Basin
W.V. Water Valve
T.P. Telephone Pole
T.B. Telephone Box
C.O. Clean Out
S.P. Service Pole
E.M. Electrical Meter
G.M. Gas Meter
M.W. Monitor Well
R.C.P. Reinforced Concrete Pipe
C.M.P. Corrugated Metal Pipe
F.O.C. Fiber Optic Cable
C.P.P. Corrugated Plastic Pipe

60 0 60 120 180
GRAPHIC SCALE - FEET

Legend

Existing Iron Pipe
New Iron Pipe
P.K. Nail
Concrete Monument
New Iron Rod
Existing Iron Rod
Rairoad Spike
Pano Monument
Temporary Bench Mark
MAG Nail
Found Set

● EIP
○ NIP
△ PK
□ CM
○ NIP
● EIP
● PI
● RH
● FM
● TBW
● MN
(F)
(S)

Lenoir Golf Club, Inc.
Deed Book 865 Page 697
Deed Book 1179 Page 263

I, R. Curtis Gaines, PLS, certify to the following:

A: That this survey creates a subdivision of land
within the area of a county or municipality that
has an ordinance that regulates parcels of land.

R. Gaines
Surveyor (PLS) License No. L-4868

I, R. Curtis Gaines, PLS, certify that this plat
was drawn under my supervision from an actual survey
made under my supervision (deed description recorded
in book 865, page 697, etc.) (other); that the
boundaries not surveyed are clearly indicated as
drawn from information found in book 865, page
697; that the ratio of precision as calculated is
1:20,000; that this plat was prepared in accordance
with G.S. 47-30 as amended.

Witness my original signature; license number and
seal this 24th day of April, A.D., 2017.
R. Gaines
Surveyor (PLS) License No. L-4868

Western Carolina Surveyors, P.A. (License No. C-0338) 2121 HARPER AVE., S.W. LENOIR, N.C. TEL. (828) 768-5353			
TITLE: Major Subdivision Of The Property Of: P.B. Realty, Inc.			
CLIENT:	TOWNSHIP:	COUNTY:	STATE:
P.B. Realty, Inc.	Lower Creek	Caldwell	NC
DEED REF. bk. 1150 pg. 1006	TAX MAP NUMBER: 124-1-20	LAYERS: 35	
bk. 1179 pg. 267	124-1-23A		
APP. BY: RCG	DRAWN BY: LJC	DATE: 4/24/2017	SCALE: 1" = 60'
			OP: 5834-95
			SP: 5834-18
			Job No.: 5934-95A
			File/Data Col.
			Sheet 1 of 1

CITY OF LENOIR
COUNCIL ACTION FORM

- I. Agenda Item:** AMI (Advanced Metering Infrastructure) Meter Upgrade Project Award – Mueller Systems Mi.Net System

Background Information: MeterSys Advanced Metering Solutions recently completed Task Order 2 of the Meter Upgrade project. The results of Task Order 2 were presented at the January 22, 2019 Committee of The Whole meeting and identified Mueller Systems as the preferred solution to address our metering needs, customer engagement and billing requirements. The next phase of the project is the implementation scope which includes the development and installation of the AMI network, billing integration, customer portal development and the replacement of the existing meters in our distribution system. This phase of the project is estimated to take 20 to 24 months. Mueller Systems' proposal met the current needs of our metering requirements as well as the opportunity to expand system capabilities in the future. A copy of the proposed agreement is attached for your review.

- II. Staff Recommendation:** Staff recommends City Council approval to enter into a contract agreement with Mueller Systems in the amount of \$3,656,097.34 for the implementation of the AMI Meter Upgrade Project. Mueller Systems is located in Cleveland, NC.

It is also recommended that the City Council grant the City Manager authority to execute the agreements and any necessary change orders associated with the project and report those change orders at the next council meeting.

- III. Reviewed by:**

City Attorney: _____

Finance Director: _____

Public Works/Public Utilities Director: _____

AGREEMENT

This Agreement (“Agreement”) is made, and entered into this the __ day of _February_, 2019 (“**Effective Date**”), by and between City of Lenoir, NC, a public corporate subdivision of the State of North Carolina, (“**City**”), and Mueller Systems, LLC, a Delaware limited liability company having its principal offices at 10210 Statesville Blvd, Cleveland, North Carolina 27013 (“**Contractor**”).

RECITALS

WHEREAS, City issued a request for proposals (“**RFP**”) for acquisition and construction of an advanced metering infrastructure (“**AMI**”) system;

WHEREAS, Contractor responded to such RFP and is in the business of providing AMI technology such as electronic products, hardware, software, and communications devices and other equipment necessary to operate an AMI system, including installation, design and integration, configuration, training, maintenance and support services (collectively, the “**Mi.Net System**”);

WHEREAS, City and Contractor desire to enter into an agreement for the sale and purchase of the Mi.Net System.

1. GENERAL PROJECT BACKGROUND, SCOPE AND DESCRIPTION

- 1.1. Contractor hereby agrees to provide Hardware, Software and Services (collectively, “**Work**”) under the terms and conditions of this Agreement, including the Scope of Work identified in Attachment A (“**Scope of Work**”) and End User License Agreement identified in Attachment C (“**EULA**”) to this Agreement, all of which are hereby incorporated by reference as if fully set out herein. City hereby agrees to pay for the Work at per unit prices contained in the Fee Schedule in Attachment A (“**Fee Schedule**”) and pursuant to Section 3 of this Agreement. These attachments are hereby incorporated by reference as if fully set out herein.
- 1.2. The Work is more fully described in the Scope of Work, but the general Project scope includes the following:
 - 1.2.1. City will purchase a Mi.Net System incorporating approximately 9,600 endpoints which meet the functional criteria set forth in the Technical Requirements.
 - 1.2.2. Contractor will provide City meters, radios, data collectors/hubs, and repeaters and web-based data hosting software and customer interface further described on the Fee Schedule.
 - 1.2.3. Contractor will provide City installation, project management, integration, training services, support, and system monitoring.

2. DEFINITIONS.

In addition to the terms defined throughout this Agreement, the following terms shall have the specified definitions:

- 2.1. “**Contract Price**” means the aggregate monetary value to be paid to Contractor hereunder.
- 2.2. “**Defective Work**” means with respect to Services, that the Services do not meet industry standard for such Services or in the case that there are not standards, the provisions of the Scope of Work, and commonly accepted industry best practices, and, with respect to Hardware and Software, that such Hardware and Software do not meet or conform to the written specification and documentation provided by Contractor.

- 2.3.⁴⁰ **“Documentation”** means the Contractor’s user guides, reference manuals, and installation materials related to the Software.
- 2.4. **“Final Completion”** means the date which the Mi.Net System meets the technical and performance requirements in this Agreement, including the Attachments, in accordance with the Scope of Work.
- 2.5. **“Force Majeure”** means an event beyond a party’s reasonable control, including, without limitation, acts of God, hurricane, flood, volcano, tsunami, tornado, storm, tempest, mudslide, vandalism, illegal or unauthorized radio frequency interference, strikes, lockouts, or other industrial disturbances, unavailability of component parts of any goods provided hereunder, acts of public enemies, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, restraints or prohibitions by any court, board, department, commission or agency of the United States or any States, any judicial restraints, civil disturbances and explosion.
- 2.6. **“Hardware”** means the meters, endpoints, hubs/collectors/gateways, and repeaters necessary for the Project, collectively.
- 2.7. **“Project”** means implementing the Contractor’s Mi.Net System, including its electronic products, including hardware, software, and communications devices and other equipment necessary to operate the Mi.Net System, and installation and other related services, system design and integration, configuration, and training in connection with the Mi.Net System.
- 2.8. **“Services”** means the installation, project management, integration, and training services described in this Agreement, including the Scope of Work and other Attachments.
- 2.9. **“Software”** means web-based data hosting software and customer interface software in object form.

3. PAYMENT AND INVOICING

- 3.1. All Work performed by Contractors for the Project shall be subject to and in accordance with the pricing terms contained in the Fee Schedule and the fee and method of verification table specified in the Scope of Work which is hereby incorporated herein by this reference. The parties contemplate that Contractor shall invoice and City shall pay for various Services, Software and Hardware hereunder. Such Hardware, Software and Services shall be invoiced and paid in accordance with this Agreement via electronic payment method if supported by both parties. Generally, unless agreed upon, in writing, by the parties, the parties agree to follow the general scheme specified below:
- 3.1.1. Hardware and Software. Contractor shall invoice City for the Hardware and Software upon delivery to City. Ownership, title, and risk of loss for Hardware will pass from Contractor to City upon delivery of such Hardware to City’s specified location. City shall inspect and accept the delivery of all Hardware in accordance with the written procedures agreed upon by the parties.
- 3.1.2. Services. Contractor shall submit a detailed monthly invoice for all Services provided by Contractor and accepted by City per the applicable contract document describing in reasonable and understandable detail the services rendered, fees charged and expenses incurred by Contractor during the previous month in accordance with the schedule of rates and charges set forth in the Fee Schedule, including fees and expenses for additional services authorized by City as provided herein.
- 3.1.3. Payment and Taxes. City shall make payment within thirty (30) days from the date of receipt of the invoice. Hardware shall be shipped F.O.B. destination. City will be responsible

⁴¹ for and pay all applicable sales, use, excise, value-added and other taxes associated with the provision of Hardware, Software or Services by Contractor, excluding income taxes on Contractor' income. City shall pay all undisputed amounts specified in the invoice and City will return the invoice to Contractor prior to the payment due date with an explanation of the reason for nonpayment and the corrective actions necessary, if any, to qualify for payment of the remainder of the invoice.

- 3.2. City shall retain all rights to suspend the Project for Defective Work not remedied or third-party claims filed against City based on Defective Work by the Contractor.
- 3.3. Prior to issuing of final payment, the Contractor will furnish to City a written certification that all subcontractors and vendors associated with the project have been paid and no liens and/or lawsuits have been placed against the Contractor for the Work.
- 3.4. The prices, fees and amounts ("**Prices**") specified in the Fee Schedule shall remain fixed during the term of this Agreement. Thereafter, the Prices will increase on January 1st of each subsequent calendar year by an amount equal to the amount displayed by the Producer Price Index by Industry: Totalizing Fluid Meters and Counting Devices Manufacturing (PCU334514334514), or substantially similar price index if this index no longer exists. This Section shall survive the termination or expiration of this Agreement for the warranty period specified in Attachment B.

4. TERM AND SCHEDULE

- 4.1. The term of this Agreement will commence on the Effective Date and, unless sooner terminated or extended as provided for herein, shall terminate upon the earlier to occur of (i) Final Completion or (ii) the third anniversary of the Effective Date. The term of this Agreement may be extended by mutual written consent of the parties.
- 4.2. The parties agree that the Mi.Net System will be deployed in phases, as defined and described in the project schedule in the Scope of Work ("**Project Schedule**"), which may be updated and adjusted from time-to-time by written agreement of the parties. If Contractor or City anticipates that Contractor will not meet the timelines set forth in the Project Schedule, Contractor and City will meet to develop a revised Scope of Work, Project Schedule, or both. If, after reasonable cooperation and thirty (30) business days, City and Contractor are unable to develop a mutually acceptable revised Scope of Work and/or Project Schedule, the parties will proceed with the dispute resolution provisions of Section 15 hereof.
- 4.3. Sections 3.4, 4, 9, 10, 13, 22, 24-30, Attachment, Attachment D and Attachment E of this Agreement shall survive the termination or expiration of this Agreement.

5. LICENSE

- 5.1. Contractor hereby grants to City for the term of this Agreement and for the fees specified in the Fee Schedule, a limited, non-exclusive, non-transferable license (without the right of further sublicense) to operate, use, and display the Software and Documentation solely for the purposes of the Project. In consideration of City's payment of the ongoing support and maintenance fees set forth in the Fee Schedule, Contractor will provide City with an ongoing license of the Software and the maintenance and support services described in the EULA. The EULA shall become effective upon Final Completion and shall be for an initial term of five (5) years from the date of Final Completion. Thereafter, the EULA shall automatically renew for subsequent, successive one (1) year renewal terms.

- 5.2.⁴² This Agreement does not grant to City any ownership interest in the Software. Rather, this Agreement hereby grants to City a license to use the Software as provided in this Agreement. City hereby agrees and acknowledges that Contractor owns all right, title, and interest in the Software and copyrights in and to the Software and City must not contest those rights or engage in any conduct contrary to those rights. Any copy, modification, revision, enhancement, adaptation, translation, or derivative work of or created from the Software made by or at the direction of City shall be owned solely and exclusively by Contractor, as shall all patent rights, copyrights, trade secret rights, trademark rights and all other proprietary rights, worldwide.
- 5.3. Except as specifically permitted, City shall not (i) modify, translate, de-compile, or create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Software; (ii) adapt the Software in any way for use to create a derivative work; (iii) include the Software in any other software; or (iv) use the Software to provide services to third parties other than City's customers. The Software and Documentation shall be considered the confidential information of Contractor and, as such, shall be subject to the confidentiality provisions of this Agreement.

6. INDEPENDENT CONTRACTOR.

The Parties acknowledge and agree that Contractor is and will remain at all times an independent contractor, and no provision of this Agreement is intended to create any relationship of employment, joint venture, partnership, or agency between Contractor (including any of its employees or agents) and City. Neither party has any authority to bind the other in any respect or otherwise execute any documents on behalf of the other pursuant to this Agreement.

7. SUBCONTRACTORS

Contractor may use subcontractors in the performance of its obligations under this Agreement, but: (a) the Contractor shall remain fully liable for the completion of its duties under this Agreement and for any breach, negligence or tortious conduct by its subcontractors and; (b) City must approve any additions or changes in subcontractors from Contractor's original proposal in writing in advance of the subcontractor commencing work, which approval shall not be unreasonably withheld, conditioned, or delayed. Approval by City shall not release Contractor from its obligations under the Agreement. Subcontractors shall be bound by all the provisions of the Agreement, including its attachments.

8. RIGHT OF INSPECTION / RIGHT TO AUDIT

Contractor agrees that the City shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions relating to this Agreement. Contractor agrees that the City shall have access, during normal working hours, to all necessary Contractor facilities, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of this section. City shall give Contractor reasonable advance notice of intended audits. Contractor shall have no liability to City for any of City's costs and expenses, directly or indirectly, as a result of this provision.

9. INDEMNIFICATION

Contractor shall defend, indemnify, and hold the City, its officers, directors, agents, and employees harmless from and against all claims, demands, actions, causes of actions, damages, liabilities, losses, and expenses (including reasonable attorneys' fees) incurred through claims of third parties against City based on or arising from Contractor's negligent acts, errors, or omissions hereunder.

10. INTELLECTUAL PROPERTY INFRINGEMENT INDEMNITY

- 10.1. Contractor shall defend, indemnify and hold harmless City from and against any claims or litigation brought or instituted against City by a third party which alleges that the Mi.Net System provided hereunder infringes upon the patents, copyrights, trade secrets or other intellectual property of such third party (an "**Indemnified Infringement Claim**"), and from any and all damages incurred by City which arise directly from the Indemnified Infringement Claim, including but not limited to any judgment or settlement, the cost of any investigation, defense and appeal of any judgment, and all related court costs and expenses, including but not limited to expert witness fees, subject to the following limitations:
- 10.2. In addition to its duty to indemnify City from any Indemnified Infringement Claim, Contractor shall also defend City against any such Indemnified Infringement Claim using counsel reasonably acceptable to City, which consent shall not be unreasonably withheld, delayed or conditioned. Contractor shall control the defense of the Indemnified Infringement Claim. In addition to being responsible for any judgment, Contractor may, in its sole discretion and at its sole expense, settle any Indemnified Infringement Claim, provided however that Contractor will not make any admission of liability or agree to any non-monetary conditions that affect City without the consent of the City, which consent shall not be unreasonably withheld, delayed or conditioned. City shall reasonably cooperate in the defense of the Indemnified Infringement Claim. City shall give Contractor written notice of any claim hereunder within fourteen (14) days of receiving it; provided, however, that any delay in providing written notice to Contractor shall not relieve Contractor of its obligations under this Section unless such delay causes material prejudice to Contractor's ability to defend and indemnify City from the claim.
- 10.3. Further, Contractor shall have no liability hereunder to defend, indemnify or hold harmless City if such Indemnified Infringement Claim directly arises from; (a) any change, modification or alteration made to the Mi.Net System by City or a third party without the prior written approval of Contractor; provided that any third-party interfaces contemplated herein used in the Mi.Net System shall not be deemed to be a change, modification or alteration under this provision; (b) the combination of the Contractor's Software with one or more of the City interfaces as contemplated herein; (c) compliance by Contractor with any designs, specifications or instructions provided by City that results in new custom software (as opposed to a different configuration of Contractor's existing Software) that then becomes the basis of the third-party infringement claim; or (d) any use of the Mi.Net System other than for the authorized use of the Mi.Net System.
- 10.4. In the event the Mi.Net System is adjudicated to infringe a patent or copyright of a third party and its use is enjoined, or, if in the reasonable opinion of Contractor, the Mi.Net System is likely to become the subject of an infringement claim, Contractor, at its sole discretion and expense, may: (i) procure for City the right to continue using the Mi.Net System, (ii) modify or replace the Mi.Net System so that it becomes non-infringing or (iii) terminate this Agreement and refund a pro-rated amount on a 15 year straight-line depreciation basis to City based upon its use of the Mi.Net System. Notwithstanding the foregoing, Contractor shall continue to be subject to the defense and indemnification obligations of this Agreement.

11. ~~INSURANCE~~

- 11.1. The Contractor shall maintain in full force and effect during the term of the Agreement the following liability insurance
- 11.1.1. Workers compensation insurance shall cover employers' liability, \$1,000,000.
 - 11.1.2. Automobile liability insurance shall have a combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year.
 - 11.1.3. The policies of insurance shall have a combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year.
 - 11.1.4. An Excess Liability Policy naming the Contractor as insured and also naming City as an additional insured in an amount not less than \$5,000,000.00 for bodily injury, personal injury, property damage and products completed operations. (Coverage shall be at least as broad as provided for in the most current version of the Insurance Services Office Form applicable to such policy.)
 - 11.1.5. Professional liability insurance coverage having a combined single limit not less than \$2,000,000 per claim applicable to this project. Professional liability insurance coverage self-insured retentions/deductibles in excess of \$100,000 must be approved by City's Finance Director.

12. LIMITATION OF LIABILITY

- 12.1. Notwithstanding anything to the contrary, Contractor's and City's aggregate liability in any and all causes of action or disputes arising under, out of or in relation to this Agreement, its negotiation, performance, breach, termination or otherwise (collectively "**Causes of Action**") shall not exceed the total amount to be paid by City directly to Contractor under this Agreement. This is so whether the Causes of Action are in tort, including, without limitation, negligence or strict liability, in contract, under statute or otherwise.
- 12.2. AS SEPARATE AND INDEPENDENT LIMITATIONS ON LIABILITY, IN NO EVENT WILL CONTRACTOR OR CITY BE LIABLE TO THE OTHER PARTY UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR COVER OR FOR EXTRAORDINARY, INCIDENTAL, LOSS OF PROFITS, SPECIAL, CONSEQUENTIAL (INCLUDING LOSS OR CORRUPTION OF DATA OR LOSS OF REVENUE, SAVINGS OR PROFITS) OR EXEMPLARY DAMAGES, EVEN IF CONTRACTOR OR CITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND IRRESPECTIVE WHETHER SUCH DAMAGE IS CATEGORIZED AS DIRECT DAMAGES OR OTHERWISE. FURTHER, WITHOUT LIMITING THE FOREGOING, CONTRACTOR SHALL NOT BE LIABLE FOR ANY IN/OUT COSTS, NOR MANUAL METER READ COSTS AND EXPENSES. THE LIMITATIONS ON LIABILITY SET FORTH IN THIS AGREEMENT ARE FUNDAMENTAL INDUCEMENTS TO THE PARTIES ENTERING INTO THIS AGREEMENT.
- 12.3. THE WARRANTIES AND REMEDIES STATED HEREIN ARE EXCLUSIVE. NO OTHER WARRANTIES OR REMEDIES EXPRESS, IMPLIED OR STATUTORY, APPLY TO THE DOCUMENTATION, SOFTWARE, HARDWARE, OR ANY SERVICES TO BE PROVIDED UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES OF QUALITY OR PERFORMANCE, ALL OF WHICH CONTRACTOR EXPRESSLY DISCLAIMS.

13. CONFLICT OF INTEREST

Contractor covenants and agrees that Contractor and its officers, employees, and managers will have no interest, including personal financial interest, and will acquire no interest, either directly or indirectly, which will conflict in any manner with the performance of the Services called for under this Agreement. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to City of any land, materials, supplies or services, except on behalf of the City or in compliance with the provisions of the City Personnel Policies and Procedures Manual.

14. DISPUTE RESOLUTION

14.1. In the event of any Cause of Action, the parties shall use their reasonable commercial efforts to settle such Cause of Action internally including resolving such dispute or breach. To this effect, they shall consult and negotiate with each other, in good faith and understanding of their mutual interests, to reach a just and equitable solution satisfactory to all parties.

14.2. If a Cause of Action arises, the parties shall, unless otherwise set out in this Agreement, follow the step-by-step correction and resolution procedure set out below to the extent necessary to resolve the Cause of Action:

14.2.1. Step 1. The non-breaching party's Project representative shall advise the other party's Project representative in writing of the alleged breach or dispute.

14.2.2. Step 2. The Project representatives shall meet to resolve the dispute and will, within forty-eight (48) hours, or such time as they mutually agree, resolve the dispute or elect to escalate it to the next reporting level.

14.2.3. Step 3. If unresolved at Step 2, the dispute shall be escalated to a vice-president of Contractor and the designee of City, who will within five (5) business days of receipt of notice of the dispute, or such time as they mutually agree, resolve the dispute or elect to escalate it to the next reporting level.

14.2.4. Step 4. If unresolved at Step 3, the dispute shall be escalated by the vice-president of Contractor and the designee of City referred to in Step 3 above to the president of Contractor and the Executive Director of City who shall within five (5) business days of receipt of notice of the dispute, or such time as they mutually agree to, resolve the dispute. If the parties fail to resolve the dispute within the five business days (or such other time as mutually agreed to) of this Section 15.2.4, either Contractor or City may submit the dispute to a mediator mutually agreed upon by the parties, which mediation shall take place in the City of Carrboro, North Carolina. If the parties cannot agree upon a mediator within five (5) business days, each party shall elect a mediator, and the elected mediators shall select a mediator to hear the dispute. This selected mediator shall be the sole mediator of the dispute. The cost of any such mediation shall be equally shared by the parties.

14.2.5. Step 5. If the mediation following Step 4 is does not result in final resolution of the issues and claims between the parties, litigation may be commenced by either party, providing the only venue for any such litigation shall be in the appropriate division of the General Court of Justice, in Caldwell County, North Carolina.

15. TERMINATION WITHOUT CAUSE.

In addition to its right to Terminate for Cause, City may terminate this Agreement at any time without cause, upon ninety (90) days' written notice to Contractor ("**Termination Without Cause**"). In the event of a Termination Without Cause, Contractor shall, upon receiving notice, immediately begin closing its operations related to this Project. City shall compensate Contractor for Contractor's reasonable Demobilization Costs for a reasonable period of time, provided that Contractor shall use its best efforts to mitigate any such costs and that Contractor notify City of what the Demobilization Costs will be within ninety (90) of its receipt of the notice of Termination Without Cause. For clarity, the Demobilization Costs do not have to actually be incurred during the ninety day period. For purposes of this Agreement, the term "**Demobilization Costs**" shall include, but not be limited to: the cost of disposing of vehicles and property purchased or leased for this project that cannot be reasonably reallocated to other projects or otherwise mitigated; and the costs, if any, of terminating sub-contractors' workforces. City shall be liable to pay Contractor for Hardware on-hand, delivered to Contractor's installer, or that is scheduled to arrive within 90 days of the termination notice, unless such hardware can reasonably be deployed elsewhere by Contractor, and Hardware and Services that have already been performed and delivered in accordance with this Agreement. If items have been delivered to the Project site for which Contractor is responsible for installing, Contractor shall not install them except with the prior written consent of City. All Hardware paid for by City under this provision will be delivered (but not installed) to City within thirty (30) days after payment. Notwithstanding any other provision of this Agreement to the contrary, City will have the right to inspect and audit the books and records of Contractor to confirm and validate Contractor's Demobilization Costs as they pertain to this project. Notwithstanding any of the foregoing, if City terminates this Agreement by providing a written termination notice of 180 days or longer, then it shall not be liable for any Demobilization Costs.

16. TERMINATION WITH CAUSE

Either party may terminate this Agreement for a material breach of the Agreement by the other party, unless the party in breach commences actions to cure the breach within ten days of written notice thereof from the claimant party, and cures the breach within forty-five (45) days of such written notice ("**Termination For Cause**"). In the event the breaching party cures, the Agreement shall remain in full force and effect. Notwithstanding the foregoing, if a specific section of this Agreement requires a shorter or longer cure period, then that shorter or longer cure period shall apply.

17. TERMINATION AND TRANSITION ASSISTANCE

- 17.1. Upon termination of this Agreement by Termination For Cause or the termination of the EULA for any reason, City and Contractor's obligations shall immediately cease; provided, however, that at the option of City, Contractor shall provide transition assistance for a period of up to ninety (90) days commencing on the applicable termination date, during which Contractor shall provide reasonable assistance to City to facilitate data migration from the Mi.Net System to City at Contractor's then-current time and material rates ("**Transition Assistance**"). Notwithstanding any other provision to the contrary, City's right to Transition Assistance shall exist even though at the time of the termination City is in breach of the Agreement and/or the Agreement has been terminated due to City's breach, except in the case City has not paid Contractor; provided that even in this case, Contractor shall provide City all Operational Data in a format reasonably determined by the parties.

18. RETURN OF CITY DATA UPON TERMINATION.

- 18.1. Upon termination of the Agreement for any reason, including but not limited to City's breach, City may, within twenty (20) business days after the effective date of termination, request that Contractor return all City Operational Data to City (the "**Data Notice**"). The "**Operational Data**" means the then-current metering data content of the Mi.Net System Software and databases in their entirety, delivered in a file format reasonably agreed upon by the parties at that time. City shall pay Contractor for any reasonable charges associated with the return of the Operational Data.
- 18.2. Within 60 days of the termination of the Agreement for any reason, including but not limited to City's breach, and/or upon City's request, Contractor shall return to City a copy of any historical City data in Contractor's possession.
- 18.3. Notwithstanding anything to the contrary, Contractor shall not be required to purge any of its business records related to City, including but not limited to records supporting its financial dealings with City, customer support efforts, project management efforts, warranty claims, contract negotiations, or other data generated in the ordinary course of operating its business. For the avoidance of doubt, the purpose of this provision is for Contractor to return information that is sensitive and proprietary to City but not a typical business record created in the ordinary course by Contractor. To the extent that Contractor keeps any of the City data following termination of this Agreement, it shall keep it secure, not disclose it to any third party unless compelled by law to do and shall be liable to City for damages and/or equitable relief for any unauthorized use or disclosure of the City Data.

19. CHANGE ORDERS.

- 19.1. The change order process shall be governed by the Scope of Work. To the extent that the Scope of Work does not address certain aspects of the change order process, this Section shall govern. In the event this Section and the Scope of Work conflicts, the Scope of Work shall govern.
- 19.2. Without invalidating or amending the Agreement, City or Contractor may, at any time or from time to time, request additions, deletions, or revisions in the Technical Specifications, Scope of Work and/or other contract document by a change order request (each a "**Change Order**"). Upon receipt of a Change Order, and after written approval by both parties, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Agreement (except as otherwise specifically provided).
- 19.3. If the Contractor identifies any change affecting the general scope or other provisions of this Agreement, it will be the Contractor's responsibility to make timely notification to City for review and approval. If City does not accept Contractor's suggested change, Contractor shall not be obligated to expand the scope of its work under the Agreement.
- 19.4. Contractor shall be entitled to an adjustment to the Project Schedule dates where Contractor falls behind on the schedule due to reasons not solely attributable to Contractor's delay or due to a Change Order.
- 19.5. Upon a request for a Change Order, if the City and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the amount due or schedule modification (provided, however, that any such adjustment to the Project Schedule may not be an acceleration of the Project Schedule), or both, that should be allowed as a result of a Change Order, the parties will proceed with the dispute resolution provisions in Section 15 of this Agreement.

- 19.6. Contractor shall not be entitled to an increase to the Contract Price or an extension of the Project Schedule with respect to any Work performed that is not required by the Agreement as amended, modified, or supplemented, except in the case of an emergency.
- 19.7. In the event that a breach or delay by City directly results in the delay of the Final Completion, which in turn results in Contractor suffering damages, then Contractor may submit a Change Order for the reasonable damages incurred as the direct result of that delay. Contractor shall have a duty to reasonably mitigate such damages.

20. EQUAL EMPLOYMENT OPPORTUNITY, NONDISCRIMINATION

Contractor shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, national origin, or disability. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, or disability. In the event Contractor is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be canceled, terminated or suspended in whole or in part by City, and Contractor may be declared ineligible for further City contracts.

21. CONFIDENTIAL INFORMATION

- 21.1. In the performance of this Agreement, each party may have access to confidential, proprietary or trade secret information owned or provided by the other party relating to software computer programs, object code, source code, marketing plans, customers, financial information, specifications, business processes, and other data ("**Confidential Information**"). All Confidential Information supplied by one Party to another pursuant to this Agreement shall remain the exclusive property of the disclosing Party. The receiving Party shall use such Confidential Information only for the purposes of this Agreement and shall not copy, disclose, convey or transfer any of the Confidential Information or any part thereof to any third party, excluding the Party's authorized employees and agents, unless otherwise required by law. Each Party will implement adequate procedures with its employees or other persons permitted or who have access to the Confidential Information to satisfy their obligations under this Agreement. Neither Party shall have any obligation with respect to Confidential Information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving Party; (ii) was previously known to the receiving Party or rightly received by a receiving Party from a third Party; (iii) is independently developed by the receiving Party.
- 21.2. If a request is made for disclosure of Confidential Information, City shall determine whether the material should be made available under the Public Records Act, chapter 42.56 RCW. If the material or parts thereof are determined by City to be exempt from public disclosure, City shall not release the exempted documents. If the material is not exempt from public disclosure, or City is not in the position to make such a determination, City shall notify Contractor of the request and allow Contractor ten (10) days to take whatever action it deems necessary to protect its interests. If Contractor fails or neglects to take such action within the ten (10) day period, City shall release the materials at issue.

22. ASSIGNMENT

- 22.1. City and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in this Agreement.
- 22.2. Unless expressly agreed to elsewhere in this Agreement, no assignment by a party hereto of any rights under or interests in the Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

23. GOVERNING LAW

The interpretation of the terms of this Agreement and the actions of the parties under the Agreement shall be governed by the laws of the State of North Carolina, without taking into account its choice of law provisions.

24. SEVERABILITY

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

25. ENTIRE AGREEMENT

This Agreement and its exhibit and attachments contain the entire understanding between City and Contractor relating to the Work which is the subject of this Agreement. This Agreement merges all prior discussions, negotiations, letters of understanding or other promises whether oral or in writing. The Agreement supersedes all prior agreements and understandings between the Parties hereto relating to the subject matter hereof. No course of prior dealings between the Parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of the Agreement. Acceptance of, or acquiescence in, a course of performance rendered under this Agreement or any prior agreement shall not be relevant or admissible to determine the meaning of the Agreement even though the accepting or acquiescing Party has knowledge of the nature of the performance and any opportunity to make objection. Subsequent modification or amendment of this Agreement shall be in writing and signed by the Parties to this Agreement.

26. WAIVER

Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement.

27. NOTICES

Any notice or demand desired or required to be given under this Agreement shall be in writing and deemed given when personally delivered, sent, or deposited in the United States Mail (or with an

express courier), postage prepaid, and addressed to the parties as set forth below or to such other address as either party shall have previously designated by such a notice:

If to City:

If to Contractor:

Mueller Systems, LLC
 10210 Statesville Blvd
 Cleveland, NC 28031
 Attention: General Counsel

28. PUBLIC ACTIVITIES

The parties agree to collaborate on any press release related to this Agreement. To the degree it is practical to do so, the parties will collaborate with regard to statements to the press or television media, but the inadvertent failure to so collaborate by either party shall not be a breach of this Agreement.

29. HEADINGS

The headings of this Agreement are for convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

30. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

30.1. Contractor makes the following representations:

30.1.1. Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations.

30.1.2. Contractor has considered the information known to itself and the RFP with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of deployment to be employed by Contractor; and (3) Contractor's safety precautions and programs.

30.1.3. Subject to the assumptions in the Scope of Work and related documents and based on the information, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price proposed, within the required times.

30.1.4. Contractor has given City written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the RFP, and the written resolution thereof by City is acceptable to Contractor.

30.1.5. This Agreement, including all attachments hereto, is generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

30.1.6. Contractor's entry into a contract with City for this Project constitutes a representation by Contractor that all unit prices in the Fee Schedule are premised upon performing and furnishing the Work.

- 30.2. Contractor represents and warrants that, from the date of provision and for one year thereafter, (i) the Work under this Agreement will be performed in a professional and workmanlike manner and (ii) the Services will substantially conform to the requirements of this Agreement.
- 30.3. Subject to the other terms and conditions in this Agreement, Contractor provides the Hardware, Software, and Services warranties as described in the Warranties attached hereto as Attachment D ("Warranties"), which are incorporated herein by this reference.

31. ORDER OF PRECEDENCE

In case of any inconsistency, conflict, or ambiguity among the applicable documents, the documents shall govern in the following order:

- a. This Agreement
- b. Attachments to this Agreement
- c. Change Orders

In the event of ambiguity in the above-referenced documents in this Section 33 a-c, the Parties agree to review City's RFP and Contractor's response in order to resolve such ambiguity prior to resorting to any dispute resolution described herein or otherwise available to the Party.

32. ATTACHMENTS

The following documents attached hereto are hereby incorporated with and made a part of this Agreement:

Attachment A: Scope of Work

Attachment B: Warranties

Attachment C: End User License Agreement

33. COUNTERPARTS

This Agreement may be executed and delivered (including by facsimile transmission or portable document format) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

[Signature Block Follows]

⁵²
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

“Contractor”

Mueller Systems, LLC

“City”

By: _____

Authorized Signature

Name (Print or Type)

Title

By: _____

Authorized Signature

Name (Print or Type)

Title

**Attachment A:
Scope of Work**

[Attached]

Attachment B

Limited Warranty For Mueller Systems Products And Services

This Warranty shall apply to the Mueller Systems hardware and software products specified in Appendix A (respectively, the “Hardware” and “Software” and collectively, the “Products”) and the Services provided hereunder and is extended only to utilities, municipalities and other commercial users of the Products (referred to as the “Customer”).

Product Warranty

Subject to the limitations and conditions set forth herein, Mueller Systems warrants that commencing from the date of shipment to the Customer and continuing for the period set forth in Appendix A (referred to as the “Warranty Period”); (a) the Hardware will comply with the documentation provided under normal use, installation and service conditions; (b) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (c) the Software substantially conforms to the applicable published Mueller Systems functional specifications for the Software. Mueller Systems will, at its option, either repair or replace the Product if it malfunctions or becomes inoperable due to a defect in workmanship or materials during the Warranty Period. If in its sole discretion Mueller Systems determines that it is unable to repair or replace the Product, it will refund to Customer a pro-rated amount paid for the defective Product, according to the warranty replacement cost schedule (that is, for example, 10 years’ full, then 10 years’ pro-rata for endpoints). Products that are repaired or replaced under this Warranty will be warranted for the remainder of the original Warranty Period or 30 days, whichever is longer.

Exclusions

If, in Mueller Systems’ reasonable judgment, a Product has been subject to misuse, neglect or accident or has been damaged through abuse, alternation, improper installation or application, failure to follow Mueller Systems’ operation or maintenance instructions or negligence in transportation, handling, or storage, or repaired by anyone other than Mueller Systems or its authorized personnel, including subcontractors, this Warranty will not be applicable. For Software, this Warranty will not apply if there has been a change to the Software’s operating environment not made or authorized by Mueller Systems; Customer fails to install any correction or enhancement provided by Mueller Systems; or a virus is introduced through no fault of Mueller Systems, provided Mueller Systems has used commercially reasonable efforts to protect the software from viruses and malware. This Warranty will also not cover damage due to acts of God, power failures, lightning, fire, severe weather, hailstorms, insect and pest infestation, and other events reasonable beyond Mueller Systems’ control.

Product Returns

Claims under this Warranty will be considered if submitted to Mueller Systems within 60 days following the discovery of any defect covered by this Warranty and provided Mueller Systems or its agents are permitted a commercially reasonable opportunity to examine and analyze the material or workmanship claimed to be defective. If Mueller Systems elects to repair the Product, Customer will send it, properly packaged, to a repair facility designated by Mueller Systems. Customer will

pay the cost of returning defective Products to the place of repair designated by Mueller Systems and Mueller Systems will pay the cost of delivering repaired or replacement Products to Customer.

Contractor shall perform routine testing on returned units in accordance with its standard processes and procedures, including (i) providing City a summary report on all returned units within ninety (90) days of receipt, (ii) conducting tests to confirm whether or not a returned unit is functional and (iii) performing root cause analysis on 5% of the confirmed non-functional returned units. Contractor may amend its processes and procedures from time-to-time at its sole discretion. If the parameters described in (i), (ii) and/or (iii) of this paragraph is/are changed, Contractor shall provide notice to City of such change.

Service Warranty

Contractor warrants that all Hardware deployed at final network acceptance will communicate with the network server and properly upload data in accordance with the performance specifications described in the Agreement and its Attachments. After endpoint acceptance, as defined in the Scope of Work, field maintenance of end points and network infrastructure (except as otherwise agreed upon in writing by the Parties) will be the responsibility of City. City further acknowledges that City shall be responsible for annual cost of power consumption if solar is not utilized. Should City desire communications with any meters not specified up front in the network design and propagation study phase, additional collector(s) and/or repeater(s) may be required and if so, City will be responsible for the cost of those items as needed.

Limits of Warranty and Liability

Damage to persons or property or other loss or injury resulting from improper installation by persons other than its subcontractors or use shall not be the responsibility of Mueller Systems. Mueller Systems will not under any circumstance be liable for any indirect, special, incidental or consequential damages of any nature, whether based on contract, tort or other legal theory including but not limited to, business interruption costs, loss of profit or revenue, loss of data, loss of use of services, cost of capital, cost of substitute services or facilities, downtime costs or damages and expenses arising out of third-party claims, even if Mueller Systems has been advised of the possibility of such damages. In all cases, Mueller Systems' total liability will be limited to the total payments made by Customer to Mueller Systems for the Products and services provided.

Disclaimer of Warranty

EXCEPT AS EXPRESSLY SET FORTH IN THIS WARRANTY, MUELLER SYSTEMS DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, OR REPRESENTATIONS, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES AGAINST TITLE AND AGAINST INFRINGEMENT AND WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. TO THE EXTENT ANY IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD.

Warranty Appendix A

Software / Hardware

1. AMR / AMI Products:

Software – Mi.Host, Mi.Data, MCM (Meter Control Management), MCM Mobile, EZReader and other software products are covered by a one (1) year warranty from the date of shipment or provision to Customer.

Hardware – Mi.Node electric (Smart Meter), Mi.Hub Collectors, Mi.Tech Handheld PC, Street Machine RF Receiver, PitStop handheld receivers, TRuRead™ remotes, laptops PC's, Server Hardware and all other peripheral electronic products are covered by a one (1) year warranty from the date of shipment to Customer.

Radio Modules – Mi.Node™ water modules and Hot Rod™ modules are covered by a ten (10) year warranty from the date of shipment to Customer. Additionally, Mi.Node water modules and Hot Rod™ modules are covered by a prorated warranty for years eleven (11) through fifteen (15) at a fifty-percent (50%) discount, years sixteen (16) through twenty (20) at a twenty-five-percent (25%) discount. Mi.Hydrant and Repeater Transceivers are covered by a ten (10) year warranty from the date of shipment to Customer. All prorated warranty credits listed will apply to list pricing in effect at the time of the return.

Encoder Register Products – Hersey Translator™ Encoder registers, Hersey SSR Solid State Register, ME-8 Encoder registers, Wall Pads and Pit Pads are covered by a ten (10) year warranty from the date of shipment to Customer. Additionally, the complete unit is covered by a prorated warranty for years eleven (11) through fifteen (15) at a fifty-percent (50%) discount, years sixteen (16) through twenty (20) at a twenty-five-percent (25%) discount from the date of shipment to Customer. All prorated warranty credits listed will apply to list pricing in effect at the time of the return.

2. Water Metering Products:

Remote Disconnect Meters - The Model 420 RDM is part of the 400 series of meters and has applicable coverage shown below for Model 400 meters. In addition, Model 420 RDM has a five (5) year warranty from the date of shipment to Customer on the valve and solenoid assembly.

Models 400, 500, MVR, RFM, FM3, HM, and cold-water mechanical meters and detector check models, **EDCIV** are covered for a period of one (1) year from the date of shipment to Customer.

Model HBMAg electromagnetic cold water meters are covered for a period of (2) years from the date of shipment.

Maincases for the above listed mechanical meters are covered for a period of twenty-five (25) years from the date of shipment to Customer.

Standard Registers for the above listed mechanical meters are covered for a period of fifteen (15) years from the date of shipment to Customer.

Models 400 and 500 meters perform to AWWA new meter accuracy standards as defined in the most current revision for a period of five (5) years from the date of shipment to Customer.

Model HBMAg electromagnetic cold water meters perform to AWWA new meter accuracy standard as defined in the most current revision for a period of two (2) years from the date of shipment to Customer.

Models MVR, RFM, FM3, and HM meters perform to AWWA new meter accuracy standard as defined in the most current revision for a period of one (1) year from the date of shipment to Customer.

Models 400 and 500 meters perform to AWWA repaired meter accuracy standards for the following time periods:

5/8" – Fifteen (15) years from the date of shipment to Customer or the registration of 1,750,000 U.S. gallons, whichever comes first;

- 59 3/4" – Fifteen (15) years from the date of shipment to Customer or the registration of 2,000,000 U.S. gallons, whichever comes first;
- 1" – Fifteen (15) years from the date of shipment to Customer or the registration of 3,000,000 U.S. gallons, whichever comes first;
- 1-1/2" – Fifteen (15) years from the date of shipment to Customer or the registration of 5,500,000 U.S. gallons, whichever comes first;
- 2" – Fifteen (15) years from the date of shipment to Customer or the registration of 8,500,000 U.S. gallons, whichever comes first.

Solid State Meters (SSM) Mueller Systems SSM is will meet or exceed accuracy of +/- 1.5% between the specified minimum flow rate to the specified maximum flow rate for ten (10) years from date of shipment according to the following sizes:

- 5/8" Meter - 0.1 gpm to 20 gpm
- 5/8" x 3/4", 3/4" Short, and 3/4" Long Meter – 0.1 to 30 gpm
- 1" Meter – 0.4 to 55 gpm
- 1 1/2" Meter – 0.8 to 100 gpm
- 2" Meter – 0.8 to 160 gpm

The SSM is covered by a prorated warranty for years eleven (11) through fifteen (15) at a fifty-percent (50%) discount, years sixteen (16) through twenty (20) at a twenty-five-percent (25%) discount. The prorated warranty credit listed will apply to list pricing in effect at the time of the return.

If the above listed meters do not perform as specified, Provider will repair or replace them, at Provider's option, subject to the following:

An applicable meter shall be noncompliant if it fails to pass an accuracy test, conducted by the customer according to AWWA standards. If the meter is inoperative because of foreign material, all such material must be removed prior to testing. A copy of the customer's test results must accompany the meter being returned. If the customer chooses not to test a meter before returning it, Provider will repair or replace the meter at Provider's option after the meter has been tested by Provider. When test is conducted by Provider, the customer will be charged a reasonable testing fee.

Attachment C
End User License Agreement

[Attached]

End User License Agreement

THIS MASTER AGREEMENT (this “**Agreement**”) is entered into this ____ day of February 2019 Between **Mueller Systems, LLC**, a Delaware limited liability corporation having its principal offices at 10210 Statesville Blvd, Cleveland, North Carolina 27013 (“**Provider**”), and the **City of Lenoir, NC** having its principal offices at 510-B Greer Circle, Lenoir, NC 28645 (“**Customer**”). This Agreement supports the Agreement by and between Customer and Provider dated ____ February, 2019, as negotiated and executed by Customer and Provider (the “**Original Agreement**”). This Agreement is entered into with the express agreement of Provider and Customer that all other terms, conditions and stipulations contained in the Original Agreement and any addenda, attachments or amendments thereto shall remain in full force and effect and without any change or modification unless expressly stated herein or therein. For the purposes of this Agreement, all capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Original Agreement. In consideration of the mutual obligations set forth in this Agreement, Customer and Provider agree as follows:

1. DEFINITIONS.

a. “**Documentation**” means the user guides, reference manuals, and installation materials provided by Provider to Customer related to the Software and Equipment.

b. “**Equipment**” means the Products specified in the Original Agreement.

c. “**Software**” means the object code versions of the Software specified in the Original Agreement.

d. “**Software Services**” means the services specified in Appendix A.

2. SOFTWARE

a. Software on Equipment License. For Equipment purchased by Customer from Provider, Provider hereby grants Customer a limited, non-exclusive, non-sublicensable, non-transferable, perpetual, irrevocable license to use and execute the Software embedded in the Equipment for its internal business purposes in connection with such Equipment (“**Firmware**”).

b. Online Software Access. Subject to the terms of this Agreement and the payment of the fees specified in Section 6a herein, Provider grants to Customer, for its internal business purposes and during the term of this agreement, a limited, non-exclusive, non-sublicensable, non-transferable right to access and use and make available to Customer’s utility users, as applicable, and/or employees the online, hosted Software (“**Online Software**”).

c. Restrictions. Except as specifically and expressly permitted in writing by Provider,

Customer shall not (i) violate any restriction set forth in this Agreement; (ii) modify, translate, de-compile, reverse compile, disassemble, or create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Software; (iii) adapt the Software in any way for use to create a derivative work; (iv) include or combine the Software in or with any other software; or (v) use the Software to provide processing services to third parties or on a service bureau basis. Except as expressly permitted in this Agreement, Customer may not copy the Software other than to make one machine readable copy for disaster recovery or archival purposes. Customer may only make copies of Documentation as reasonably necessary for the use contemplated herein and with proper inclusion of Provider’ copyright notices.

d. Ownership. This Agreement does not grant to Customer any ownership interest in the Software or Documentation. Customer has a license to use the Software and Documentation as provided in this Agreement. Customer hereby agrees and acknowledges that Provider owns all right, title, and interest in the Software and Documentation, and Customer will not contest those rights or engage in any conduct contrary to those rights. Any copy, modification, revision, enhancement, adaptation, translation, or derivative work of or created from the Software and Documentation made by or at the direction of Customer shall be owned solely and exclusively by Provider, as shall all patent rights, copyrights, trade secret rights, trademark rights and all other proprietary rights, worldwide.

e. Reservation. Provider reserves all rights not specifically granted under this Agreement.

5. **CONFIDENTIALITY** The Software, Equipment and Documentation, including any ideas, concepts, know-how and technology contained therein, shall be considered the proprietary and confidential information of Provider and, as such, shall be subject to the confidentiality provisions of this Agreement. If a separate, written non-disclosure agreement exists between Provider and Customer, such agreement will control and will apply according to its terms and conditions to all confidential information the parties exchange with each other. If no separate, written non-disclosure agreement exists between Provider and Customer, the terms listed in Appendix B will apply to the confidential information the parties exchange with each other.

6. FEES AND PAYMENT

a. **Fees.** Customer shall pay the fees set forth in Appendix C.

b. **Taxes.** All prices and fees are in U.S. dollars unless otherwise specified. All amounts payable under this Agreement are exclusive of all sales, use, value-added, excise, property, withholding, and other taxes and duties. Customer will pay all taxes and duties assessed by any authority in connection with this Agreement and with Customer's performance hereunder. Customer will promptly reimburse Provider for any and all taxes or duties that Provider may be required to pay in connection with this Agreement or its performance. This provision does not apply to taxes based on Provider's income, or any taxes for which Customer is exempt, provided Customer has furnished Provider with a valid tax exemption certificate.

c. **Payment.** Unless provided otherwise and agreed upon by the Parties, in writing, Customer agrees to pay all invoiced amounts due under this Agreement within thirty (30) days after the date of invoice. Past due amounts will shall bear interest from the due date until paid at a rate of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate permitted by law, whichever is less. All payments made under this Agreement shall be nonrefundable, except as specifically provided otherwise in this Agreement.

7. TERM; TERMINATION

a. **Term and Termination.** The term of this Agreement is one (1) year commencing upon the date of this Agreement. This Agreement will automatically renew for subsequent, successive one (1) year periods at the then-current Provider prices unless either party gives the other party written notice of its intent to not renew at least thirty (30) days prior to the expiration of the then current term. Provider may increase support fees at any time on thirty (30) days prior notice to Customer. Within such thirty (30) days, Customer may terminate the Agreement by providing written notice to Provider. Notwithstanding anything to the contrary, if Customer does not pay the fees specified in Section 6a hereof, Provider may terminate this Agreement with sixty (60) days prior written notice.

b. **Termination for Breach.** If either party breaches this Agreement, and such breach is not cured within ten (10) days of the breach, after receiving written notice, the non-breaching party may terminate this Agreement, including all licenses provided herein, effective upon written notice to the other party. The breaching party agrees that if it breaches this Agreement, the non-breaching party will be entitled to injunctive or similar equitable relief and that the breaching party will not argue in any proceeding that its breach will not cause irreparable harm to the non-breaching party or that the non-breaching party can be adequately compensated for any such harm by any remedies other than by injunctive relief.

c. **Effect of Termination.** Upon termination of this Agreement all Customer access to Online Software shall be withdrawn.

d. **Non-Exclusive Remedy.** Termination of this Agreement or any license or access granted hereunder shall not limit the remedies otherwise available to either party, including injunctive relief.

e. **Survival.** Unless otherwise stated herein, any provision that, by its nature or terms, is intended to survive the expiration or termination of this Agreement, will survive.

8. LIMITED WARRANTIES; REMEDIES

a. **Software.** Subject to the exclusions herein, Provider warrants that commencing from the date of shipment or

provision to Customer and continuing for the period of one (1) year (the “**Warranty Period**”), (i) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (ii) the Software will perform substantially in conformance with the applicable Documentation provided to Customer by Provider. Provider does not warrant that the Software will operate in combinations with other software, except as specified in the Documentation, that the Software will meet the Customer’s requirements or that the operation of the Software will be uninterrupted or error-free. Customer assumes responsibility for taking adequate precautions against damages which could be caused by defects, interruptions or malfunctions in the Software or the hardware on which it is installed. Provider’s entire obligation and Customer’s exclusive remedy with respect to the Software warranties set forth above shall be, at Provider’s option, to either (x) repair or replace any Software containing an error or condition which is reported by Customer in writing to Provider which causes the Software not to conform with the warranty set forth herein; or (y) refund a prorated amount paid by Customer to Provider for the Software and terminate this Agreement and all licenses provided herein.

b. Exclusions. The warranties provided by Provider shall not apply to Software which: (i) have been altered, except with the express written consent, permission or instruction of Provider, (ii) have been used in conjunction with another product or software resulting in the defect, except for those third party products specifically approved by Provider, (iii) were other than the most current version of the Software (but only to the extent that any failure of the Software would have been avoided by the use of the most current version), (iv) have been damaged by improper environment, abuse, misuse, accident, negligence, act of God, excessive operating conditions, or unauthorized attachments or modifications or (v) have not been properly installed and operated in accordance with the Documentation, or as otherwise instructed by Provider.

c. Software Services. Provider shall perform the Software Services in accordance with that same or similar standard of care practiced by reasonable and prudent firms providing the same or similar services in the same geographic locality. This warranty is valid for a period of 30

days from performance of the specific Software Service (“Software Service Warranty”). If any portion of the Software Services fails to comply with this Software Services Warranty and Customer promptly notifies Provider of such non-conformance along with evidence which reasonably demonstrates the non-compliance, Provider shall promptly re-perform the non-conforming Software Services at its cost.

d. DISCLAIMERS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES AND REMEDIES STATED ABOVE ARE EXCLUSIVE AND NO OTHER WARRANTIES OR REMEDIES EXPRESS, IMPLIED OR STATUTORY, APPLY TO THE DOCUMENTATION AND THE SOFTWARE TO BE PROVIDED BY PROVIDER UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY OR PERFORMANCE, AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, ALL OF WHICH PROVIDER EXPRESSLY DISCLAIMS.

9. INDEMNIFICATION. Provider will indemnify and defend Customer from any third party claim that the Software and Equipment infringe on another person’s or company’s patent, copyright or other intellectual property right as specified in this Section. This indemnity does not cover and specifically excludes (a) intellectual property rights recognized in countries and jurisdictions other than the United States, and (b) claims relating to infringement of intellectual property rights by a third party’s products and software. Provider has no obligation under this Section for any claim to the extent it results from or arises out of Customer’s modification of the Equipment or Software or from any combination, operation or use of the Software or Equipment with other third party products or services. Provider’s duty to indemnify under this Section is contingent upon Provider receiving prompt notice of a claim and Provider’s right to solely control resolution of a claim. Customer’s sole remedy for an indemnified claim under this Section is as follows: Provider will, at its expense and in its discretion either (a) resolve the claim in a way that permits Customer’s continued ownership and use of the

affected Software and Equipment, (b) provide a comparable, non-infringing replacement at no cost to Customer, or (c) accept return of the Software and Equipment, provide a reasonable depreciated refund and terminate this Agreement and all licenses herein. This Section is the exclusive statement of Provider's liability and responsibility for indemnifying Customer for infringement of intellectual property rights

10. LIMITATION OF LIABILITY.

a. PROVIDER'S MAXIMUM LIABILITY HEREUNDER IS EXPRESSLY LIMITED TO THE TOTAL AMOUNT PAID FOR THE SOFTWARE AND SOFTWARE SERVICES IN THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS AND WILL UNDER NO CIRCUMSTANCE EXCEED THE AMOUNT PAID BY CUSTOMER IN THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS FOR THE SOFTWARE AND SOFTWARE SERVICES PROVIDED BY PROVIDER UNDER THIS AGREEMENT. Some states do not allow the limitation and/or exclusion of liability for incidental or consequential damages, so the above limitation may not apply.

b. The provisions of this Agreement allocate the risks between Customer and Provider. Provider's pricing reflects this allocation of risk and the limitations of liability specified herein.

11. NOTICE. All notices required to be given hereunder shall be in writing. Notice shall be considered delivered and effective upon receipt when sent by registered or certified mail, return receipt requested, addressed to the parties as set forth above. Either party, upon written notice, may change any name or address to which future notice shall be sent.

12. GENERAL. The Software will not be exported or re-exported in violation of any export provisions of the United States or any other applicable jurisdiction. The rights and obligations of this Agreement are personal rights granted to the Customer only. The Customer may not transfer or assign any of the rights or obligations granted under this Agreement to any other person or legal entity. Any such purported transfer or assignment shall be null and void. Provider will be free of liability to the Customer where Provider is prevented from executing its

obligations under this Agreement in whole or in part due to force majeure, such as earthquake, typhoon, flood, fire, and war or any other unforeseen and uncontrollable. Any modification or amendment to any of the provisions of this Agreement will be in writing and signed by an authorized officer of each party. This Agreement does not create or imply any relationship in agency or partnership between the parties. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. The validity of this Agreement and the rights, obligations, and relationship of the parties resulting from same will be interpreted and determined in accordance with the law of the State specified in the Original Agreement, and applicable federal law, without regard to its choice of law provisions. The parties specifically exclude from application to the Agreement the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. If any provision of this Agreement is contrary to and in violation of any applicable law, such provision will be considered null and void to the extent that it is contrary to such law, but all other provisions will remain in effect. The waiver or failure of either party to exercise any right herein shall not be deemed a waiver of any further right hereunder. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior and contemporary agreements, understandings, and commitments between the parties regarding the subject matter of this Agreement.

[Signatures Appear on the Following Page]

**EACH PARTY ACKNOWLEDGES THAT IT
HAS READ THIS AGREEMENT,
UNDERSTANDS IT, AND AGREES TO BE
BOUND BY ITS TERMS AND CONDITIONS.**

Mueller Systems, LLC

By: _____

Name (Print or Type)

Title

By: _____

Name (Print or Type)

Title

Appendix A

Software Services

1. Software Services and Support Obligations

a. "Update" to the Software means a subsequent release of the Software that Provider makes generally available to its current customers for the Software. Updates include changes and corrections to the Software as are required to keep the Software in substantial conformance with the applicable Documentation and that are created by Provider as corrections for defects in the Software. Updates shall not include any release, option or future product that Provider licenses separately. Provider shall in its sole discretion determine the nature, content, timing and release of any Updates.

b. Web-based support, consisting of information on the most current release of the Software through Provider's web site.

c. Phone support in the form of advice and counsel via telephone regarding Customer's use of the most current release of the Software, as well as Customer's connectivity and ability to access Content. Phone Support shall be provided from 8:00 AM to 5:00 PM (Eastern Standard Time), Monday through Friday, exclusive of holidays observed by Provider.

2. Software Hosting Services

a. Except as specifically permitted in this Agreement, Customer shall have web-based access the Software hosted by Provider pursuant to this Agreement.

b. Provider shall provide Customer with access and related hosting services to the Software installed on Provider's servers. Provider will also install the Content provided by Customer. Provider will define the appropriate performance specifications and will host the server at a Provider's location. Provider will monitor and perform routine maintenance on the server, and if the server is not operating properly, will make a good faith effort to operate Customer's system on a backup server, if available. Access to Customer's server is restricted to authorized Provider information technology and support personnel only. Differential and full server backups are performed when reasonably practicable.

c. Customer shall be responsible for installing, operating and maintaining the equipment, software, and/or facilities at Customer location recommended by Provider for effective access to and use of the Software installed on Mueller Systems server. Customer shall be responsible for providing and maintaining its own Internet access and all necessary telecommunications equipment at Customer's location necessary for accessing the Software.

d. Upon termination, for any reason, of the Agreement or any license(s) granted herein, Provider shall immediately cease providing access to the Software and Hosting Services. Customer shall (i) immediately stop access and use of all such Provider confidential information (including Software); (ii) shall return all copies of the Software, Documentation, and any Provider confidential information to Provider; and (iii) delete all Software, Documentation, and other confidential information off of any and all storage media possessed or controlled by Customer. Customer shall provide Provider with written certification signed by an officer of Customer that Customer has complied with the provisions of this Section. Customer shall immediately pay all amounts due to Provider.

Appendix B

Confidential Information

For purposes of this Attachment, “party” or “parties” shall mean Provider and Customer, including their respective subsidiaries and affiliates who are providing information under this Agreement. The parties agree to maintain confidential information as follows:

1. **Definition of Confidential Information.** The parties understand and agree that confidential information is any and all current and future Equipment, Documentation and/or Software information, roadmap, technical or financial information, customer names, addresses and related data, contracts, practices, procedures and other business information, including software reports, strategies, plans, documents, drawings, machines, tools, models, patent disclosures, samples, materials and requests for proposals that may be disclosed between the parties, whether written, oral, electronic or otherwise, however and wherever acquired (“Confidential Information”). Confidential Information excludes any information which would otherwise fall in the definitions above, but which was (a) known to the recipient of the information (“Recipient”) before receipt from the disclosing party; (b) publicly available through no fault of Recipient; (c) rightly received by Recipient from a third party without a duty of confidentiality; (d) disclosed by disclosing party to a third party without a duty of confidentiality on the third party; (e) independently developed by Recipient without breach of this or any other confidentiality agreement; or (f) disclosed by Recipient after prior written approval from the disclosing party (each an “Exclusion”).

2. **Obligations of Confidentiality and Remedies.** Recipient agrees to protect the disclosing party’s Confidential Information with the same degree of care, but no less than a reasonable degree of care, as Recipient uses with respect to its own Confidential Information. Neither party has any obligation to exchange Confidential Information. Both parties acknowledge and agree that the disclosure of the other party’s Confidential Information could cause irreparable harm. Therefore, an injured party is entitled to applicable equitable relief, including injunctions, in addition to other remedies, for such wrongful disclosure of Confidential Information. In addition, disclosure of Confidential Information required by a government body or court of law is not a violation of this Section if the Recipient gives prompt notice of the required disclosure to the disclosing party.

3. **Term of Confidentiality Obligations.** Recipient’s duty to protect Confidential Information expires upon the date that such applicable Confidential Information becomes an Exclusion.

4. **No Warranties on Confidential Information.** Neither party warrants or guarantees the accuracy of any Confidential Information transferred between the parties.

Appendix C

Fees

Schedule of Values Item	Unit Price	Milestone for Payment
MiHub Collector Maintenance	\$600	One year anniversary of ship date
MiNet Cellular Backhaul per MiHub	\$420	Installation of MiHub and reporting to MiHost
MiTech Maintenance Radio Yearly Maint	\$350	One year anniversary of ship date
AMI Prem Host Mi.Host	\$19,704.60	Availability of hosted software and at least one MiHub reporting to MiHost
AMI Prem Host WaterSmart	\$16,821.00	Completion of WaterSmart acceptance testing
Optional Collector/Repeater Service Plan per Appendix D	\$15,040.00	Completion of Network Coverage Test

Appendix D

Optional Service Plans Infrastructure (Collector/Repeater)

Overview

NOTE: If any failure is due to acts beyond the control of Mueller Systems, e.g. acts of God, or third party intentional or willful misconduct, upon notification by Customer and acceptance by Mueller Systems of such failure, Mueller Systems will use commercially reasonable efforts to address such failure at the then-current Parts and Service fees. Such fees shall be in addition to any previously-paid maintenance fees.

Summary of the service level commitment provided by Mueller Systems is as follows:

- 100% reporting of all and accepted infrastructure devices covered
- Acknowledgement and response of all service requests within 2 hours
- Local troubleshooting with 48 hours if required
- Problem resolution of most requests within 5 to 10 business days
- This plan covers labor to service Customer owned equipment only and DOES NOT cover the purchase of material except noted herein

Assumptions

Single Point of Contact (SPOC): Customer will provide Mueller Systems with a single point of contact for notification and communications relating to the assets covered by this plan. This SPOC will be responsible for the coordination of activities and responsibilities assigned to customer.

Access: Where needed, Customer will arrange for timely access to all assets covered under this plan. Customer will coordinate access to any assets installed on third party sites, and ensure access to locked gates, buildings, or any area that a network asset is installed which may require special considerations to service. If requested by Mueller Systems, customer will make attempts to arrange for safe access to assets through local law enforcement, etc.

Covered Assets: Covered assets are defined as Mi.Hub XR collectors, Mi.Hub XR-R collectors, and repeaters installed as part of this project. Pricing is outlined in Appendix C and valid for the installed infrastructure devices (collectors and repeaters) listed in a formal propagation study developed by Mueller Systems as the first step in the execution of this plan.

Stock: Customer will be required to purchase spare stock separately on all required parts for maintenance of network devices (such as collectors as DCXR Repeaters), and a minimum of one (1) Mi.Hub XR collectors and one (1) Mi.Hub XR-R collectors, two (2) DC XR repeaters and other infrastructure devices if identified in final network design (for example solar panels).

AMI tasks included in the annual fee:

- Troubleshooting and replacement of existing Collectors and Repeaters
- Removal / Decommissioning
- Battery Exchange in collectors for contracts that are 6 years or longer.
- Quarterly reporting – format to be mutually agreed upon
- Traffic control

AMI equipment tasks not included in annual fee but price quotation provided following agreed upon scope and site survey:

- Relocate Collector and Repeater

Infrastructure Troubleshooting Steps: Hosted Environment

Mueller Systems will respond to all customer generated service requests within two (2) hours. If local troubleshooting is required, Mueller Systems personnel will be onsite within forty eight (48) business hours. Mueller Systems will attempt to resolve all service requests within 3 to 5 business days, and if such service request cannot be so resolved, Mueller Systems will provide Customer with daily updates and action plans until the service request is resolved. Work above 50 feet (XR-R applications) may take longer than 5 business days.

Step 1: Notification of Outage

Mueller Systems Network Operations Center (NOC) will notify Customer's SPOC of the potential outage condition. A ticket will be opened with the Mueller Systems operations center from tracking the incident and the ticket number will be provided to the Customer SPOC for tracking.

In the event Customer would need to alert Mueller Systems of a potential outage (i.e. physical damage, vandalism, etc.); reporting will be done through the Mueller Systems NOC. Mueller Systems will open a ticket for the incident, and future communications on the issue will be through the Customer SPOC.

Step 2: Remote Troubleshooting

In reaction to suspected outage, Mueller Systems NOC will perform corrective actions to attempt to recover the outage. This will include:

- (1) Troubleshooting and restoration attempts on the cellular backhaul connection (which will include working directly with third party providers such as AT&T)
- (2) Remote Reboot (if the Mi.Hub is responsive on the cellular backhaul)
- (3) Additional troubleshooting steps as required attempting to determine root cause of the outage.

In the event remote troubleshooting does not remedy the outage, Customer will arrive onsite and coordinate with NOC personal to troubleshoot (AC powered devices only). If there is no power present at the electrical connection to the Hub, Mueller Systems will refer the outage back to the customer so that power can be restored by the local electrical provider. The incident investigation will be suspended for further investigation until power is restored and customer notifies NOC.

If local troubleshooting reveals no outright issues with the Mi.Hub device, AC power is present, and escalation is required by Mueller Systems to its third party vendors, a second visit may be required before additional technicians are dispatched.

All actions taken will be logged in the Mueller Systems troubleshooting ticket and included in a final incident report.

Step 3: Technician Dispatch for On-Site Troubleshooting or Replacement

Mueller Systems, or its trained subcontractor, will be dispatched to the site for any outage that cannot be remedied through previous Steps troubleshooting. Mueller Systems will coordinate with the Customer SPOC to occur during normal business hours Monday through Friday 8am to 5pm. The onsite technician is trained in advanced troubleshooting and will take action to remedy the outage. As-found photos will be taken to document the site before any work is done, and As-Built photos will be taken as the technician leaves the site. If replacement of the network device is required, the technician will use a new device from Customer stock. Local Mueller Systems technician will be responsible to return any removed product to the Customer for failure and warranty analysis in a timely manner. A summary of all work will be returned to Customer and logged in the case that tracks the issue through to completion for archival purposes.

Warranties and Fees

In consideration of the annual fee, this plan covers all labor for the servicing of network assets and managing infrastructure during the year such fee was received by Mueller Systems.

Mueller Systems will provide removed equipment back to customer for disposition as necessary (RMAs, disposal, etc). Mueller Systems, or its subcontractors, will dispose of non-warranty RMA products on behalf of Customer if desired.

This plan does not alter, change or effect the standard warranty related to the equipment and software purchased by Customer.

Standard Mueller Systems products needed for inventory for this plan (collectors, repeaters, etc.) will be ordered and billed at quoted prices.

Materials and specialized services are not covered by this plan, but Mueller Systems will make commercially reasonable efforts to acquire all specialized materials and services required under this plan. Such materials and services will be detailed and itemized in a trip summary, and billed to Customer on a cost plus twenty percent rate. Specifically these additional items are:

- Any materials used to service assets (e.g. coax connectors, electrical connectors, LMR cable, antennas, etc.).
- Any other specialized materials or services that may be required to repair assets.

In the event any specialized materials and services cannot be obtained by Mueller Systems for reasons and circumstances outside of its reasonable control, Mueller Systems and Customer will work together to develop a plan to address such issue.

CITY OF LENOIR
COUNCIL ACTION FORM

I. Agenda Item: Consideration of a Service Agreement with MeterSYS Advanced Metering Solutions for Task Order 3 – AMI Metering Project Management and Implementation

II. Background Information: Funding was included in the 2017-2018 Fiscal Year Budget to contract with MeterSYS – Advanced Metering Solutions to undertake a complete analysis of our metering practices including a look at the type of meters we are using and the method that is being used to read the meters. At the conclusion of Task Order 1, Task Order 2 of the project, Solicitation and Procurement, was approved to development an RFP, bidding tabulation, shortlisting and due diligence in the selection process for a contractor to undertake the actual meter change out process. The results of Task Order 2 was presented at the January 22, 2019 Committee of The Whole meeting and identified Mueller Systems as the preferred solution to address our metering needs, customer engagement and billing requirements.

Attached for your review and consideration, is Task Order 3 from MeterSys for the Project Management and Implementation of the AMI meter replacement project. The cost of the Project Management phase with MeterSys is \$339,130.00. This phase of the project is estimated to take 21-24 months. A copy of the Task Order 3 proposal is attached for your review.

III. Staff Recommendation: Staff recommends City Council approval to enter into a Service Agreement with MeterSYS Advanced Metering Solutions in the amount of \$339,130.00 to undertake Task Order 3 – Project Management and Implementation for the Mueller AMI meter reading system.

IV. Reviewed by:

City Attorney: _____

Finance Director: _____

Public Works/Public Utilities Director:_____



City of Lenoir Water Department - Task Order 3 Program of Work: AMI Implementation Scope



MeterSYS
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Raleigh, North Carolina 27603
844.881.8685
www.MeterSYS.com



City of Lenoir Water Department Advanced Metering Implementation Scope of Work Task Order 3 - Program Management

I. Project Overview

The results of the feasibility analysis conducted by MeterSYS and the City of Lenoir Water Department (the "City") Project Team supports investment by the City in full deployment of advanced metering infrastructure (AMI) technology. From the feasibility analysis, it has been determined there is a clear business case for AMI implementation, including full meter replacement with remote disconnect functionalities. Automation and standardization of the City's water meters will reduce read labor costs from manual-heavy work processes like re-reads and manual service orders by performing on-demand reads while gaining benefits from improved meter reading accuracy and customer service through real-time read data. The current market for AMI technologies provides a reliable and predictable meter infrastructure system that will serve the City's current and future operational, financial, and customer service goals successfully delivered through professional program management.

Based on the results of the feasibility analysis, the City authorized MeterSYS and the Project Team to solicit proposals from qualified AMI technology vendors to provide 100% coverage of fixed-base meter reading across the City's service territory. The City issued the RFP in July of 2018 and completed its evaluation with a recommended solution in January of 2019. Through the defined procurement process and competitive evaluation, the City AMI Selection Team has chosen Mueller Systems Mi.Net as the preferred solution. This selection was made based on ranking factors and proposal elements including:

- Total cost of ownership
- Standardization of all meters with 100% new meter infrastructure
- Deployment of 100% remote disconnect functionality for all 5/8"X 3/4" meters; length of time the remote disconnect unit has been on the market and operational
- Ability to maintain existing meter boxes and lids
- On-demand read capabilities
- Expandable LoRa/smart city, distribution capabilities
- Integrated/transactional customer engagement platform



MeterSYS is very experienced in all aspects of AMI evaluation and project management including implementation of Mueller Systems Mi.Net Version 4 AMI solution by successfully serving as project manager on six other water utility projects using this technology in the past three years. Our knowledge and experience with Mueller Systems AMI along with the WaterSmart Customer Engagement Platform is unparalleled in the Southeast and arguably across the country. Through MeterSYS Program Management, the City will be assured it will receive a high-performing and operationally-sustainable AMI solution throughout its expected 15-year useful life.

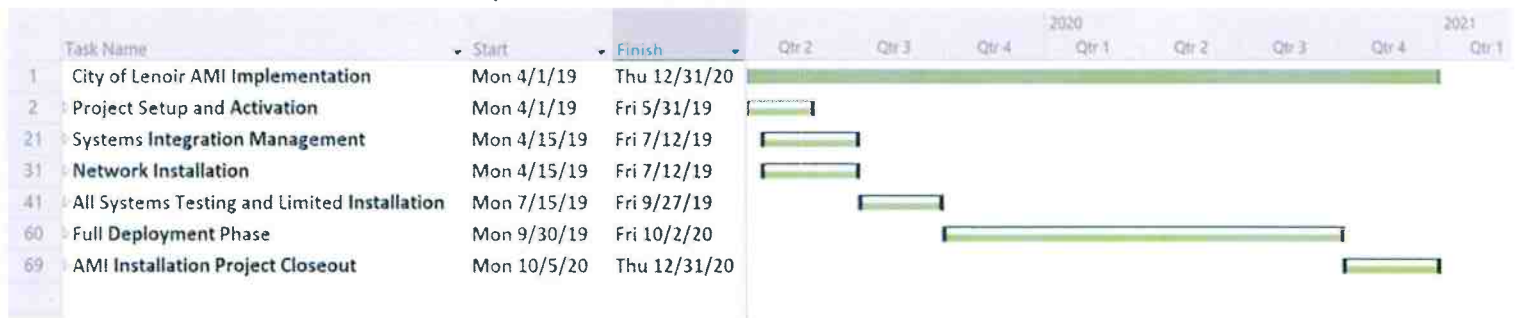
Summary: MeterSYS possesses broad understanding of the relationship between emerging technologies and the associated business processes within metering and billing unique to each public utility. To facilitate the effective deployment of advanced metering technology, MeterSYS has developed a proven management *Program of Work* to ensure the utility's goals for high performance of the system, improved operations, and



enhanced customer service are achieved. This approach was specifically designed to clearly identify the project steps and highlight the inherent dependencies between technology and business processes predictably and cost effectively and to guide the utility through Advanced Metering Infrastructure (AMI) evaluation, deployment, and optimization.

The timeline for AMI implementation is presented within the Program of Work and accounts for completion of the authorization to proceed and project coordination with the City and Mueller Systems team members. The installation and acceptance targets support a well-designed and implemented AMI system for the City of Lenoir targeted for completion by December 31, 2020.

We propose the following milestones (Project Setup and Activation, Systems Integration Management, Network Installation, All Systems Testing, Full Deployment, and Installation Project Closeout) and time allocations to execute City-wide deployment of AMI by our experienced team of consultants through professional program management services. It is the overarching goal of each project managed by MeterSYS to seek cooperative solutions between the vendor, the installation/construction team, operational staff, and utility management while always representing the interests of the utility. MeterSYS has significant experience and a proven track record in crafting and executing these cooperative solutions with efforts that are designed to achieve the highest return of service for the investments made by the City on behalf of its citizens and customers.



1 Draft Project Plan by Milestone- City of Lenoir AMI

The City of Lenoir Water Department AMI Implementation program will involve multiple vendors with independent and often competing objectives. MeterSYS has the combined program management expertise to oversee these variables and will be responsible for ensuring the necessary solutions are implemented through effective management. By combining our team's wealth of industry knowledge and Project Management Institute (PMI) approaches, we will work to enhance the outcomes of AMI implementation on operations, finance, and customer service while avoiding risks and exposures common to projects of this significance.

The City is not engaging in a meter replacement project, but rather a major change management program of work that influences all aspects of the metering and billing process. The Utility is making significant technological enhancements to field and back-office operations, which will have significant influence on Finance, IT, Public Works, and Customer Service, as well as asset and resource management. The proposed AMI project has a 21-24 month timeline with a focus on continuity of resources and delivery from a competent and dedicated project management team that specializes in AMI technology delivery. MeterSYS is prepared to dedicate project management resources for the entirety of the AMI program of work and is committed to



achieving system performance and proper project financial and operational management, ultimately delivering a high-performing and sustainable AMI solution.

II. Program Management Services by MeterSYS

Overview: MeterSYS and the City of Lenoir Water Department both recognize the value of full program assessment and analysis of available technologies. During the **Feasibility Analysis in Planning Phase 1, Task Order 1** MeterSYS evaluated the business case for the City to adopt AMI, including comparing future potential design alternatives, evaluating cost-benefit determinations among various options, conducting current and future business process assessments, and facilitating CapEx/OpEx planning. Detailed future-state planning conducted in this phase was critical to establishing a solid foundation by which the City of Lenoir Water Department will build a reliable, cost effective, and publicly supported AMI capital project. These analysis elements put into place prior to contract award with a preferred vendor will protect the City against otherwise predictable project occurrences that impact the project budget, schedule, performance, and the City's operational training of the new meter infrastructure.

Procurement services were performed within **Planning Phase 1, Task Order 2** for purposes of determining the market value of the City's AMI requirements against the assumptions and financial estimates resulting from the Feasibility Analysis. Through proper procurement processes and detailed analysis of vendor proposals, the City determined objectively the preferred technology solution through Mueller Systems and has awarded the vendor agreement contingent upon Division of Water Infrastructure approval.

Implementation Program of Work- Task Order 3



City of Lenoir is now ready to begin **Implementation Phase 2, Task Order 3**, which involves **professional program management services** for each of the steps required for successful *installation of AMI technologies*. These steps include *Planning and Design, Installation Management and Quality Controls, and Business Process Change Management Support* services for a turn-key advanced metering solution while minimizing resource demands on the Utility Department team already at workload capacity. For purposes of clarification, program management is inclusive of all elements of AMI implementation and associated business processes and change management requirements while project management refers to the conversion of manual and drive-by (AMR) metering reading to fixed-base (AMI) technologies.

City of Lenoir Water Department AMI Program of Work Milestones

Through the Task Order 3 Program of Work, MeterSYS assumes responsibility for managing all aspects of the City of Lenoir AMI Implementation Program, in cooperation with the Project Team, comprised of MeterSYS consultants, vendor representatives, and City staff. The following Program of Work Plan outlines the general responsibilities of each Step for implementation, but considering the dynamic nature of the project, is not intended to be all-inclusive. MeterSYS professional services will incorporate emerging responsibilities in the

implementation of AMI as part of its responsibility to the City to provide a seamless conversion of its metering



and billing systems through fixed-base meter reading technology. Tasks associated with these milestones are outlined in Attachment C.

2 City of Lenoir Program Milestones- AMI



PROJECT SETUP
AND ACTIVATION

Step 4: Program Initiation

This Step serves as the official “kick-off” of the Implementation Phase and the critical foundation for an effective deployment and operation. Step 4 engages City Staff, the Meter Vendor, the Installer, and the MeterSYS Project Team, through collaborative project planning, milestone scheduling, roles and responsibilities, and project “housekeeping”. Goals of this step include:

- Project Management Systems Development (MS Project, Zoho Project)
- Team Structure with Roles and Responsibilities
- Project Plan Acceptance
- Initial Equipment Order Approval and Execution
- Communication Planning
- Defined Work Flows and Work Order Management Procedures
- Network Deployment Checklist
- Large Meter and Special Account Planning (Field Inventory As-Needed, Account Identification)
- Project Charter
 - ✓ Project Description
 - ✓ Project Timeline / Phasing
 - ✓ Organizational Structure
 - ✓ Overall Project Management
 - ✓ Communications Strategy

✓ Issue/Change/Risk Plan/Quality Assurance

- Establish Install and Integration Sub-teams
- Communication Templates Updates



Step V. Testing Phase- Systems Integration, Network Construction, All Systems Testing

**SYSTEMS
INTEGRATION
MANAGEMENT**

Considered the most critical point of the project, this Step engages the responsibilities the roles of each team member, establishes compliance with project contract service levels, requires effective integrations, and demands proper equipment lead-time management. Key elements of the testing phase include:

- Coordinated integration planning between City Customer Service, Meter Vendor Professional Services, City Customer Information Systems (CIS) Vendor, and MeterSYS Integration Specialists
- Implement Network Checklist Activities (Backhaul, Tank Modifications, Electric Service Access, New Collector Location Access and Preparation)
- Develop and test the connectivity between a small number of test meters, the AMI Headend and the meter data management system
- Order and test integration with utility billing

Coincided with System Integration, construction of the network will be coordinated between the prime contractor, the City, and third-party site managers for the assessment and build-out of collector infrastructure and associated power and data access. Because network infrastructure generally requires multiple sub-contractors early in the process, the management requirements for this coordination are significant and crucial. Major tasks for this milestone include:



**NETWORK
INSTALLATION**

- Complete site plan analysis and Scope of Work documentation
 - Coordinate with tank management vendors and third-party site owners/operators for site upfit approvals
 - Complete City required power and data (as required) connectivity for each site
- Ensure RF sweeps are performed according to manufacturer's requirements
- Test RF signal strength and review network data for issues with "reach"



**ALL SYSTEMS
TESTING**

Once completion of the systems integrations, meter swap files, field installation tool configurations, and network construction, the Program Manager and team execute a limited, all systems testing period to validate that all contributing components of the AMI system are fully and properly operational. This period of limited installation production is considered the final validation prior to full-scale meter installation production. Each member of the project team will validate the results of the testing period prior to authorizing the installation contractor to proceed with full AMI deployment.

Step VI. Full Deployment



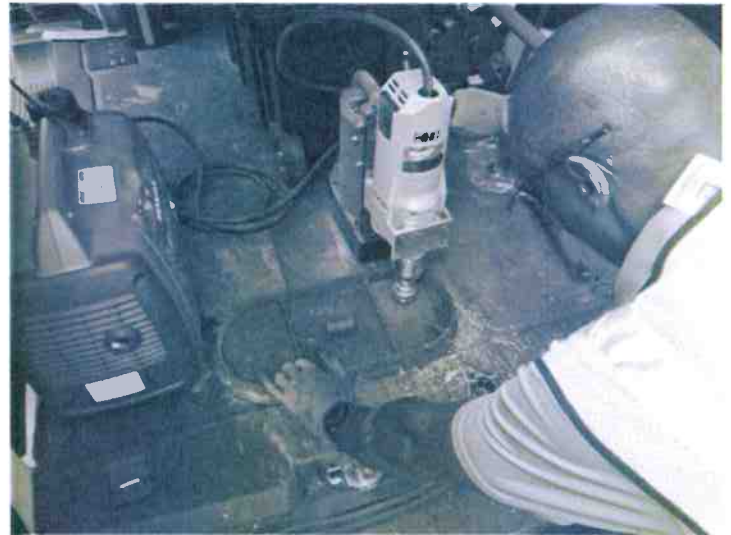
FULL DEPLOYMENT

Once the system functionality and new business processes have been tested, verified, and accepted, deployment of hardware can begin on a large scale.

- Full system functionality is available with acceptance gates to release devices into the automated billing process
- Full Deployment is typically managed as a formal construction project with the intent to minimize interruption to daily operations

MeterSYS provides:

- ✓ Oversight of the day to day deployment activities
- ✓ Quality Assurance Management of the Installation
- ✓ Communication management and PM reporting
- ✓ Financial reviews
- ✓ Equipment inventory oversight
- ✓ Project plan adherence
- ✓ Network and systems performance oversight
- ✓ Utility customer issues management
- ✓ Customer portal implementation management
- ✓ Training program quality controls
- ✓ Non-standard meter management
- ✓ Staff augmentation as needed



Step VI. Program Closeout



PROJECT CLOSEOUT AND ACCEPTANCE

During this phase, the Program Management team will focus on contractual compliance and proper financial tracking and system acceptance for proper program closure through development of a Program Performance Audit to ensure the Utility is capturing the return on its AMI investment. This program will inform on the performance of the organization and the system; identifying strengths and areas for improvement. The Utility can then utilize this information to make operational adjustments to ensure performance. Actions performed during this phase include:

- System punch list management and network performance mitigation
- Scrap management
- Installation data archiving
- Training proficiency reviews- MDMS and Customer Portal
- Updated field and back-office workflows verifications
- Infrastructure final acceptance and Program sign-off



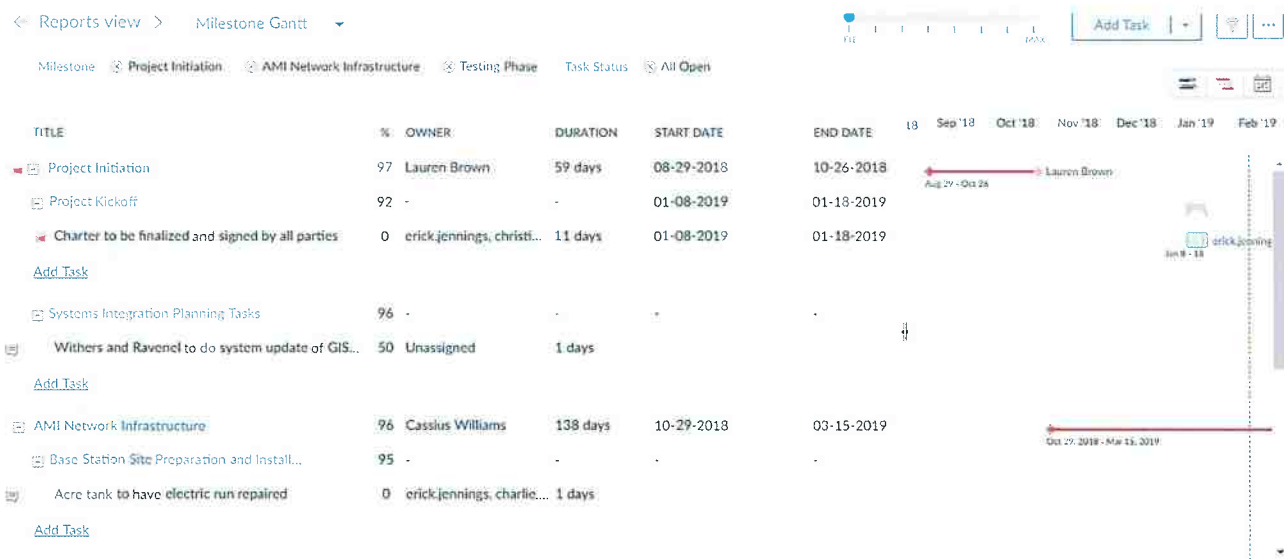
- Leadership and customer communications

Program Management Components for the City of Lenoir

The MeterSYS dedicated AMI Program Team will conduct field inspections, financial tracking, systems interfacing, quality controls oversight, communication planning, business process improvements, and operational policies and procedures assessment. Our Scope of Work for the City of Lenoir Water Department includes the following management elements:

Program Management Tools

Our experienced Program Administrator, Program Manager and Project Team will develop a detailed project plan and accompanying project charter to guide and manage all tasks and services associated with the project. The project plan identifies each individual task via a detailed work breakdown structure that includes the level of effort required to complete tasks, a timeline for completion of tasks, dependencies (predecessor and successor relationships), responsible party (vendor, client, etc.) and the status of each task. The plan will be developed in cooperation with the entire project team and managed consistently for performance throughout duration of implementation.



MeterSYS will convert all relevant Vendor activities into a Task and Milestone plan within Microsoft Project and then into Zoho Projects. This on-line, team accessible tool will be used throughout the project to monitor progress and update project stakeholders on project status. The project plan will be maintained by MeterSYS with regular input from the City project lead and all Vendor project leads. The plan will be available for all team members to view on Zoho and SharePoint as requested.

MeterSYS will maintain oversight of the Project Budget and will review and present to the City and Grant Administrator all Vendor invoices monthly as required for proper processing and approvals. It is expected that each Vendor will align their invoice details with the payment milestones identified in each respective contract. Upon receipt of the invoice from each Vendor, MeterSYS will review and determine whether the level of detail and explanation is adequate to support payment. The Vendor will be notified of any deficiencies. Once deficiencies are addressed, the MeterSYS Program Manager will approve and release the invoices to the City



Project Lead and Accounts Payable for payment. The MeterSYS Program Manager will assist the City as needed to verify that actual billings align with budget.

Project Communications Plan- Internal and External

The overall objective of a Communications Plan is to promote the success of a project by meeting the information needs of all project stakeholders. The Communications Plan defines the methods of information collection and distribution and outlines the understanding among the project team members regarding the actions and processes necessary to facilitate effective communications for City staff and external audiences. MeterSYS will create and maintain open communications among all stakeholders and vendors throughout the Program timeline.

For external audiences, MeterSYS will work with City project team members to develop a detailed external communications strategy that includes general project information, customer service key messaging,

Engage Audiences:

- Involve staff and customers in the solution
- Provide customer education
- Understand community culture for communications

Planned Approach:

- Pre-project outreach
- Multi-channel usage
- Consistent messaging
- Question anticipation

Key Messages:

- Water's value
- Project goals
- Advanced metering benefits
- Customer service enhancements

information sheets, web-site resources, social media posts, a customer toll-free phone line for inquiries, project progression information (install map, route schedule) and media releases.

Internal Collaboration: The primary communications among the project team will be the status meetings, monthly reports, and the project management site, Zoho. The MeterSYS Program Manager will lead formal, re-occurring status meetings with the core team members to ensure that the project tracks to the milestones set forth in the project plan. Meeting summaries and action items will be summarized by the MeterSYS Project Team and published on Zoho for access by the full team. The Status Meeting Agenda will generally include the following:

- | | |
|--|---------------------------------|
| ➤ <i>Confirm Previous Meeting Action Items with Update Reporting</i> | ➤ <i>Issues and Risks</i> |
| ➤ <i>Project Status Report- Network Performance, Inventory, Installation Production, Systems Interfacing</i> | ➤ <i>Resource Review</i> |
| ➤ <i>Schedule Compliance</i> | ➤ <i>Communications</i> |
| ➤ <i>Milestones/Deliverables Progression</i> | ➤ <i>Project Finance</i> |
| | ➤ <i>Safety</i> |
| | ➤ <i>Next Meeting Logistics</i> |
| | ➤ <i>Roundtable</i> |

Communication tools include Microsoft Project, Zoho Projects, Dropbox, and JoinMe (a web-based meeting platform). These tools assist us in initiating and tracking projects, capturing data, storing and sharing project documents, maintaining schedules, scheduling events, reporting results and publishing documentation related to each project and task. MeterSYS team members are in constant communication with various project



participants, following up on action items and work products, and fielding questions daily, and these tools enable and enhance the effectiveness of that outreach.

Client-based Advocacy and Internal Reviews

MeterSYS utilizes the review process in order to keep projects on target and the goals of the client in the forefront. Our Program Manager conducts an internal review with the prime contractor, the technology manufacturer, and the installation subcontractor to ensure that scope, costs, and timeline are being managed appropriately. Documents are submitted for team review to ensure completeness before being submitted to management for final review and approval. Each document is reviewed by the Management Team and Executive Team to ensure completeness and accuracy.

Issue and Risk Management

The goal of the team is to assess any issues arising from the Project and understand its impact to the City of Lenoir AMI Implementation Program of Work. We work with the Utility and Vendors in a cooperative manner to resolve issues in a satisfactory manner in order to maintain internal continuity of the project as well as public trust. The key to this process is to remain objective, address the issue as early as reasonable and practical, and work to mitigate the problem prior to it becoming a risk to the Program of Work.

Change Management

Deviation from original scope can be caused by new requirements, unforeseen circumstances, or simply the desire to take advantage of a new technology or cost reduction opportunity. MeterSYS employs standard change management practices of assessing the change and then making a recommendation to stakeholders. The assessment of a change includes impacts to cost, resources, and duration (schedule). The recommendation is qualified against the original goals and objectives of the project to ensure there is alliance and a strategic fit. The decision to include the change in the project is ultimately a City decision. Our goal is to ensure the Utility is adequately educated and equipped to make this decision.

Quality Control (QC)

Each Vendor will be responsible for QC efforts and results as it relates to their contracted scope of work with the City and MeterSYS will ensure management elements are in place to hold vendors accountable for QC. At a minimum, it is expected that Vendors' QC efforts will consist of plans, procedures, and the organization necessary to assure adequate control (inspection) and delivery of quality for materials, workmanship, installation procedure compliance and operations covering both on-site and off-site work. Vendors will be required to perform their own audits to assure compliance with the requirements of their quality program. At a minimum, Vendors will be expected to provide and adhere to the following:

- QC documentation to cover the scope of the work
- Designated QC personnel
- Checklists approved by person completing the work and by QC personnel accepting the work

Quality Assurance (QA) and Quality Management (QM)

The MeterSYS Program Manager will have responsibility for the overall Quality program in close coordination with the City Project Lead and Project Team. Management responsibility encompasses establishing a high-level presence and environment to facilitate activities and a fundamental commitment to quality including, but not limited to:

- Development and approval of mutually agreed upon, well-defined contract requirements that include clearly defined roles, responsibilities, and reporting



- Contract language highlighting that vendors must act in an independent, professional manner regarding quality of their deployments
- Periodic meetings with the Project Team and reporting to track quality status
- Review of vendor project quality control plans, test results, and status reports
- Conduct periodic QA audits of Vendors' QC activities. Oversight will take the form of checking contractor supplied documentation; witnessing contractor operations, inspections, and tests; performing independent inspections and tests to verify contractor results



All the Project Management elements included in the section serve to outline the main categories of responsibilities of the MeterSYS team throughout the Implementation Phase. With the goal of delivering the project on-time and within budget, and bringing valuable experience from implementing multiple, successful AMI installations, the MeterSYS team will augment internal staff to shoulder the day-to-day management of the project and ensure the complete satisfaction of all City stakeholders.

PROGRAM AREA	SUPPORT RESOURCES
ORGANIZATIONAL ASSESSMENT; CONTRACT MANAGEMENT; COST BENEFIT ANALYSIS, NEEDS ASSESSMENT, GAP ANALYSIS, RISK ANALYSIS	Microsoft Projects, Zoho Projects, MeterSYS Financial Model
CUSTOMER SERVICE OPERATIONS EVALUATION	MeterSYS AMI Communications Library, Web and Social Media Outlets, Zoho CRM
TECHNOLOGY SYSTEMS AND SECURITY, BUSINESS INTELLIGENCE	TeamViewer, Meter Data Management System, SpiceWorks, Microsoft Power BI
SYSTEMS INTEGRATION AND CONFIGURATION EVALUATION; DATA GOVERNANCE	Zoho, JoinMe, MeterSYS Customized Job Aides
NETWORK AND FIELD AUDITS; SYSTEM TROUBLESHOOTING	MeterSYS Iform Customized Field Management Tool
PROGRAM DATA MANAGEMENT, DOCUMENT ARCHIVING AND RETRIEVAL	Zoho Projects, Dropbox Retention Folders, FTP Site Access
INTERNAL/EXTERNAL STAKEHOLDER COMMUNICATIONS AND RELATIONS	Communications Templates, Project Information Sheets

Project Personnel

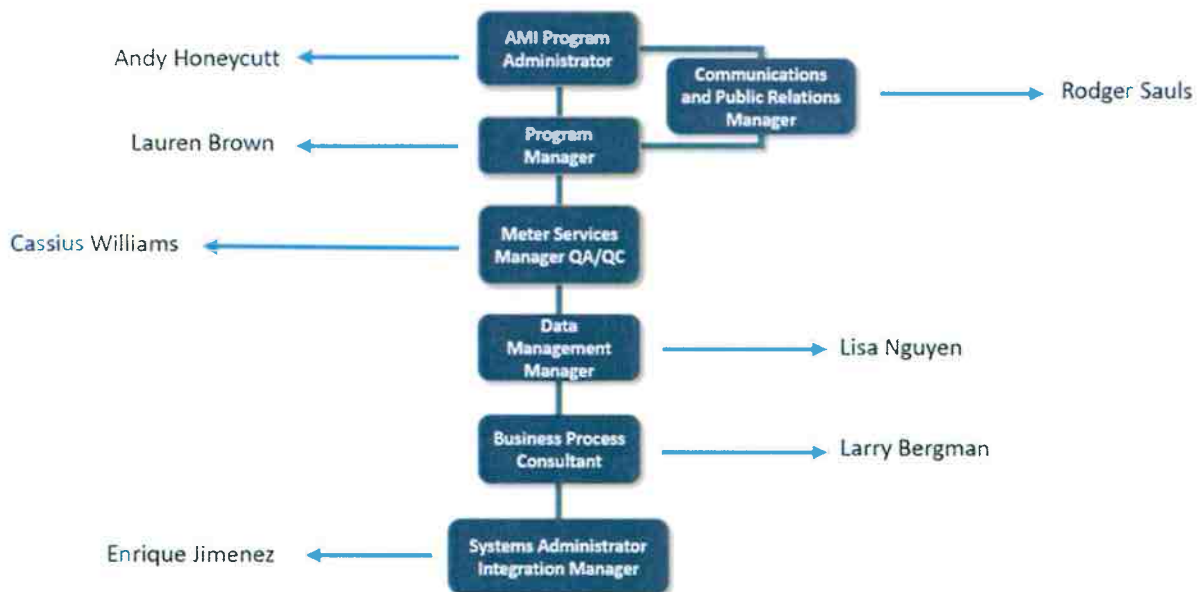
The City of Lenoir AMI Project will involve multiple vendors with independent and often competing objectives. MeterSYS has the combined program management expertise to oversee these variables and will be responsible for ensuring the necessary solutions are implemented through effective program management. By combining our team's wealth of industry knowledge and Project Management Institute (PMI) approaches, we will reduce the organization's overall program risk. MeterSYS provides the Department with structured

Program Management to ensure that all project components are executed in an organized fashion. Our goal for this project is to deliver a high-performing AMI metering system for Department on schedule and within the program budget, while limiting impacts to the Department's internal staff.

We are fortunate to have assembled a great team of dedicated professionals with the experience, expertise, partnerships, and proven methodology for industry-leading AMI feasibility analysis and metering program management. The MeterSYS team is committed to providing the Department with our most experienced consultants to fully leverage its investment in infrastructure, technology, and support resources for enhanced service delivery and optimized metering and billing system management.

The MeterSYS organizational structure provides our clients with specialized and cross-trained personnel to ensure continuity of services for the City of Lenoir through each element of program delivery.

City of Lenoir AMI Program- MeterSYS Team



Advanced metering technology contributes to each step of the billing, customer service, and asset management process; therefore, procurement, implementation and integration of this technology should only be performed by a team of experts experienced in working within each of the key processes and technologies. Our implementation programs involve each of the key business units of the utility agency, as each is a contributing stakeholder to this technology implementation and integration. We have assembled our project team in accordance with the desired scope of work and based on our understanding of the expectations outlined in the RFP. The following highlights the responsibilities of our key project team members:

Summary of Key Project Personnel

Senior Program Administrator/Principal, Andy Honeycutt: The Senior Project Administrator will be focused on total program task delivery and will represent MeterSYS in all leadership meetings, vendor coordination, contract reviews and negotiation, program performance compliance, financial tracking, and quality controls.



He will serve as the primary conduit of information and project activities between the Department, the MeterSYS team, and the preferred solution vendor. The Senior Project Manager will remain directly accountable for all activities within the Program of Work throughout assessment, planning, implementation, and post-deployment activities.

Project Manager, Lauren Brown: The Project Manager will lead the project team on direction. The Project Manager is responsible for all internal and external communications, coordination of tasks within the program plan, quality controls, and issues resolution. She will be responsible for managing requisition issuance and data compilation of all business units supporting the feasibility analysis, procurement and vendor selection, project implementation planning, and project close-out.

Business Process Consultant, Larry Bergman: This Assistant Project Manager is responsible for development of the communications plan in cooperation with the project team and City public relations staff. This position will provide general oversight to planned messaging, help desk and issue response, and internal/external educational sessions on water metering technologies, resource conservation, and utility operations.

Data Analyst and Training Manager, Lisa Nguyen: The Data Analyst is responsible for coordinating all data request and responses and properly organizing the data within the MeterSYS project management tool for use in technology training, systems interfacing, and organizational impacts of AMI. She will be also providing support for data collection and remittance to the Senior Project Manager and Project Manager for all critical customer service business processes, policies, rates, issues, and operational opportunities as well as assisting in the coordination of project management elements including meeting notes, scheduling, task assignments, and project reporting.

Meter Services Manager, Cassius Williams: This position is responsible for the assessment and planning for conversion of direct read and AMR processes to AMI from pre-deployment to post-deployment. The Meter Services Manager seeks to identify cost-saving opportunities through planned meter implementation and the correlation of data between field installation and back-office/CIS data management. This position is also responsible for coordination and consultation of all field data gathering and key business processes performed by the Department, including water production, distribution, and metering activities during the feasibility stage of analysis. The Field Operations Lead also provides direct vendor oversight including field inspections, safety, and quality control measures. He will be heavily involved in the development of specific Department requirements for field activities including execution of communication responsibilities, utility customer engagement, issue resolution, and field risk avoidance.

Systems Administrator, Enrique Jimenez: The Systems Administrator is an experienced database and software systems technician and will be responsible for coordination of all software configurations and interfaces. He will serve as sub-committee lead, in cooperation with the City IT Department, for all interface planning and testing as well as consideration of automation and integration beyond the metering and billing workflows. He will provide continuity of data and systems initiatives throughout the planning and implementation phases and will assist in development of specific standards for systems security and disaster recovery for field installation data, MDMS, customer portal, and their relationships with CIS.

Communications and Public Relations Manager, Rodger Sauls: This position is responsible for the overall management of City leadership and community engagement throughout the duration of the project. Working in cooperation with the Project Administrator and Project Manager, the Communications and Public Relations Manager will ensure the Communications Plan is being properly executed and that all issues are addressed and communicated according to levels of severity. Communication tools may include public forums and media interactions as directed or authorized by the City.



AMI Project Management Task Order 3 Professional Services Fees

MeterSYS appoints executive-level professionals to each of its projects to ensure that each initiative efficiently coordinated and executed. For the City of Lenoir AMI Implementation Program, MeterSYS proposes a collaborative team of experienced metering and utility operation professionals to define a metering solution roadmap that considers both financial and operational best architecture design. This team will be dedicated to the delivery of effort and expertise required for successful delivery of AMI technology to the City in consideration for certain fees applied to each milestone and tasks.

The task and milestone fees are based on turn-key professional services for the project up to 24 months in duration. Should the project extend beyond 24 months from Authorization to Proceed, MeterSYS and the City will evaluate the terms and expectations of this Program of Work against delays in the project extending beyond two years and adjust accordingly the professional fees associated with the Program of Work to the acceptance of both the City and MeterSYS.

The following table provides information on pricing for each major task of the implementation scope of work and general assumptions based on the recommended approach.

Professional Service Breakdown by Milestone

<i>Key Milestones</i>	<i>Allocation as Percentage</i>	<i>Cost</i>
<i>Project Setup and Activation</i>	9%	\$29,845
<i>Systems Integration Management</i>	12%	\$37,455
<i>Network Installation</i>	11%	\$33,525
<i>All Systems Testing</i>	14%	\$44,980
<i>Full Deployment</i>	40%	\$124,785
<i>Project Closeout and Acceptance</i>	14%	\$44,880
<i>Travel Expenses- Estimated (Reimbursed)</i>		\$23,660
Total		\$339,130

Travel Expenses are estimated over the 21-24 month period based on a percentage typical in the industry for program management support and will be reimbursed once presented to the City and approved.

Project Team Member	Hourly Rate	Summary-	Consultant	Hourly
General Rate Schedule City of Lenoir			Name	Rate
Program Administrator			Andy Honeycutt	\$185.00
Program Manager			Lauren Brown	\$165.00
Business Process Consultant			Larry Bergman	\$140.00
Meter Services Manager			Cassius Williams	\$140.00
Systems Administrator Integration Specialist			Enrique Jimenez	\$130.00
Data Systems Consultant (Subcontractor as Needed)			Jason Hare	\$140.00
Lead Data Analyst			Lisa Nguyen	\$100.00
Project Administrative Assistant			Khane Kraft	\$65.00



III. Authorization

AUTHORIZATION BY METERSYS:

The scope of work contained in Task Order 3 as noted herein is authorized by:

Andy Honeycutt, Managing Director
MeterSYS

Date

ACCEPTANCE BY THE CITY OF LENOIR:

Task Order 3: Project Management - AMI Implementation

Authorized Representative
City of Lenoir

Date

"This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act"

City of Lenoir Finance Officer

Date



Attachment A: Assumptions

Assumptions related to in-scope services and/or components include:

- The target for starting Task Order 3 will be April 1, 2019. MeterSYS and the City project team members will work onsite at City facilities and/or MeterSYS facilities to support the engagement as needed to meet project schedules and milestones with an expected completion target date on or before December 31, 2020.
- The project scope contained within this proposal is based on a general understanding of the City metering environment and is consistent with other projects in both size and scope. As the proposal is based on time allocations of MeterSYS, any adjustments to scope will be directly related to billable time associated with the changes. Additionally, any delays resulting from internal resource constraints, vendor responsiveness, decision-making, or other conflicts beyond the control of MeterSYS will impact project costs and schedule.
- The City will make available to the firm all relevant information so that effective and proper program management may be performed. This information shall be provided in a timely manner in order to not adversely influence the approved project plan and schedule.
- The City will appoint a Project Lead whom will serve as the primary point of contact for MeterSYS throughout the engagement. The Project Lead will assist in organizing the participation of staff, management, and stakeholders as needed. The Project Lead will facilitate the operational planning process and the achievement of goals and objectives of the project.
- The City and its project sponsors and team members will assume a proactive role in actively participating in project objectives, milestones, and defined project responsibilities.
- The City will take an active role in the engagement of its third-party service providers especially for tower/tank structures, utility billing software, and local/regional data and power providers.
- The City will provide a timely decision-making, issue resolution and escalation process to prevent delays in the progress of the project. The City project team will be empowered to make critical and necessary decisions to expedite resolution of issues.
- Over the course of the project, the City will provide adequate working facilities, and support equipment such as telephones, photocopiers, fax machines, and internet access for the team members and consultants onsite.



Attachment B: Task Order Authorization Form

Task Number	Approval Date	Issued By
CoLen2019-01		Andy Honeycutt
Program Name	Program Description	MS Workbook Reference
City of Lenoir Water Department AMI Implementation Program Management	Conversion of City of Lenoir Meter Reading Infrastructure to AMI Technology	2019.08.001
Task Cost	Start Date	Target Completion Date
\$315,470 plus \$23,660 (est. expenses)	04/01/2019	12/31/2020
Resources and Rates Assigned	Task Milestone Summary from Scope of Work	
Andy Honeycutt \$185 Lauren Brown \$165 Larry Bergman \$150 Rodger Sauls \$140 Enrique Jimenez \$130 Cassius Williams \$140 Lisa Nguyen \$100 Kahne Kraft \$65	I. Project Setup and Activation \$29,845 II. Systems Integration Management \$37,455 III. Network Installation \$33,525 IV. All Systems Testing \$44,980 V. Full Deployment \$124,785 VI. Project Closeout and Acceptance \$44,880 VII. Estimated Expenses \$23,660	
Task Scope Summary: In coordination with, and in leadership for, the City of Lenoir Water Department, oversee all aspects of metering system conversion to full AMI functionality including network installation, field installation, communications, quality control, software integration, systems training, reporting, and financial management of project expenditures. MeterSYS provides full project management service to the City as outlined in the Task Order 3 Scope of Work.		
Schedule of values: Refer to Project Scope of Work. <i>*Total Task Order value includes reimbursement of mileage and City authorized expenses.</i>		
Delivered by _____ Date _____ MeterSYS		
Approved by _____ Date _____ City of Lenoir, North Carolina		

CITY OF LENOIR
COUNCIL ACTION FORM

I. Agenda Item:

**Mulberry Recreation Center/Optimist Park Addition Improvements:
Bid request: Camp Electric Company Inc. for lighting project at Optimist
Park Baseball Field in the amount of \$94,615.00**

II. Background Information:

**This is part of the Parks and Recreation Trust Fund Grant for the
Mulberry Optimist Park Project.**

**Bids: Camp Electric Company Inc. \$94,615.00
Medallion Athletic products, Inc. \$112,625.00
Qualite Sports Lighting, LLC \$115,175.00**

III. Staff Recommendation:

**Staff recommends to approval the bid to Camp Electric Company Inc. in
the amount of \$94,615.00**

IV. Reviewed by:

City Attorney:

Finance Director:

Public Works/Public Utilities Director:

Planning Director:

Recreation Director: Kenny Story



239 US 64 Highway - PO Box 1454 Rutherfordton NC 28139
Office (828) 287-7971 - Fax (828) 287-2668

Date: January 27, 2019

Project Name: Lenoir Optimist Park Baseball Field Two Field Lighting

Jobsite Location: 701 Mulberry Street Southwest
 Lenoir, NC 28645

Proposal: Mr. Kenny Story, Parks and Recreation Director

From: Jason Camp, Vice President

Camp Electrical Company NC Electrical License Number: 6864-U

Revised Contract price to provide and install a turnkey sports lighting package for baseball field two. Sports Lighting Materials to be provided by Torrence Sports Lighting, Inc and is included with our turn key proposal.

Due to budget after the bid we have deleted from our scope all work that pertains to the existing lighting on baseball field one and football field. The existing wood poles and lights for baseball field one and the existing wood poles and lights on the football field to remain and not part of this revised proposal.

Baseball Field Two: Sports Lighting is Tournament Play Light Levels for 50 Maintained Foot-Candles Infield and 30 Maintained Foot-Candles Outfield.

-Unload and install (4) 60' Mounting Height; 70' Overall Length Galvanized Steel Sports Lighting Poles and (26) Sports Lighting 1500 watt metal halide fixtures per Torrence Sports Lighting, Inc bill of material.

-All poles to include pole steps, safety cable, and catwalk/maintenance platforms.

-Price Includes permit to complete job.

-Excavation of all pole base holes.

-Excavation of rock is not included in price.

-If rock or high water table is encountered we will notify all parties and work will stop until an agreement on cost is reached while trenching or boring the sports lighting holes.

-Install conduit with copper conductors to each pole using trenched ditches.

-All ditches will be backfilled and tamped.

-Owner responsible for all straw and reseeding.

-New service panel with contactor cabinet for controls will be installed for the existing 240 Volt service available. The panel will be built big enough for future lighting of baseball field one.

-Wind load for poles will be 90 MPH per Caldwell County Builders Code.

-Provide all equipment necessary to receive, assemble and erect new sports lighting poles.

January 29, 2019

-Aim and test all new lighting.

-Provide owner training once final inspections are complete.

Turn Key Price: \$91,780.00

NC Sales Tax on Material: \$2,835.00

Total with Tax: \$94,615.00

Time Frame to Complete: 4-6 Weeks to order and deliver material. 1-2 weeks to install.

Thank you,
Jason Camp



January 30, 2019

**Proposal: City of Lenoir Parks and Recreation
Kenny Story, Director**

- Estimate is to light the baseball field at the Optimist Park Field 2. Lighting to be for tournament playLighting.
- Price includes to bore holes and stand four steel poles and 1500 watt metal halide sports lighting fixtures to meet required light levels.
- All steel poles equipped with platforms ad pole steps will be installed.
- We will provide all new copper wiring in the ground and to be in conduit.
- We will provide all new panels that will be located near the location of the existing panels.
- The voltage at the jobsite is 240 volt.
- It will take 8-10 weeks to receive material and 3 weeks to complete.
- We will commission all the lighting for the City of Lenoir.
- We will complete all cleanup.
- All applicable sales tax cost included.

Medallion's Scope of Work Turn Key Total \$ 112,625 .00

Notes:

- Pricing does not include bonding.
- Pricing does not include handling or hauling of any hazardous or regulated materials.
- Pricing assumes all removed soils will be stock piled or loaded into owner provided vehicle and disposed of by owner.
- Pricing does not include irrigation, or turf cooling system.
- Utility disconnects are not included in scope or pricing.
- Rock or repair of unsuitable soil will be an extra charge.
- Price assumes access to the job site 24 hours a day, 7 days a week.
- Pricing is good for 90 days.
- Freight pricing is FOB jobsite.
- Payment terms: Net due max. 30 days upon satisfactory completion.

Respectfully Submitted,
Todd Penley
V.P. of Business Development
(704) 200-8770

Medallion Athletic Products, Inc. 150 River Park Road Mooresville, NC 28117
(P) 704.660.3000 (F) 704.660.3001
www.medallionathletics.com



January 24, 2019

Customer: City of Lenoir Parks and Recreation Department

Job Name: Lenoir Optimist Park Baseball Field Two Lighting

From: Qualite Sport Lighting Quotations Dept.

We propose to supply and install new sports lighting system consisting of Tournament Play Light Levels for 50 Maintained Foot-Candles Infield and 30 Maintained Foot-Candles Outfield.

Install (4) 60' Mounting Height; 70' Overall Length Galvanized Steel Sports Lighting Poles and (26) Sports Lighting 1500 watt metal halide fixtures.

All poles will include pole steps, safety cable, and catwalk/maintenance platform.

Excavation of all pole base holes.

Install conduit with copper conductors to each pole using trenched ditches. Ditches will be backfilled and tamped.

New service panel with contactor cabinet for controls will be installed for the existing 240 Volt Service available. New panel will be sufficient to include lighting of field One in the future.

We will provide all startup and commission of the lights.

Price includes all needed permits and equipment necessary to assemble and erect lighting.

Material & Labor: \$115,175.00

*price does not include tax, any rock removal, straw and reseeding, or power company charges. If high water is encountered during trenching or boring of lighting holes, additional charges may apply.

<u>New Board Appointment</u>		<u>Term</u>
Planning Board	Kaye Reynolds	4-year term

<u>Re-Appointments</u>		<u>Term</u>
Lenoir Tourism Development Authority	Matt Underwood	2-year term
Lenoir Business Advisory Board	Sean Williams	4-year term
	Kimmie Rogers	2-year term
Lenoir Housing Authority	Debbie Smith	3-year term
Parks and Recreation Advisory Board	Michael Dineen	2-year term
	James Robertson	2-year term

MINUTES

ABC BOARD & CITY COUNCIL MEETING TUESDAY, FEBRUARY 12, 2019 6:00 PM.

PRESENT: ABC Board Members: Jerry Brooks, Chairman, John Tye, Betsy Wilson, ABC Staff: Mike Suddreth, Manager, Richard Hagen, Finance Manager, and Steve Huntley, CPA.

Others present were City Manager Hildebran, City Clerk Cannon, Mayor Gibbons, Mayor Pro-Tem Willis, and Councilmember Beal.

ABSENT: Councilmembers Todd Perdue, Ike Perkins, David Stevens and Crissy Thomas. **Note:** Councilmembers Perdue and Stevens participated via telephone at the end of the meeting and during the vote to approve the report.

I. CALL TO ORDER

A. Mayor Joe Gibbons welcomed everyone and called the meeting to order.

II. ABC Board Report

A. Chairman Brooks stated the City of Lenoir's ABC stores experienced their third best year since 1978 and also reported Lenoir has the second lowest capita per consumption. Mr. Brooks stated the Board and Staff are proud of this accomplishment. He shared the City of Lenoir received a \$255,000 distribution payment in FY2017-2018.

In addition, Chairman Brooks briefly mentioned the issue of privatization and pointed out, if all of the ABC Boards were consolidated, there would only be one Board per County. Mr. Brooks emphasized that over 2,000 employees would also lose their jobs. As information, Mr. Brooks shared that North Carolina, Virginia and Pennsylvania are all state controlled Boards.

Steve Huntley, CPA, presented an overview of their annual audit report which was conducted by the firm of Benson, Blevins & Associates, P.L.L.C. (A copy of the audit report is on file in the City Clerk's office.)

Mr. Huntley presented the following information:

- Net Sales \$2,700,759
- Gross Profit \$ 866,736
- Net Assets Ending \$ 851,459
- Net Position \$ 877,221

Next, Mr. Huntley presented the distribution of income:

- City of Lenoir \$ 255,000
- Caldwell Schools \$ 31,281
- Law Enforcement \$ 12,029
- Alcoholic Education \$ 16,840

Mr. Huntley reiterated sales have increased and their total current assets are \$681,578. Mr. Huntley noted their change in net position is \$25,762. The Board's actual working capital as of June 30, 2018 is \$445,348. He also shared the Board's restricted working capital amount is \$103,875.

Additionally, Mr. Huntley reported the audited financial statements consist of the Management's Discussion and Analysis, Basic Financial Statements, Required Supplementary Information-Local Governments Employees' Retirement System along with Additional Information Required by the ABC Board.

Mr. Huntley further reported their total operating budget increased by \$124,619 for a total operating budget of \$3,496,165. Mr. Huntley also explained the Board's proportionate share of the net pension liability using a discount rate of 7.2% is \$34,068. A 1% decrease amount is \$102,274 which is a 6.2% percentage rate and a 1% increase or (8.20%) is (\$22,862). Mr. Huntley explained the state Treasurer's office determines the percentage rate.

A brief discussion followed regarding the proposed increases to the state and local government's pension plans over the next several years.

In conclusion, Mr. Huntley clarified the Board did not have any violations during FY2017-2018 and restated that revenue increased. He also stated they did not have any depreciation or capital outlay, but reiterated the change in their contribution rate for the state's pension fund.

Mike Suddreth, Store Manager, reported the quality of their products has improved which he thinks has helped with increased sales. Mr. Suddreth reported their new products are very popular and he anticipates both stores will do well in the upcoming year.

Motion

Upon a motion by Councilmember Beal, Council voted 4 to 0 to accept the ABC Board's Audit Report as presented. **Note:** Councilmembers Todd Perdue and David Stevens participated electronically via telephone for the vote.

On behalf of City Council, Mayor Gibbons thanked the Board and Mr. Huntley for the good report.

III. ADJOURN

There being no further business, the meeting was adjourned at 6:22 p.m.

CITY OF LENOIR

AFTER ACTION MEMO

To: Department Heads/Division Superintendents

From: Scott Hildebran, City Manager

Date: Wednesday, February 20, 2019

Subject: Action taken by City Council on Tuesday, February 19, 2019.
Review all information to ensure that your department maintains
action taken by City Council.

- ✓ City Council approved the minutes of the City Council Meeting of Tuesday, February 19, 2019, as submitted.
- ✓ City Council approved the minutes of the joint City Council and ABC Board Meeting of Tuesday, February 12, 2019, as submitted.
- ✓ City Council adopted a resolution as requested by the N.C. Department of Environmental Quality (DEQ) in order to demonstrate the City of Lenoir's commitment to take the necessary steps to comply with the National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) requirements of the Clean Water Act.
- ✓ City Council adopted a resolution accepting the construction of Hotel Street and Market Street as complete and dedicated for public use, including rights-of-way, underground utilities, stormwater drainage systems, curb and guttering and sidewalk(s).
- ✓ City Council approved Staff's request to enter into a Contract with Mueller Systems in the amount of \$3,656,097.34 for the implementation of the Advanced Metering Infrastructure (AMI) Upgrade Project.
- ✓ City Council approved Staff's request to enter into a Service Agreement with MeterSYS Advanced Metering Solutions in the amount of \$339,130.00 to undertake Task Order 3-Project Management and Implementation for the Mueller AMI Meter Reading System.
- ✓ City Council awarded the low bid of \$94,615.00 to Camp Electric Company, Inc. for the lighting project at Optimist Park Baseball Field.
- ✓ The Honorable Richard S. Holloway, District Court Judge, Judicial District 25, administered the Oath of Office of City Attorney to Timothy J. Rohr. Mr. Rohr's appointment as City Attorney is effective March 1, 2019.
- ✓ On behalf of City Council Mayor Gibbons presented a proclamation to Mr. Paul Brandenburg, President, Rotary Club of Lenoir, and Mrs. Courtney Wright, President, Caldwell Rotary Club, proclaiming Saturday, February 23 as "*Rotary Day 2019*" throughout the City of Lenoir and Caldwell County.
- ✓ City Council adopted a Historic Preservation Commission Ordinance establishing

the Lenoir Planning Board to serve as the Lenoir Historic Preservation Commission. This ordinance establishes the legal framework for future requests for local landmarks and/or districts, which may help with long-term planning and redevelopment goals for key historic properties.

- ✓ Upon a recommendation by Mayor Gibbons, City Council appointed Patricia Kaye Reynolds to serve a four-year term on the Lenoir Planning Board.
- ✓ Upon a recommendation by Mayor Gibbons, the following individuals were re-appointed to serve a term on the following Authorities/Boards/Commissions:

Lenoir Tourism Development Authority	Matt Underwood
Lenoir Business Advisory Board	Sean Williams and Kimmie Rogers
Lenoir Housing Authority	Debbie Smith
Parks and Recreation Advisory Board	Michael Dineen and James Robertson
- ✓ The following events for the month of February were highlighted:
 - The Planning Board will meet on Monday, February 25 at 5:30 p.m.
 - The Committee of the Whole will meet on Tuesday, February 26 at 8:30 a.m. at City Hall, Third Floor, former Council Chambers.
 - The Foothills Regional Airport Authority will meet on Wednesday, February 27 at noon.
 - The Caldwell County Economic Development Commission will meet on Tuesday, February 12 at 8:00 a.m.
 - A reception will be held in the City/County Chambers on Tuesday, March 5 from 4:00 p.m. – 5:30 p.m. for retiring City Attorney Ed Blair and for Councilmember T. J. Rohr who resigned as Council Member in order for Council to appoint him as the City's new City Attorney. Mr. Rohr's appointment is effective March 1, 2019. The public is invited to attend.