



AGENDA

**CITY OF LENOIR
CITY COUNCIL MEETING
905 WEST AVENUE
MONDAY, APRIL 19, 2021
6:00 P.M.**



I. CALL TO ORDER

- A. Moment of Silence & Pledge of Allegiance
- B. Special Recognition: Mayor Gibbons will present a resolution to Jim Blanton, Head Coach, Hibriten High School Men's Soccer Team, in honor and recognition of their successful season, their Regional Championship Victory and their journey to the 2021 State Championship game.

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

III. CONSENT AGENDA ITEMS

- A. Minutes: Approval of the minutes of the City Council meeting of Tuesday, April 6, 2021 as submitted.
- B. Authorizing Resolution; Lease Agreement: Approval of an Authorizing Resolution to lease a portion of the parking lot located at 601 West Avenue (behind the Lenoir Fire Department) to the North Carolina State Employees' Credit Union (NCSECU) for the purpose of an ATM. The lease will be for a term of five (5) years at an annual rate of \$1,200.00. Note: The legal ad was published on Wednesday, March 17 meeting the 30-day notice requirement for the rental or lease of City-owned property.
- C. Resolution; Hibriten High School Soccer Team: Approval of a resolution in recognition of the Hibriten High School Soccer Team achieving the title of First Runner-up Champions in the North Carolina High School Athletic Association's 2A State Soccer Championship.

IV. REQUESTS AND PETITIONS OF CITIZENS

V. REPORTS OF BOARDS AND COMMISSIONS

- A. Rick Oxford, Plan Administrator, Western Piedmont Council of Governments, will hold the second of two public meetings to receive public comments regarding the FY2021 Action Plan of the City of Lenoir and the Unifour HOME Consortium as part of the five-year Consolidated Plan as submitted. This plan, as required by the U.S. Department of Housing and Urban Development (DHUD), outlines goals and action plans of the City of Lenoir and the Unifour HOME Consortium and its use of Community Development Block Grant (CDBG) and HOME funds for fiscal year 2021, beginning July 1, 2021 and ending June 30, 2022. The City of Lenoir serves as the Lead Entity for the Unifour Consortium.

Items for Council Action

1. FY2021 Action Plan and FY2021 Unifour Consortium HOME Plan: Approval of the FY2021 Action Plan for the City of Lenoir Consolidated Plan and approval of the FY2021 Unifour Consortium HOME Program Plan as submitted Rick Oxford, Plan Administrator.

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

A. Items of Information

1. The Planning Board will conduct a virtual meeting on Monday, April 26 at 5:30 p.m.
2. The Committee of the Whole will conduct a virtual meeting on Tuesday, April 27 at 8:30 a.m.
3. The Foothills Regional Airport Authority will conduct a virtual meeting on Wednesday, April 28 at noon at the Airport facility.

B. Items for Council Action

1. Engineering Services Agreement; McGill Associates: Staff recommends City Council approval to enter into a contract for Engineering Services with McGill Associates for the Water Interconnect Project.
2. Engineering Services Agreement; McGill Associates: Staff recommends City Council approval to enter into a contract for Engineering Services with McGill Associates for the Whitnel Water Transmission Main Replacement.

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

IX. REPORT AND RECOMMENDATIONS OF COUNCIL MEMBERS

X. ADJOURNMENT



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
R. S. PRESTWOOD
D. F. STEVENS
C. D. THOMAS
B. K. WILLIS

RESOLUTION
HONORING HIBRITEN HIGH SCHOOL
MEN'S 2021 SOCCER TEAM

WHEREAS; the hard work, dedication, sportsmanship, and talent of the 2021 Hibriten High School Men's Soccer team led these student athletes to finish their season 18-1-0; and

WHEREAS; the Panthers went undefeated, 14-0-0, in the Northwestern Foothills 2A where they won the conference championship for the third consecutive year; and

WHEREAS; Hibriten Men's Soccer won the Western Regional Championship for the first time since 1989 taking the team to their second appearance in a North Carolina High School Athletic Association Men's Soccer State Title game; and

WHEREAS; the Panthers scored 122 goals and allowed only 13 goals all year, with 14 shutouts in 19 games, and the team ranks 16 in the nation, second overall in the state, and first in the 2A division of North Carolina; and

WHEREAS; winning the regional championship and playing in the state championship game brought honor and recognition to Hibriten High School on the local and state level; and

WHEREAS; Head Coach Jim Blanton, the entire coaching staff, team parents, faculty, and the student body were integral in supporting the players and guiding the team to victory all season long;

NOW THEREFORE BE IT RESOLVED, I, Mayor Joseph L. Gibbons, on behalf of the City of Lenoir City Council and all our citizens, do hereby recognize and congratulate the 2021 Hibriten High School Panthers Men's Soccer Team on their successful season, their Western Regional Championship Victory, and their journey to the 2021 State Championship Game.

This the 19th day of April 2021.

SEAL

Joseph L. Gibbons, Mayor



**LENOIR CITY COUNCIL
TUESDAY, APRIL 6, 2021
6:00 P.M.**

PRESENT: Mayor Joe Gibbons presiding. Councilmembers present were Jonathan Beal, Ike Perkins, Ralph Prestwood, Ben Willis and City Attorney T.J. Rohr. City Manager Scott Hildebran, Police Chief Brent Phelps, and Communications Director Joshua Harris were also in attendance at the meeting.

ABSENT: Mayor Pro-Tem Crissy Thomas and David Stevens.

VIA TELECONFERENCE:

Participating via teleconference was Councilmember Todd Perdue and City Clerk Shirley Cannon.

Department Directors participating via teleconference were Finance Director Donna Bean, Fire Chief Ken Hair, Recreation Kenny Story, Planning Director Jenny Wheelock, Economic Development Director Kaylynn Horn, Public Utilities Director Radford Thomas, and Public Works Director Jared Wright.

Also participating via teleconference was Carmen Boone, *News Topic*.

I. CALL TO ORDER

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

PROCLAMATION; KEEP LENOIR

LITTER FREE: B. On behalf of City Council, Mayor Gibbons presented a proclamation to Donnie Potter, Caldwell County Commissioner, proclaiming Wednesday, April 14 as the City of Lenoir and Caldwell County's joint Litter Sweep Event throughout the City of Lenoir. Caldwell County's Litter Sweep Day will be held on Saturday, April 17.

Mayor Gibbons remarked the City of Lenoir and Caldwell County are making a great joint effort to help keep our community free of litter and he encouraged all residents to participate in both of these worthy events.

Commissioner Potter thanked City Council for the proclamation and for all their support. He remarked this is the first time Caldwell County has organized a litter sweep campaign and he invited all interested individuals to sign up on the County's website in order for the County to have a record and be able to have their supplies ready on litter sweep day.

**PROCLAMATION; NATIONAL PUBLIC SAFETY
TELECOMMUNICATORS WEEK:**

- C. On behalf of City Council, Mayor Gibbons presented a proclamation to Brent Phelps, Chief of Police, proclaiming the week of April 11 through April 17 as

“National Public Safety Telecommunicators Week” in the City of Lenoir.

Chief Phelps thanked City Council for the recognition and stated telecommunicators are a vital part of providing public safety for the community. He emphasized the job could not be done without them and the Department was fortunate to have such a great Staff.

**2020 ANNUAL REPORT;
POLICE DEPARTMENT:**

D. Brent Phelps, Chief of Police, presented the Department’s 2020 Annual Report to City Council. A copy of the full report is available on the City’s website at www.cityoflenoir.com/police.

Chief Phelps reported Communications received 39,364 calls with 4,696 of these calls being for 911 purposes. The Patrol Division received 22,932 service calls and conducted 691 follow-up calls, which is a vital part of their service to the community. Also, he shared the Investigations Division handled 1,933 criminal cases and collected 44,917 pieces of evidence of which the majority has been digitalized due to their use of body cameras. They also investigated 234 nuisance cases of which 116 were owner abated and 12 abated by the City.

Chief Phelps further shared there were 250 drug charges along with \$354,831 illegal narcotics seized (this number includes assists.) In addition, he stated there were 50 overdoses and the drug Narcan was used 22 times resulting in 22 lives being saved. Chief Phelps stated officers participated in 7,109 total training hours for the year and pointed out Mr. Hildebran and he received an Equitable Leadership Certificate through Lenoir Rhyne University’s Equity & Diversity Institute upon their completion of the course.

Next, Chief Phelps reported K9 Major and K9 Uwais completed their certification and he informed Council the Department has reviewed and revised 5 of their departmental policies including use of force, search and seizure, firearms, body worn cameras and personal appearance.

In conclusion, Chief Phelps stated the Department is working on a new patrol car design and color due to their current blue color no longer being available from their supplier. Staff will share the new design and color with City Council in the near future. Also, Chief Phelps referred to Scott Kannup’s recent retirement in February and mentioned two additional sergeants may retire this year. He pointed out the Department is currently conducting leadership training and also cross training employees in different positions in order to make sure the Department is well prepared in the future.

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

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, March 16, 2021 as submitted.
2. Minutes: Approval of the budget minutes of the Committee of the Whole meeting of Tuesday, March 23, 2021 as submitted.
3. Revised Minutes: Approval of the revised Committee of the Whole minutes of Tuesday, August 25, 2020 as submitted to include approval of the following section that was inadvertently omitted from the prior minutes: II. A. Ordinance, Amending Chapter 12-Nuisances, Related to Disease Vector Species, Providing for Severability, Codification, and an Effective Date. (A copy of the revised section of the August 25, 2020 minutes and approved Nuisance Ordinance are hereby incorporated into these minutes by reference. Refer to pages 92-97.)
5. Authorizing Resolution; Bernhardt Transportation, LLC: Approval of a resolution authorizing lease of City property for a term of one year to Bernhardt Transportation, LLC at a rate of \$1,500.00 monthly or \$18,000.00 per year. (A copy of the authorizing resolution, lease agreement and maps are hereby incorporated into these minutes by reference. Refer to pages 98-110.)
6. Resolution; Spring Litter Sweep Day: Approval of a resolution encouraging residents to help keep Lenoir litter free. With the full support of City Council, City Staff will pick up litter in Lenoir on Wednesday, April 14, 2021, during the annual City of Lenoir Employee Spring Litter Sweep Day. (A copy of the resolution is hereby incorporated into these minutes by reference. Refer to page 111.)
7. Proclamation; National Public Safety Telecommunicators Week: Approval of a proclamation proclaiming the week of April 11 through April 17 as "National Public Safety Telecommunicators Week" in the City of Lenoir. (A copy of the proclamation is hereby incorporated into these minutes by reference. Refer to page 112.)

Councilmember Perdue asked for City Council to recuse him from voting on Item. 4. Change Order No. 3 due to a business conflict.

1st Motion

Upon a motion by Councilmember Willis, Council voted 4 to 0 to recuse Councilmember Perdue from voting on Item 4. Change Order No. 3 as requested.

4. Change Order #3; Lower Creek WWTP Biosolids Improvements Project: Approval of Change Order #3 as recommended by McGill Associates for the Lower Creek Wastewater Treatment Plant Biosolids Improvements project in the amount of \$26,745.97. (A copy of Change Order No. 3 is hereby incorporated into these minutes by reference. Refer to pages 113.)

2nd Motion

Upon a motion by Councilmember Prestwood, Council voted 4 to 0 to approve Change Order #3 as recommended by McGill Associates for the Lower Creek Wastewater Treatment Plant Biosolids Improvements project in the amount of \$26,745.97.

3rd Motion

Upon a motion by Councilmember Willis, Council voted 5 to 0 to approve Items 1, 2, 3, 5, 6 and 7 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

APRIL

CALENDAR: 1. The calendar for the month of April will be submitted to Council listing various meetings and events.

LENOIR TOURISM DEVELOPMENT

AUTHORITY: 2. The Lenoir Tourism Development Authority will conduct a virtual meeting on Thursday, April 8 at 4:00 p.m.

LENOIR BUSINESS ADVISORY

BOARD: 3. The Lenoir Business Advisory Board will conduct a virtual meeting on Thursday, April 8 at 6:00 p.m.

CITY/COUNTY SERVICES

COMMITTEE: 4. The City/County Services Committee will conduct a virtual meeting on Monday, April 12 at noon.

EDC: 5. The Caldwell County Economic Development Commission (EDC) will conduct a virtual meeting on Tuesday, April 13 at 8:00 a.m.

ABC BOARD: 6. The ABC Board will conduct a virtual meeting on Thursday, April 15 at 2:00 p.m.

DATE CHANGE; CITY COUNCIL MTG.:

7. City Council will meet on Monday, April 19 at 6:00 p.m. in the City/County Chambers in lieu of its regular monthly meeting of Tuesday, April 20.

B. ITEMS FOR COUNCIL ACTION

AUTHORIZING RESOLUTION; STATE LOAN/GRANT ASSISTANCE; FINLEY AVENUE WATER IMPROVEMENTS PROJECT:

1. Staff recommends approval of an authorizing resolution to authorize the City Manager to file an application with the state of North Carolina for a state loan and/or grant aid to aid in the construction of the Finley Area Water System Improvements Project.

A copy of the resolution is hereby incorporated into these minutes by reference. Refer to page 104.)

City Manager Hildebran explained the City's application did not get funded in the fall due to state funding and Staff was requesting authorization to re-file another application prior to the state's deadline of April 30, 2021.

Upon a motion by Councilmember Beal, Council voted 5 to 0 to approve the Authorizing Resolution authorizing the City Manager to proceed with re-filing an application with the state of North Carolina for a state loan and/or grant aid for the Finley Area Water System Improvements Project as recommended by City Staff.

ORDER OF ABATEMENT; 1921 MARIGOLD LANE:

2. Staff recommends approval of an Order of Abatement for property located at 1921 Marigold Lane, Parcel ID#03-53-2-16 and NCPIN#2768107707 directing Staff to abate the Minimum Housing Order by demolishing the structure as recommended by City Staff.

A copy of the Order of Abatement is hereby incorporated into these minutes by reference. (Refer to pages 105-107.)

City Manager Hildebran pointed out the property is dilapidated and referred to the submitted photos in the agenda packet. He also clarified the City has not received any response from the property owner.

Upon a motion by Councilmember Willis, Council voted 5 to 0 to approve the Order of Abatement for property located at 1921 Marigold Lane as described above and as recommended by City Staff.

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

BOARD RE-APPOINTMENTS;

BOARD OF ADJUSTMENTS:

- A. On behalf of City Council, Mayor Gibbons recommended that Jeff Church and Leah Hamilton be re-appointed to serve a three-year term on the Board of Adjustments. These individuals were announced at the March 16 City Council meeting.

Upon a motion by Councilmember Prestwood, Council voted 5 to 0 to re-appoint Jeff Church and Leah Hamilton to serve a three-year term on the Board of Adjustments as recommended by Mayor Gibbons.

TERMS FOR BOARDS/COMMISSIONS:

- B. City Manager Hildebran informed Council that beginning July 1, 2021, all board members will serve a term beginning July 1 through June 30 in order to make the process of re-appointments more consistent and easier for record keeping purposes.

**UPCOMING SPECIAL RECOGNITION; HIBRITEN
HIGH SCHOOL MEN'S SOCCER TEAM:**

- C. Mayor Gibbons reported the Hibriten High School Men's Soccer Team and coaches will be recognized at the April 19 City Council meeting for being the 2020-2021 North Carolina High School Athletic Association's State First Runner-Up Champions. He commended the team and coaches for all their hard work and outstanding season.

IX. REPORT AND RECOMMENDATIONS OF COUNCIL MEMBERS

- A. Councilmember Perkins thanked Communications Director Joshua Harris and Public Works Director Jared Wright for being guests on his program "Straight Talk" and providing information about the City's litter sweep campaign. Mr. Perkins thanked them for their service and for all they do for the citizens of Lenoir.

**COMMENDED; COUNCILMEMBER
BEN WILLIS:**

- B. On behalf of City Council, Mayor Gibbons commended Councilmember Ben Willis for his tenure on the North Carolina League of Municipalities Board of Directors. Mr. Willis has served two terms as District 10 Director.

Mr. Willis thanked City Council and shared the League is in the process of appointing new Board members. He remarked the League represents all of the North Carolina communities and towns well.

X. ADJOURNMENT

- A. There being no further business, the meeting was adjourned at 7:11 p.m.

Shirley M. Cannon, City Clerk

Joseph L. Gibbons, Mayor

REVISED MINUTES-AMENDMENT IN BOLD

**COMMITTEE OF THE WHOLE
CITY HALL, THIRD FLOOR
TUESDAY, AUGUST 25, 2020
8:30 A.M.**

PRESENT: Committee members, Joe Gibbons, Crissy Thomas, Ralph Prestwood, Ike Perkins, and David Stevens.

ABSENT: Councilmember Jonathan Beal and Joshua Harris, Communications Director.

STAFF PRESENT: City Manager Scott Hildebran and City Clerk Shirley Cannon.

VIA TELECONFERENCE:

Participating via teleconference were Councilmembers Todd Perdue and Ben Willis, Fire Chief Ken Hair, Finance Director Donna Bean, Police Chief Brent Phelps, Recreation Director Kenny Story, Main Street Director Kaylynn Horn, Planning Director Jenny Wheelock, Public Utilities Director Radford Thomas, Public Works Director Jared Wright and Garrett Stell, *News-Topic*.

I. CALL TO ORDER

A. Mayor Pro-Tem Crissy Thomas welcomed everyone and called the meeting to order.

II. **B. Ordinance-Nuisances: Amending Chapter 12-Nuisances, Related to Disease Vector Species, Providing for Severability, Codification, and an Effective Date.**

A copy of the Ordinance is hereby incorporated into these minutes as information.

A public hearing was held at the City Council meeting on Tuesday, August 18, 2020 for consideration of approval of an Ordinance amending Chapter 12-Nuisances. Action was deferred by Council until the August 25, 2020 Committee of the Whole meeting in order to meet the state's guidelines for public hearings.

Motion

Upon a motion by Councilmember Perkins, City Council voted 7 to 0 to approve the Ordinance Amending Chapter 12-Nuisances, Related to Disease Vector Species, Providing for Severability, Codification, and an Effective Date as submitted. The City's Code of Ordinances will be amended to reflect this change.

III. CITIZEN COMMENT PERIOD

IV. COMMITTEE ITEMS

A. Public Utilities: Public Utilities Director Radford Thomas reported on the following items:

1. Update; Biosolids Project: Director Thomas presented a slide show of the construction

**AN ORDINANCE OF THE CITY COUNCIL OF LENOIR,
NORTH CAROLINA, AMENDING CHAPTER 12 - NUISANCES,
RELATED TO DISEASE VECTOR SPECIES, PROVIDING FOR
SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

Whereas, Chapter 12 currently addresses nuisance conditions related to harboring pests or creating breeding grounds for the same, but does not specifically address rabies-vector species; and

Whereas, From time-to-time staff fields complaints related to raccoons, bats, and other rabies-vector species, in addition to the more common complaints related to other disease-vectors and pests such as mosquitos, rats, and snakes, which are already specifically addressed in the nuisance ordinance; and

Whereas, Property conditions that harbor snakes, rats, and mosquitos may be different than conditions promulgating rabies-vector species, but the control of all of these types of nuisances is vital to maintaining a healthy and safe community; 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. Chapter 12 of the Code of Ordinances, City of Lenoir, North Carolina, "Nuisances" is hereby amended to read as follows:

ARTICLE 1. – IN GENERAL

Sec. 12-1. Designation of nuisances.

- (a) No occupant or owner of any building, structure, dwelling, dwelling unit or vacant lot of land shall place, leave or allow anything which is unsightly as to create a nuisance, including but not limited to the following:
- (1) Refuse, debris, dead animals, stagnant water, rubbish, decayed vegetables and fruits, and household garbage;
 - (2) Stables, lots or shelters for animals causing an offensive odor;
 - (3) Appliances, including but not limited to any icebox, refrigerator, stove, dishwasher, freezer, clothes washer or dryer, or television;
 - (4) Machinery, to include but not be limited to, any mowers or parts thereof or any used vehicle part, or other item which is either in a wholly or partially wrecked, junked, dismantled or inoperative condition and which is not enclosed within a building (this section shall not apply to authorized junk dealers);

- (5) Used equipment, including but not limited to worn-out furniture or building materials which are not being used during construction; or
- (6) Outside storage of wood products being used as firewood which are not stacked.
- (b) This section shall apply to any item that may cause injury to the health, safety or general welfare of any other person, or that is unreasonably detrimental to neighboring properties. All properties within the city limits shall remain clean and in such order as to not harbor or attract disease vector species and pests (including but limited to rodents, snakes, mosquitos, cockroaches, raccoons, skunks), rats or any other vermin. ~~This section shall apply to any such item which remains on the same property of the same occupant for a period not less than 15 days. This section shall not apply to authorized junk dealers.~~
- (c) Any person violating, failing, refusing or neglecting to comply with any of the provisions of this section shall be subject to a civil penalty. This provision is adopted pursuant to and in accordance with G.S. 160A-175(c). Failure to abate a violation may also constitute a misdemeanor or infraction pursuant to G.S. 14-4, as provided in Sec. 1-15(h) of the Lenoir City Code.
- (d) Any nuisance violation that constitutes an immediate and substantial risk of harm shall constitute a misdemeanor offense pursuant to G.S. 14-4.
- (e) The Lenoir Planning Department and the Lenoir Police Department shall have the authority to enforce the provisions of this Chapter.

ARTICLE II. – PUBLIC NUISANCES

Sec. 12-12. Nuisances declared.

(a) The following enumerated and described conditions are hereby found, deemed and declared to constitute a detriment, danger and hazard to the health, safety, morals and general welfare to the inhabitants of the city or are unsightly, unattractive and contribute measurably to visual blight within the city, and are found, deemed and declared to be public nuisances wherever the same may exist and the creation, maintenance or failure to abate any nuisances is hereby declared unlawful.

- (1) Any condition which is a breeding ground or harbor for mosquitoes or a breeding ground or harbor for rats, snakes, or other pests or disease vectors, including but not limited to raccoons, bats, and skunks, or has the potential for becoming a breeding ground or harbor for such pests;
- (2) A growth of weeds, grasses and/or other vegetation on one's residential, business, or vacant lot which is over 12 inches in height on the average. It will be the responsibility of the owner to cut and remove all weeds and other overgrown vegetation as often as necessary so as to comply with the provisions of this section. This provision shall not apply to lots greater than one acre. Lots that are larger than one acre will only be required to be maintained to this provision if and only if adjacent property is occupied by a

dwelling, commonly used structure or building and said dwelling, structure, or building is within a distance of 100 feet to the adjacent property line. If this occurs then the owner will be responsible for cutting and removing all overgrown vegetation within a 20-foot border along occupied lots and street frontage. This provision will not apply to wooded vacant lots that are more than 75 percent covered with mature trees, or property that consist of ravines, creek banks, or severe slopes which may cause the maintenance process to be dangerous or unsafe. Furthermore this provision will not apply to vacant lots that are larger than three acres in size;

- (3) A place of vines, shrubs or other vegetation over eight inches in height when such vines, shrubs or vegetation are a focal point for any other nuisance enumerated in this Code; provided, the nuisance herein defined by this subsection shall be cleared and cut only when it is necessary to abate any other nuisance described in this section;
- (4) A place of growth of noxious vegetation, including poison sumac (*Rhus vernix*), poison ivy (*Rhus radicans*) or poison oak (*Rhus Toxicodendron*), in a location likely to be accessible to the general public;
- (5) Any hedge, shrubbery, tree or plant along any street, alley or sidewalk planted closer than 18 inches or extending closer than 12 inches or lower than 14.5 feet to such street, alley or sidewalk, or any of the above-mentioned vegetation that obscures clear vision for a distance of 15 feet from the intersection of one street with another;
- (6) An open place of collection of water for which no adequate natural drainage is provided and where insects tend to breed or which is or is likely to become a nuisance or a menace to public health;
- (7) A collection place, storage or accumulation of lumber, bricks, blocks, nails, building hardware, roofing materials, scaffolding, masonry materials, electrical supplies or materials, plumbing supplies or materials, heating and air conditioning supplies or material or any other type of old or unusable building supplies (especially those with nails, staples or sharp objects and edges) unless such conditions are temporary in nature and caused by a current construction project in progress pursuant to a lawfully issued building permit;
- (8) A collection place, storage or accumulation for garbage, garbage bags, food and kitchen waste, litter, animal waste, trash and refuse or any other rotten or putrescible matter of any kind;
- (9) Hides, dried or green, provided the same may be kept for sale in the city when thoroughly cured and odorless;
- (10) Deteriorated or dilapidated sheds, outbuildings, garages or other uninhabited structures which have collapsed, partially collapsed or are likely to collapse; or pose a danger of fire, is or is likely to become a breeding place or habitat for rats, mice and other pests; or present a risk of injury to neighborhood children who are likely to be attracted to the place or to adjacent property and property owners;
- (11) The use of carports, open porches, decks, open garages and other outdoor areas that are visible from the streets as a storage or collection place for boxes, appliances, furniture (not including outdoor furniture), tools, equipment, junk, garbage, old, worn out, broken or discarded machinery and equipment, cans, containers, household goods or other similar conditions that increase the likelihood of a fire; may conceal dangerous conditions; may be a breeding place or habitat for mice, rats or other pests; or create an unattractive condition or visually blighted property;

- (12) The placement, storage or use of upholstered sofas, couches, chairs or other indoor furniture, appliances, seats removed from motor vehicles or other furniture not intended for outdoor use by the manufacturer used on any open porch, carport, stoop, deck, veranda, terrace, patio or other outdoor area that is visible from nearby streets or sidewalks;
- (13) A collection place, storage or accumulation of old, worn out, broken or discarded machinery, vehicle parts, junk, tires, tire rims and tubes, metal products, old clothes, rags, furniture, stoves, refrigerators, appliances, cans and containers, household goods, mattresses, boxes, paper, plumbing or electrical fixtures, glass products, brush, limbs, fencing materials, wood products (not including firewood);
- (14) Any improper or inadequate drainage on private property which causes flooding, interferes with the use or endangers in any way the streets, sidewalks, parks or other municipal property of any kind;
- (15) Failure to clean or clear a public street of mud and debris related to a construction, timbering, or other similar land use project within 12 hours after notification by the city for major and minor thoroughfares or within 24 hours after such notification for collector and local streets; however, if it is found by the city that the situation is causing a clear and present danger or hazard to traffic or the general public, such cleaning or clearing may be required to take place as soon after notification as practicable; and
- (16) Any other condition specifically declared to be a danger to the public health, safety, morals and general welfare of inhabitants of the city and declared to be a public nuisance by the city council. Proceedings to abate the violation(s) may be initiated by the city prior to the nuisance declaration of the city council after giving written notice thereof. Such notice shall state the condition existing, the location of the violation and that the city council will be requested, after public hearing at which the person notified may appear and be heard, to declare that the conditions existing constitute a danger to the public health, safety, morals, and general welfare of the city inhabitants and a public nuisance. After such declaration by the city council, in the form of an ordinance, the condition will be abated as provided for in this chapter.
- (17) Property owners are required to maintain any area of their property which is located between a public sidewalk and the curb of a paved street in accordance with the guidelines set forth in this section.

(b) Appeal from a notice of violation initiated by the city council shall be made to county superior court within 30 days following the issuance of such order.

SECTION 2. 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 3. 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 4. EFFECTIVE DATE. This ordinance takes effect upon adoption.

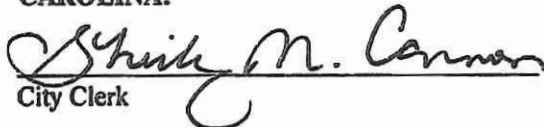
DONE, THE PUBLIC NOTICE, in a newspaper of general circulation in the City of Lenoir, North Carolina, by the City Clerk of the City of Lenoir, North Carolina, this 8th day of August day of N/A, 2020.

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 25th day of August, 2020.

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

CITY OF LENOIR, NC
CHARTERED
JANUARY 28, 1851

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SEAL

Resolution Leasing Property for One Year or Less

WHEREAS, the City of Lenoir owns the improvements and lands located within the property described in Book 1094, at Page 1690, and located northwest of the City Public Services Complex and including the paved parking areas, the Garage Building and the rear parking area, located at 510 Greer Circle that it does not currently have use for; and

WHEREAS, Bernhardt Furniture Company (parent company of Bernhardt Transportation, LLC) owns adjoining lots and buildings; and

WHEREAS, the City and Bernhardt Transportation, LLC have agreed upon a lease, under which Bernhardt Transportation, LLC will lease a portion of the city's lot/building for the term of one year beginning January 1, 2022, for a consideration of \$18,000, payable in twelve (12) monthly payments; and

WHEREAS, North Carolina General Statute § 160A-272 authorizes the city to enter into leases of one year or less upon resolution of the City Council adopted at a regular meeting; and

WHEREAS, the City Council is convened in a regular meeting;

THEREFORE, THE CITY COUNCIL OF THE CITY OF LENOIR RESOLVES THAT:

The City Council hereby approves lease of the city property described above to Bernhardt Transportation, LLC and directs the City Manager to execute any instruments, including terms and conditions necessary to execute the lease.

Adopted this the 6th day of April, 2021.

SEAL


Joseph L. Gibbons, Mayor

ATTEST:


Shirley M. Cannon, City Clerk

Prepared by: Groome, Tuttle, Pike & Blair, RLLP

STATE OF NORTH CAROLINA

COUNTY OF CALDWELL

LEASE AGREEMENT

This Lease Agreement, made and entered into this ____ day of _____, 2021, by and between CITY OF LENOIR, a North Carolina municipal corporation of Caldwell County, North Carolina, (hereinafter called "Lessor"), and BERNHARDT TRANSPORTATION, LLC, a North Carolina limited liability company, with its principal office located in Lenoir, Caldwell County, North Carolina, (hereinafter called "Lessee");

WITNESSETH:

1. Demise of Premises. Lessor leases unto Lessee the real property and the building thereon (hereinafter called "Premises") which is located in the City of Lenoir, Caldwell County, North Carolina, subject to the Reservations set forth herein, and described more particularly as follows:

The improvements and lands located within the property described in Book 1094, at Page 1690, and located northwest of the Public Works/Public Utilities Office Building and including the paved parking areas, the Garage Building and the rear parking area, but excluding the Used Oil Containment Building. See attached map of leased area which is incorporated herein by reference.

2. Term of Lease.

A. The original term of this Lease shall be for One (1) year and the commencement date shall be January 1, 2022. If requested, the parties shall execute a short form Memorandum of Lease in recordable form containing such matters as the parties may agree upon including, however, as a minimum, the commencement date and the expiration date (which date shall be One (1) year from said commencement date).

B. This lease is subject to certain Reservations by Lessor as set forth below:

a. In the area designated on the attached map, Lessor retains the exclusive right and option to use the wash bay and equipment in the Garage Building on Wednesday of each week. Lessee agrees to not interfere with Lessors use of the Garage premises on Wednesdays. Lessor staff will exercise due care and diligence in the use of the wash bay.

b. In the area designated on the attached map, Lessor retains the right to have parking and storage in the paved parking areas for its Public Works/Public Utilities Office Building including an area adequate to install a covered shed and including an adequate physical area sufficient to construct a chain link fence, installation of additional gates, and new secondary traffic patterns throughout the facility. Lessor agrees to cooperate with Lessee in carrying out such reservations should Lessor determine such reservations are necessary.

c. In the area designated on the attached map, Lessor retains the right to have secure storage of new rollout garbage carts on the demised premises. Such secure storage shall be inside an Enclosed Material Storage Trailer (53 ft) which shall be provided by Lessee at no cost to Lessor.

3. Rentals.

Lessee shall pay rental to Lessor at a rate of One Thousand Five Hundred (\$1,500.00) Dollars per month or \$18,000.00 per year. Rental shall be due and payable in twelve (12) equal monthly installments of One Thousand Five Hundred (\$1,500.00) Dollars each, in advance, on the first (1st) day of each calendar month for and during the term.

In addition, Lessee shall carry, at its own expense, policies of property insurance with extended coverage insuring Lessee's personal property located on the premises against loss or damage to its furnishings, fixtures, inventory, equipment and other property situated or placed upon, in or about the Premises with companies and in amounts acceptable to itself.

4. Acceptance of Premises. Lessee acknowledges that the act of taking possession of the premises shall constitute acceptance thereof and conclusive evidence that Lessee has inspected and examined the entire premises and utility installations and that the same were, and are, in good and satisfactory condition, and Lessee accepts the same "as is".

5. Assignment or Subletting. Lessee shall not have the right to assign the Lease or to sublet the Premises in whole or in part without the prior written consent of Lessor. If Lessee is a corporation, then the passage of control of Lessee to parties other than those who presently control Lessee, as of the date of this Agreement, shall constitute an assignment of this Lease.

6. Compliance with Legal Requirements. Both parties shall comply with all the legal requirements of any governmental or quasi-governmental body including City, County, State or Federal boards having jurisdiction thereof, respecting any operation conducted or any equipment, installations or other property placed upon, in or about the Premises. Both parties shall neither create nor permit the creation of any nuisance upon, in or about the Premises, and neither shall not make any offensive use thereof.

7. Utilities. Lessee shall pay for all water and sewer services consumed or used on the Premises. Lessor shall pay for electricity and gas service to the premises. The lack of availability or failure of utility service shall not be deemed constructive eviction.

8. Additions, Alterations, Changes and Improvements. Lessee shall not make, nor have the right to make any alterations, changes or improvements, structural or otherwise, in or to the Premises without Lessor's prior written consent. If such consent is given, all such alterations, changes and improvements, shall be promptly made in a workman-like manner, be promptly paid for allowing no liens to attach either to the Premises or to Lessor's interest therein, and shall become the property of Lessor at the termination of this Lease Agreement. Lessor shall have the right to require Lessee to provide such assurances as Lessor shall reasonably require (such as bonds, escrows, etc.) to protect Lessor against unpaid-for work.

9. Repairs. Lessor shall not be responsible for making any repairs including

structural repairs and repairs of a capital nature to the exterior walls and to the roof. Lessee shall at its own expense keep and maintain all the premises and all parts and systems thereof including all repairs to windows and/or plate glass, and all utility installations and equipment (including repairs of a capital nature), in good maintenance, replacement and repair, properly painted and decorated. All repairs shall be performed in a prompt, workman-like manner, shall be promptly paid for by Lessee and no liens shall be allowed to attach either to the Premises or to Lessor's interest therein. Other than as specifically stated herein, Lessor has no obligation to make any repairs.

10. Safe and Sanitary Conditions. Lessee shall not permit, allow or cause any act or deed to be performed upon, in or about the premises which shall cause or be likely to cause injury to any person or to the Premises, the building or improvements located thereon, or to any adjoining property. Lessee shall at all times keep the premises in a neat and orderly condition and keep the premises and the entryways, parking areas, sidewalks and delivery areas adjoining the premises clean and free from rubbish, dirt, snow, standing water and ice.

11. Trade Fixtures. Lessee shall be permitted to install trade fixtures on the premises. In addition, Lessee shall be permitted to remove said trade fixtures installed during the term of this lease from the premises upon the termination of this Lease Agreement; provided that if Lessee does so remove such trade fixtures, it shall return the Premises to the same condition as existed at the time of the original entry, ordinary wear and tear excepted. This provision is not intended to allow Lessee to remove approved structural improvements by Lessee to the Premises. All such improvements belong to Lessor at the termination hereof and shall not be removed or damaged by Lessee's removal of its trade fixtures. If Lessee does not remove the trade fixtures at termination, Lessor shall have the option either to declare such fixtures abandoned and shall become the owner thereof or to demand that Lessee remove the same at its own expense, returning the Premises to the condition required herein.

12. Lessor Not Liable for Damages or Injuries. Lessor shall not be responsible to Lessee or any other person, firm, partnership, association or corporation for damages or injuries by virtue of or arising out of burst water pipes, leaks from sprinkler or air conditioning systems, leaks from the roof, or by virtue of earthquakes, riots, windstorms, overflow of water from surface drainage, rains,

water, fire or by the elements or acts of God, or by the neglect of any person, firm, partnership, association or corporation. Lessee shall indemnify and hold Lessor harmless from any and all claims for damages to person or property to the full extent permitted by law.

13. Indemnification. Both parties covenant to indemnify and hold the other party harmless from the claims of any and all persons, firms, partnerships, associations or corporations for personal injury or damage to property or both arising out of or in connection with either parties' use and/or occupancy of the Premises. In addition, Lessee shall carry public liability insurance in the minimum amount of \$1,000,000.00 bodily injury per occurrence, and \$500,000.00 property damage per occurrence, and Lessee shall deliver to Lessor a memoranda of the policy of such coverage with a company satisfactory to Lessor and which names Lessor as additional insured therein.

14. Fire or Casualty. If, during the term of this lease, the Premises shall be partially destroyed (as that term is herein defined) by fire or other casualty, Lessee shall have the right to terminate this Lease Agreement. If this option is not exercised by Lessee, Lessor may, in its sole discretion, effect the required repairs and reconstruction of the Premises. If Lessor elects to make the repairs or reconstruction, during such time as said repairs or reconstruction are being made, the rentals hereinabove provided shall not abate. Any other provisions contained herein notwithstanding, Lessor shall be required and obligated to effect repairs or reconstruction only to the extent of any sums of money, if any, which are received by Lessor under insurance coverage as a direct result of said fire or other casualty.

15. Waiver of Subrogation. Neither Lessee nor anyone claiming by, through, under or in Lessee's behalf shall have any claim, right of action or right of subrogation against Lessor or based upon any loss or caused by fire, explosion or any other casualty (not limited to the foregoing) relating to the premises or any property upon, in or about the Premises, whether such fire, explosion or casualty shall arise from the negligence of Lessor, their agents, representatives or employees, or otherwise.

16. Subordination to Mortgages. This Lease Agreement and the rights of Lessee are subordinate to and shall be subordinate to the lien of any mortgage or deed of trust (hereafter called "Mortgage") whether such Mortgage is a lien on the

Premises or hereafter becomes a lien on the Premises and no further agreements or documents shall be required to render this Lease and Lessee's rights subordinate to such Mortgage. Lessee shall at all times upon request of Lessor promptly furnish documents stating that this lease is in full force and effect, that no defaults of Lessor exist, and such other matters as are customarily contained in what is known as an "estoppel letter" or a "good-standing letter". Should Lessee fail to deliver such documents within 10 days of Lessor's request therefor, Lessor shall be deemed Lessee's attorney-in-fact for the purpose of executing such documents in the name of Lessee.

17. Inspection. Lessor shall have the right at all reasonable times to enter and inspect the Premises.

18. Condition of Premises Upon Termination. Upon the termination of this Lease Agreement, Lessee shall return the Premises to Lessor substantially in the same condition as when received ordinary wear and tear and approved improvements excepted.

19. Holding Over. In the event Lessee remains in possession after the expiration of the Term without the execution of a new lease, Lessee shall not acquire any right, title or interest in or to the Premises. In such event, Lessee shall occupy the Premises as a tenant from month-to-month and shall otherwise be subject to all of the conditions, provisions and Obligations of this Lease agreement insofar as the same shall be applicable.

20. Default. Each of the following events shall constitute a default or breach of this lease by Lessee:

a) The filing of a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act or the making of general assignment for the benefit of creditors.

b) Involuntary proceedings under any bankruptcy or insolvency act instituted against Lessee, or if a receiver or trustee shall be appointed for all or substantially all of the property of Lessee and such proceedings are not dismissed, or the receivership or trusteeship vacated within 10

days after the institution or appointment;

c) Failure to pay rent when the same shall become due and a continuing failure to pay rent for 10 days after notice thereof from Lessor to Lessee. For purposes hereof, all funds due from Lessee shall constitute rental whether denominated as rental or otherwise elsewhere herein;

d) If Lessee fails to fully perform and comply with each and every condition and covenant of this Lease Agreement, and such failure of performance continues for a period of 30 days after notice thereof;

e) Vacates or abandons the Premises;

f) If the interest of Lessee is transferred, levied upon or assigned to any other person, firm or corporation whether voluntary or involuntary except as herein permitted;

21. Remedies In Event of Default. In the event of any default hereunder as set forth in the foregoing Section 20, Lessor shall be entitled to re-enter and re-take the Premises and exercise all their rights under the laws of the State of North Carolina.

22. Breach. Upon any breach hereof, regardless of what such breach is or if such breach becomes, an "event of default", either party shall be reimbursed by the other party for any reasonable attorney's fees incurred in connection with such breach.

23. Waiver. No failure to exercise any rights hereunder to which Lessor may be entitled shall be deemed a waiver of the right to subsequently exercise same. Lessee shall gain no rights nor become vested with any owner to remain in default under the terms hereof by virtue of Lessor's failure to timely assert rights. No waiver of an acceleration of rentals, regardless of how often occurring, which Lessor chose to ignore by thereafter accepting rental or other performance by Lessee shall constitute a waiver of the right to thereafter accelerate rentals.

24. Law Applicable. This Lease is entered into in North Carolina and shall

be construed under the laws, statutes, and ordinances of such jurisdiction.

25. Severability. The provisions hereof are independent covenants and should any provision or provisions contained in this Lease be declared by a court or other tribunal of competent jurisdiction to be void, unenforceable or illegal, then such provision or provisions shall be severable and the remaining provisions hereof shall remain at Lessor's option in full force and effect.

26. Easements, Restrictions and Right of Way. The Premises are demised subject to all easements, restrictions and right of way legally affecting the Premises.

27. Binding Effect and Complete Terms. The terms, covenants, conditions and agreements herein contained shall be binding upon and inure to the benefit of and shall be enforceable by Lessor and by their respective heirs, successors and assigns. All negotiations and agreements of Lessor and Lessee are merged herein. No modification hereof or other purported agreement of the parties shall be enforceable unless the same is in writing and signed by Lessor and Lessee.

28. Rental Payments. All rental payments, unless otherwise designated in writing, shall be made to Lessors at such place as Lessor may from time to time designate in writing.

29. Lessor's Performance of Lessee's Covenants. Should Lessee, after seven days' notice from the Lessor, fail to do any of the things required to be done by it under the provisions of this Lease, Lessor, in addition to any and all other rights and remedies, may (but shall not be required to) do the same or cause the same to be done, and the amount of any money expended by Lessor in connection therewith shall constitute additional rental due from Lessee to Lessor and shall be payable as rental on the date for payment of rentals next following such expenditure.

30. Covenant of Title and Quiet Enjoyment. Lessor covenants and warrants to Lessee that they have full right and lawful authority to enter into this Lease for the term hereof and provided Lessee is not in default hereunder, Lessee's quiet and peaceable enjoyment of the Premises shall not be disturbed by anyone claiming through Lessor.

31. Construction. This Lease shall not be construed more strictly against either party regardless of which party is responsible for the preparation of the same.

32. Notice. Any notice to a party to this lease shall be given at the following address:

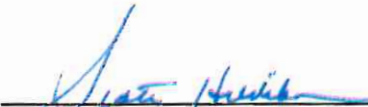
Lessor: City of Lenoir
Attn: Scott Hildebran, Manager
Shildebran@CLLENOIR.NC.US
Post Office Box 958
Lenoir, North Carolina 28645

Lessee: Bernhardt Transportation, LLC
Attn: Kevin McDougall, General Counsel
1839 Morganton Blvd.
Lenoir, North Carolina 28645
Kevinmcdougall@bernhardt.com

IN WITNESS WHEREOF, the parties have signed and sealed this Lease Agreement, this day and year first above written.

LESSOR:

CITY OF LENOIR (SEAL)
a North Carolina municipal corporation

By: 
Scott Hildebran
Manager



SEAL

LESSEE:

BERNHARDT FURNITURE COMPANY (SEAL)

By: _____

Caldwell County



October 9, 2020

This map is NOT of land survey quality and is NOT suitable for such use.

Exhibit A - Overall Plan

Caldwell County



This map is NOT of land survey quality and is NOT suitable for such use.

Exhibit B - Parking & Storage Area

October 9, 2020



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
R. S. PRESTWOOD
D. F. STEVENS
C. D. THOMAS
B. K. WILLIS

Resolution Encouraging Residents to Help Keep Lenoir Litter-Free

WHEREAS, City of Lenoir residents are blessed to live in the beautiful foothills of the Blue Ridge Mountains in Western North Carolina, and the natural beauty of our land is a source of pride for residents, and an attraction for tourists and new businesses; and

WHEREAS, littering is against the law and cleaning litter from North Carolina's roadsides costs taxpayers millions of dollars each year; and

WHEREAS, litter is more prevalent than ever along our roadways, and the state and volunteers have collected more than two million pounds of roadside litter in North Carolina since January 1, 2021; and

WHEREAS, seeing litter along our roads is embarrassing to our residents who love Lenoir and off-putting to citizens and new visitors; and

WHEREAS, we can help keep Lenoir litter-free by teaching our children and other young people not to litter, covering truck and trailer beds when transporting trash, carrying and using a litter bag in our vehicle, and reporting litterbugs when we see them to the North Carolina Department of Transportation Swat-A-Litterbug program; and

WHEREAS, The North Carolina 2021 Spring Litter Sweep will take place April 10-24, 2021; and

WHEREAS, City of Lenoir staff, with the full support of City Council, will pick up litter in Lenoir Wednesday, April 14, 2021, during the annual City of Lenoir Employee Spring Litter Sweep Day; and

WHEREAS, the City of Lenoir supports Caldwell County's first annual "A Clean Caldwell" Roadside Litter Pickup Day scheduled for April 17, 2021;

NOW THEREFORE BE IT RESOLVED, I, Mayor Joseph L. Gibbons, on behalf of the City of Lenoir City Council, encourage all residents, businesses, civic groups, churches, and schools, to help pick up litter in Lenoir and Caldwell County during the 2021 Spring Litter Sweep while following all roadside safety and state health safety guidelines; and

BE IT FURTHER RESOLVED, the City of Lenoir City Council encourages all residents to take pride in our community and help keep Lenoir Litter-Free all year long.

This the 6th day of April, 2021.

SEAL

ATTEST:


Shirley M. Cannon, City Clerk


Joseph L. Gibbons, Mayor





PROCLAMATION

*National Public Safety
Telecommunications Week*



April 11 – 17, 2021

Whereas, emergencies can occur at anytime that require police, fire or emergency medical services;

Whereas, when an emergency occurs, the prompt response of police officers, firefighters and paramedics is critical to the protection of life and preservation of property;

Whereas, the safety of our first responders is dependent upon the quality and accuracy of information obtained from citizens who telephone the Lenoir Communications Center;

Whereas, Professional Telecommunicators are not as visible as the men and women who arrive at the scene of emergencies, but they are the first and most critical contact our citizens have with emergency services;

Whereas, Professional Telecommunicators are the single vital link for our first responders by monitoring their activities by radio and mobile, providing accurate up-to-date information and ensuring their safety;

Whereas, each Telecommunicator has exhibited compassion, understanding and professionalism during the performance of their job in the past year;

Therefore Be It Resolved, that I, Joseph L. Gibbons, Mayor of the City of Lenoir, and on behalf of the Lenoir City Council, do hereby proclaim and declare the week of April 11th through 17th, 2021 to be National Public Safety Telecommunicators Week in Lenoir, in honor of the men and women whose diligence and professionalism keep our city and citizens safe.

Witness, my hand and seal this the 6th *day of* April, 2021.

SEAL

Joseph L. Gibbons, Mayor

ATTEST:

Shirley M. Cannon, City Clerk

Minutes-City of Lenoir Council Meeting
Tuesday, April 6, 2021

APR 10 2021
CITY OF LENOIR

Change Order No. 03

Date of Issuance: March 17, 2021
Owner: City of Lenoir
Contractor: Brushy Mountain Builders
Engineer: McGill Associates, P.A.
Project: Biosolids Facility Improvements

Effective Date: March 17, 2021
Owner's Contract No.:
Contractor's Project No.:
Engineer's Project No.: 17.01107
Contract Name: Biosolids
Facility Improvements

The Contract is modified as follows upon execution of this Change Order:

Description: Adjust the Contract Price for additional, unforeseen project work items as outlined in the attached Change Order Summary

Attachments: Change Order Summary, with back-up documentation

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES [note changes in Milestones if applicable]
Original Contract Price:	Original Contract Times:
\$ 4,259,000.00	Substantial Completion: <u>330</u>
	Ready for Final Payment: <u>360</u>
	days or dates
[Increase] [Decrease] from previously approved Change Orders No. <u>1</u> to No. <u>2</u> : CO #1: \$23,607.96 CO #2: \$9,287.07	[Increase] [Decrease] from previously approved Change Orders No. <u>1</u> to No. <u>2</u> : Substantial Completion: <u>43</u>
\$ 32,895.03	Ready for Final Payment: <u>43</u>
	days
Contract Price prior to this Change Order:	Contract Times prior to this Change Order:
\$ 4,291,895.03	Substantial Completion: <u>373</u>
	Ready for Final Payment: <u>403</u>
	days or dates
[Increase] [Decrease] of this Change Order:	[Increase] [Decrease] of this Change Order:
\$ 26,745.97	Substantial Completion: <u>27 days</u>
	Ready for Final Payment: <u>27 days</u>
	days or dates
Contract Price incorporating this Change Order:	Contract Times with all approved Change Orders:
\$ 4,318,641.00	Substantial Completion: <u>400 days</u>
	Ready for Final Payment: <u>430 days</u>

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: _____	By: <u>[Signature]</u>	By: _____
Engineer (if required)	Owner (Authorized Signature)	Contractor (Authorized Signature)
Title: _____	Title: <u>City Manager</u>	Title: _____
Date: _____	Date: <u>4/7/2021</u>	Date: _____

Approved by Funding Agency (if applicable):

Date: _____

RESOLUTION BY GOVERNING BODY OF APPLICANT

- WHEREAS, The Federal Clean Water Act Amendments of 1987 and the North Carolina the Water Infrastructure Act of 2005 (NCGS 159G) have authorized the making of loans and grants to aid eligible units of government in financing the cost of construction of drinking water distribution system projects, and
- WHEREAS, The **City of Lenoir** has need for and intends to construct a drinking water distribution system project described as the Finley Area Water System Improvements project, and
- WHEREAS, The **City of Lenoir** intends to request state loan and/or grant assistance for the project,

NOW THEREFORE BE IT RESOLVED, BY THE CITY OF LENOIR CITY COUNCIL:

That **City of Lenoir**, the **Applicant**, will arrange financing for all remaining costs of the project, if approved for a State loan and/or grant award.

That the **Applicant** will adopt and place into effect on or before completion of the project a schedule of fees and charges and other available funds which will provide adequate funds for proper operation, maintenance, and administration of the system and the repayment of all principal and interest on the debt.

That the governing body of the **Applicant** agrees to include in the loan agreement a provision authorizing the State Treasurer, upon failure of the **City of Lenoir** to make scheduled repayment of the loan, to withhold from the **City of Lenoir** any State funds that would otherwise be distributed to the local government unit in an amount sufficient to pay all sums then due and payable to the State as a repayment of the loan.

That the **Applicant** will provide for efficient operation and maintenance of the project on completion of construction thereof.

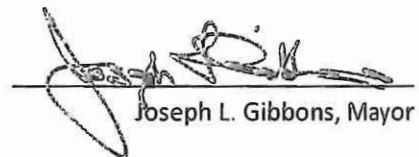
That **Scott Hildebran, City Manager**, the **Authorized Official**, and successors so titled, is hereby authorized to execute and file an application on behalf of the **Applicant** with the State of North Carolina for a loan and/or grant to aid in the construction of the project described above.

That the **Authorized Official**, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That the **Applicant** has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted this the 6th day of April, 2021 at Lenoir, North Carolina.

SEAL



Joseph L. Gibbons, Mayor

CERTIFICATION BY RECORDING OFFICER

The undersigned duly qualified and acting City Clerk of the City of Lenoir does hereby certify: That the above/attached resolution is a true and correct copy of the resolution authorizing the filing of an application with the State of North Carolina, as regularly adopted at a legally convened meeting of the City Council of the City of Lenoir duly held on the 6th day of April, 2021; and, further, that such resolution has been fully recorded in the journal of proceedings and records in my office. IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of April, 2021.

Shirley Cannon
Signature

Shirley Cannon, City Clerk

Printed Name and Title



**AN ORDINANCE DIRECTING THE MINIMUM HOUSING INSPECTOR TO REMOVE OR
DEMOLISH THE PROPERTY HEREIN DESCRIBED AS UNFIT FOR HUMAN
HABITATION AND DIRECTING THAT A NOTICE BE PLACED THEREON THAT THE
SAME MAY NOT BE OCCUPIED.**

WHEREAS, the City Council of the City of Lenoir finds that the dwelling described herein is unfit for human habitation under the City Housing Standards, and that all of the procedures of the Minimum Housing Standards have been complied with; and

WHEREAS, this dwelling should be removed or demolished, as directed by the Minimum Housing Inspector, and should be placard thereon the notice prohibiting use for human habitation; and

WHEREAS, the owner of this dwelling, Robert Alandth Hamby, has been given a reasonable opportunity to bring the dwelling into compliance with the Minimum Housing Standards accordance with G.S. 160A-443 (5) pursuant to an order issued by the Minimum Housing Inspector on November 4, 2020, and the owner has failed to comply with the order;

NOW THEREFORE BE IT ORDAINED BY the City Council of the City of Lenoir that:

Section 1. The Minimum Housing Inspector is hereby authorized and directed to place a placard containing the following:

"This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful."

on the building located at the following address: **1921 Marigold Ln**
Lenoir, North Carolina.
Parcel-ID 03 53 2 16
NCPIN 2768107707

Section 2. The Minimum Housing Inspector is hereby authorized and directed to proceed to remove or demolish the described above dwelling in accordance with this Order, and in accordance with the City of Lenoir Minimum Housing Code, and NCGS Chapter 160A, Article 19, Part 6.

Section 3. The cost of demolition and improvement of the lot shall be a tax lien on the real property as provided by G.S. 160A-443 (6).

Section 4. It shall be unlawful for any person to remove or cause to be removed the placard from any building to which it is affixed. It shall be likewise unlawful for any person to occupy or to permit the occupancy of any building therein declared to be unfit for human habitation.

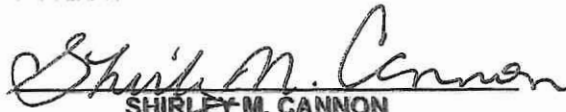
Section 5. A copy of this ordinance shall be recorded in the Register of Deeds of Caldwell County, North Carolina, and indexed in the name of the property owner or owners in the grantor index.

Section 6. This ordinance shall become effective on Tuesday, April 6th, 2021

Adopted this the 6th day of April 2021.


JOSEPH L. GIBBONS
MAYOR

ATTEST:


SHIRLEY M. CANNON
CITY CLERK

CITY OF LENOIR, NC
CHARTERED
JANUARY 28, 1851

APPROVED AS TO FORM:


TIMOTHY J. ROHR
CITY ATTORNEY

SEAL



This map is NOT of land survey quality and is NOT suitable for such use.

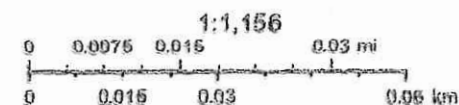
Owner HAMES HUGH ALEXANDER

1921 MARIGOLD LN
HUDSON, NC 28638

Acct Number 86156
Parcel ID 03 53 2 16
NCPIN 2768107707

Deferred Val \$0
Assessed Val \$74,000
Calc Acreage 0.355282
Land Units 100 (FF)
Legal Desc 1016/1237 1990 0.00
Plat Ref /
Property Addr 1921 MARIGOLD LN SE

Caldwell County



October 6, 2020

**CITY OF LENOIR
COUNCIL ACTION
FORM**

I. Agenda Item:

Resolution Authorizing Lease of City Property for a Term of Five Years to the North Carolina State Employees' Credit Union for an ATM.

II. Background Information:

The City has historically (16+ years) leased a portion of the parking lot located of 601 West Avenue (behind the Lenoir Fire Department) to the North Carolina State Employees' Credit Union for an ATM. This agreement would extend the lease for five years. Highlights of the lease are as follows:

The original term of this Lease shall be for five years and the commencement date shall be March 1, 2021.

Lessee shall pay rental to Lessor at a rate of One Hundred (100) Dollars per month or \$1,200.00 per year.

III. Staff Recommendation:

Recommend approval of a Resolution Authorizing Lease of City Property for a Term of Five Years to the North Carolina State Employees' Credit Union for an ATM.

IV. Reviewed By:

City Attorney:

Public Works/Public Utilities

Directors: City Manager:

Finance Director: *Donna Bear*

Resolution Leasing Property for Five years

WHEREAS, the City of Lenoir owns the parking lot located at 601 West Avenue which includes the Central Fire Station Property; and

WHEREAS, the North Carolina State Employees' Credit Union (NCSECU) owns the ATM located on the property; and

WHEREAS, the City and NCSECU have agreed upon a lease extension, under which NCSECU will lease a portion of the city's lot for the term of five years beginning March 1, 2021, for a consideration of \$1,200, payable in twelve (12) monthly payments; and

WHEREAS, North Carolina General Statute § 160A-272 authorizes the city to enter into leases of one to ten years after public notification and upon resolution of the City Council adopted at a regular meeting; and

WHEREAS, the City Council is convened in a regular meeting;

THEREFORE, THE CITY COUNCIL OF THE CITY OF LENOIR RESOLVES THAT:

The City Council hereby approves lease of the city property described above to NCSECU and directs the City Manager to execute any instruments, including terms and conditions necessary to execute the lease.

Adopted this the 19th day of April, 2021.

SEAL

Joseph L. Gibbons,
Mayor

ATTEST:

Shirley M. Cannon, City Clerk

North Carolina

Caldwell County

LEASE AGREEMENT

This lease agreement, made and entered into this 11th day of February 2021 and between, City of Lenoir, hereinafter referred to as "Lessor"; and State Employees' Credit Union, a North Carolina credit union, hereinafter referred to as "Lessee."

WITNESSETH:

That subject to the terms and conditions hereinafter set out, Lessor does hereby let and lease unto Lessee, and Lessee does hereby accept as tenant of Lessor that certain tract or parcel of land located at 601 West Ave. Lenoir, County of Caldwell, State of North Carolina, and as more fully described and/or depicted in Exhibit A (the "Leased Premises").

The terms and conditions of this Lease Agreement are as follows:

- 1) The term of this Lease Agreement shall be for a period of five (5) years beginning on the FIRST day of March, 2021 and ending on the LAST day of February, 2026, unless extended or terminated under the other provisions of this Lease Agreement.
- 2) As rental for the Leased Premises, Lessee shall pay to Lessor the sum of One Hundred dollars (\$100.00) per month, payable monthly in advance on the first day of each calendar month. Rental payments will be payable to City of Lenoir and sent to the following address: P.O. Box 958, Lenoir, NC 28645
- 3) Lessee shall use and occupy the Leased Premises solely for the purpose of constructing and operating a kiosk ATM, and Lessee shall have exclusive control and possession of the Leased Premises for the entire term of this Lease Agreement.
- 4) Lessor shall be responsible for the repair and/or maintenance of the parking lot area immediately surrounding the Leased Premises including but not limited to repairing any potholes, removing any debris, and performing all landscaping such as maintaining and trimming any shrubs and trees in close proximity of the ATM. In addition, Lessor shall ensure that reasonably adequate lighting, parking, and access are available for the Leased Premises at all times. Upon written notice from Lessee to Lessor requesting any repairs and/or maintenance described above on the Leased Premises, Lessor shall perform any requested repairs and/or maintenance within thirty (30) days. If Lessor fails to perform any requested repairs and/or maintenance within thirty (30) days, then Lessee has the option to provide a forty-five (45) day written notice of its intent to terminate this Lease Agreement (such 45-day window to include the 30-day repair and maintenance window). Except as otherwise agreed to in writing by both parties, Lessee will be responsible for the construction of the ATM and any necessary upkeep, repairs, and maintenance of the ATM during the term of this Lease Agreement. Upon termination of the Lease Agreement, Lessee will be responsible for removing the ATM and the structure from the "Leased Premises" and will restore the premises back to substantially the same condition as existed prior to the installation of the ATM.

- 5) During the term of this Lease Agreement, Lessee shall maintain comprehensive general liability insurance on an occurrence basis with minimum limits of liability in the amount of Three Hundred Thousand Dollars (\$300,000.00) for property damage, bodily injury, personal injury or death to any one person; Lessee shall also maintain excess liability coverage with a per occurrence limit of at least One Million Dollars (\$1,000,000.00); and Lessee shall keep the kiosk structure on the Leased Premises together with the equipment in the structure insured against loss or damage by fire or other casualties. Lessor shall be named as an additional insured on Lessee's general liability policy and Lessee shall provide or cause to be provided to Lessor, on an annual basis, a certificate evincing the required coverage.
- 6) Lessee shall neither use nor occupy the Leased Premises or any part thereof for any unlawful or hazardous purpose.
- 7) Lessor shall pay prior to delinquency all taxes and assessments of every kind and nature, if any, which may be imposed or assessed upon or with respect to the Leased Premises.
- 8) If the Leased Premises are wholly or partially destroyed by fire or other casualty, rental payments shall abate in proportion to the loss of use thereof, and Lessee shall, at its own expense, promptly restore the Leased Premises to substantially the same condition as existed before damage or destruction, whereupon full rental shall resume. Should Lessee elect not to repair or replace the ATM, then Lessee shall provide to Lessor at least thirty (30) days written notice of its intent to terminate this Lease Agreement. Upon such termination, Lessee shall restore the premises to substantially the same condition as existed prior to the installation of the ATM. After the premises are restored, Lessee and Lessor shall not have any responsibility to each other under the terms of the Lease Agreement.
- 9) If the whole of the Leased Premises, or such portion thereof as will make the Leased Premises unsuitable for use contemplated hereby, shall be taken under the power of eminent domain (including any conveyance in lieu thereof), then the term hereof shall cease as of the date possession thereof is taken by the condemnor, and rental payments shall be accounted for as between Lessor and Lessee as of that date.
- 10) All applications in connection with necessary utility services on the Leased Premises shall be made in the name of Lessee only, and Lessee shall be solely liable for utility charges as they become due, including those for electricity, gas, and telephone/data services. Lessor shall reasonably cooperate with Lessee's efforts in furtherance of this provision, including, but not limited to, promptly responding to any requests for information or access by a utility provider.
- 11) Lessee shall defend, indemnify and hold harmless Lessor from and against any claims, damages, or expenses (including reasonable attorney's fees), whether due to damage to the Leased Premises, claims for injuries to persons or property, or administrative or criminal action by governmental authority, where such claims, damages, or expenses result from the negligence or misconduct by Lessee, its agents, or employees. Lessor shall defend, indemnify and hold harmless Lessee from and against any claims, damages, or expenses (including reasonable attorney's fees) where such claims, damages, or expenses result from the negligence or misconduct by Lessor, its agents, employees or invitees.

- 12) At the expiration of the term of this Lease Agreement, this Lease Agreement shall automatically renew as a month-to-month lease unless and until a party provides at least ten (10) days written notice to the other party that this Lease Agreement shall not renew.
- 13) It is expressly understood and agreed that if any monthly installment of rent as herein called for shall remain overdue and unpaid for thirty (30) days, Lessor may, at its option, at any time during such default, declare this Lease Agreement terminated and canceled and take possession of the Leased Premises, and require the Lessee to remove the structure from the premises and restore the Leased Premises back to substantially the same condition as existed prior to the installation of the ATM.
- 14) If Lessee shall pay the rent and perform and observe all the other covenants and conditions to be performed and observed by it hereunder, Lessee shall at all times during the term hereof have the peaceable and quiet enjoyment of the premises without interference from Lessor or any person lawfully claiming through Lessor.
- 15) All notices provided for in this Lease Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail addressed to Lessor at:

City of Lenoir
City Manager
P.O. Box 958
Lenoir, NC 28645

and to Lessee at:

State Employees' Credit Union
Attn: SVP, Facilities Management
PO Box 26807
Raleigh, NC 27611

- 16) This Lease Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina without regard to any conflict of laws provisions.
- 17) This Lease Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. In addition, this Lease Agreement may be assigned by Lessee to a third party that is regularly in the business of operating ATMs, subject to the approval of Lessor, such approval not to be unreasonably withheld.
- 18) This Lease Agreement contains the complete agreement of the parties regarding the terms and conditions of the lease of the premises, and there are no oral or written conditions, terms, warranties, understandings or other agreements pertaining thereto which have not been incorporated herein. This Lease Agreement may be modified only by written instrument duly executed by both parties or their respective successors in interest or assigns.
- 19) If any provision of this Lease Agreement shall be declared invalid or unenforceable, the remainder of this Lease Agreement shall continue in full force and effect.

- 20) Nonperformance of either party shall be excused to the extent that performance is rendered impossible by strikes or other labor problems, fire, flood, civil unrest, pandemics, acts of terror, war, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing party.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

In testimony whereof, the parties have caused this Lease Agreement to be executed as of the day and year first above written.

Lessor:
City of Lenoir

By: _____
Name: _____
Title: _____

North Carolina:
_____ County:

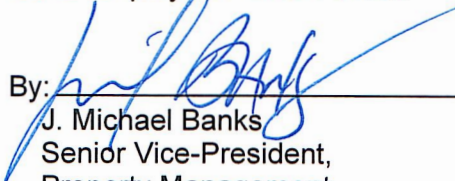
This is the ____ day of _____, 2021, before me, _____, a Notary Public, personally came _____, who, being duly sworn, says that she/he is a duly authorized officer of the foregoing entity and that the foregoing was signed and sealed by her/him on behalf of the said entity by its authority duly given, and acknowledged the said writing to be the act and deed of said entity.

Witness my hand and notarial seal, this ____ day of _____, 2021.

Notary Public

My Commission Expires:

Lessee:
State Employees' Credit Union

By: 
J. Michael Banks
Senior Vice-President,
Property Management

North Carolina:
Wake County:

This the 11th day of February, 2021, before me, Diksha Flowers a Notary Public, personally came J. Michael Banks, who, being duly sworn, says that he is Senior Vice-President, Property Management of State Employees' Credit Union and the said writing was signed and sealed by him on behalf of the said credit union by its authority duly given and the Senior Vice-President, Property Management acknowledged the said writing to be the act and deed of said credit union.

Witness my hand and notarial seal, this the 11th day of February, 2021.


Notary Public

My Commission Expires:

8/4/2024

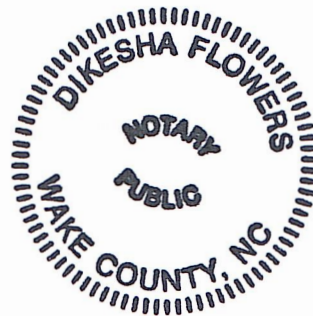




Exhibit A

News-Topic

123 Pennton Avenue
Lenoir, N.C. 28645

www.newstopicnews.com

CLASSIFIED

Call to place an ad: 828-610-8220

YARD SALE

\$18⁷⁴

**10 Lines
3 Days
2 Signs**

Ad must be prepaid.

MERCHANDISE

\$24⁰⁰

**5 Lines
1 Weeks**

Includes Caldwell Weekly & Website

Non commercial.
Additional \$5.00 for photo or border

MERCHANDISE

\$48⁰⁰

**5 Lines
4 Weeks**

Includes Caldwell Weekly

Non commercial.
Additional \$5.00 for photo or border

LEGALS

0955 Legals

0955 Legals

0955 Legals

0955 Legals

0955 Legals

0955 Legals

NORTH CAROLINA CALDWELL COUNTY
NOTICE TO CREDITORS
THE UNDERSIGNED, having qualified as Executor of the Estate of Carolyn Julia Winn White, Carolyn Julia White, deceased late of Caldwell County, this is to notify all persons, firms, and corporations having claims against said Estate to present them to the undersigned on or before the 19th day of June, 2021 or this Notice will be pleaded in bar of their recovery. All persons indebted to said estate please make immediate payment to the undersigned.
This the 17th day of March, 2021.

Julia White Williamson,
Executor
341 Zander Woods Court
Mt. Holly, NC 28120
Mar. 17, 24, 31, Apr. 7, 2021

NORTH CAROLINA CALDWELL COUNTY
NOTICE TO CREDITORS
THE UNDERSIGNED, having qualified as Co-Administrator of the Estate of Carolyn M Davis, deceased late of Caldwell County, this is to notify all persons, firms, and corporations having claims against said Estate to present them to the undersigned on or before the 19th day of June, 2021 or this Notice will be pleaded in bar of their recovery. All persons indebted to said estate please make immediate payment to the undersigned.
This the 17th day of March, 2021.

Samuel B Davis Jr.,
Co-Administrator
1426 Merriman St NW
Lenoir, NC 28645

Buddy L Davis,
Co-Administrator
175 Crysel Rd
North Wilkesboro, NC 28659
Mar. 17, 24, 31, Apr. 7, 2021

CITY OF LENOIR CITY COUNCIL NOTICE OF INTENT TO LEASE REAL PROPERTY

Notice is hereby given in accordance with NCGS 160A-272, that the Lenoir City Council intends to renew a lease for a portion of the parking lot located at 601 West Avenue (behind the Lenoir Fire Department) in Lenoir, NC, to the North Carolina State Employees Credit Union for the purpose of an ATM. The lease will be for a term of five years at an annual rent of \$1,200. City Council will consider adoption of a resolution authorizing the execution of the lease agreement at its regular meeting on Monday, April 19, 2021 at 6:00 p.m. at the City County Chambers, 905 West Avenue, Lower Level. Individuals may contact the City Clerk's office at (828) 757-2205 for additional information.

Shirley M. Cannon,
MMC, NCCMC
City Clerk

March 17, 2021

NORTH CAROLINA CALDWELL COUNTY
NOTICE TO CREDITORS
THE UNDERSIGNED, having qualified as Administrator of the Estate of Donald Ray Maddy, deceased late of Caldwell County, this is to notify all persons, firms, and corporations having claims against said Estate to present them to the undersigned on or before the 5th day of June, 2021 or this Notice will be pleaded in bar of their recovery. All persons indebted to said estate please make immediate payment to the undersigned.
This the 3rd day of March, 2021.

Melissa Kay Jones,
Administrator
2544 Brentwood Circle
Lenoir, NC 28645
March 3, 10, 17, 24, 2021

NORTH CAROLINA CALDWELL COUNTY
NOTICE TO CREDITORS
THE UNDERSIGNED, having qualified as Executor of the Estate of Peggy Helton Greene, deceased late of Caldwell County, this is to notify all persons, firms, and corporations having claims against said Estate to present them to the undersigned on or before the 4th day of June, 2021, or this notice will be pleaded in bar of their recovery. All persons, firms and corporations indebted to said estate will please make immediate payment to the undersigned.
This the 24th day of February 2021.

NORTH CAROLINA CALDWELL COUNTY
NOTICE TO CREDITORS
THE UNDERSIGNED, having qualified as Administrator of the Estate of Melvin Gerald Thompson, deceased late of Caldwell County, this is to notify all persons, firms, and corporations having claims against said Estate to present them to the undersigned on or before the 19th day of June, 2021 or this Notice will be pleaded in bar of their recovery. All persons indebted to said estate please make immediate payment to the undersigned.
This the 17th day of March, 2021.

Bryan E Greene,
Executor
2206 Planters Way
Lenoir, NC 28645
Mar.3, 10, 17, 24, 2021

CO-EXECUTORS' NOTICE TO CREDITORS
Having qualified as Co-Executors of the Estate of Virginia Baird Williams a/k/a Virginia B. Williams, deceased, late of Caldwell County, North Carolina, this is to notify all persons, firms and corporations having claims against the estate of said decedent to present them to the undersigned c/o Jennifer C. Perry Persinger at 169 Wildwood Road, Lenoir, NC 28645 on or before the 4th day of June, 2021, or this notice will be pleaded in bar of their recovery. All persons, firms and corporations indebted to said estate will please make immediate payment to the undersigned.
This the 24th day of February 2021.

Jennifer C. Perry Persinger
and Brent Travis Williams,
Co-Executors of the Estate of Virginia Baird Williams a/k/a Virginia B. Williams
Patrick, Harper & Dixon L.L.P.
PO Box 218
Hickory, NC 28603
Feb. 24 Mar.3, 10, 17, 2021

NORTH CAROLINA CALDWELL COUNTY
NOTICE TO CREDITORS
THE UNDERSIGNED, having qualified as Administrator of the Estate of Melvin Gerald Thompson, deceased late of Caldwell County, this is to notify all persons, firms, and corporations having claims against said Estate to present them to the undersigned on or before the 19th day of June, 2021 or this Notice will be pleaded in bar of their recovery. All persons indebted to said estate please make immediate payment to the undersigned.
This the 17th day of March, 2021.

Geoffrey Randolph Thompson,
Administrator
111 Ripton Court
Greer, SC 29650
Mar. 17, 24, 31, Apr. 7, 2021

MERCHANDISE

0563 Misc. Items for Sale

Black Glass & Wood TV Stand. Extra Sturdy Good Condition \$50 Call 828-572-1476

Oak corner cupboard. 3 open shelves and 2 shelves with door. Ex Cond \$200 Call 828-292-0923

REAL ESTATE FOR SALE

0734 Lots & Acreage

For Sale, 156 acres in Caldwell County.
Hunters Paradise.
Call 336-902-1401

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Apply today! Applications accepted by appointment only.
Office Hours: 8am - 4pm; Monday-Friday
828-754-6186
226 Wilson Street, Lenoir, NC 28645

We offer 1, 2, 3 & 4 bedroom town house and garden style apartments that include well planned living areas, fully equipped kitchens with energy efficient appliances, ceiling fans and patios/balconies. Amenities include: on-site laundry facility, playground and picnic area with barbeque grill. Enjoy affordable rents with Section 8 assistance (Income restrictions apply). Handicap accessible units available.

Professionally Managed by Community Management Corporation

Telecommunications Relay Services: 711
EQUAL HOUSING OPPORTUNITY

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FINANCING THAT FITS YOUR BUDGET! Promo Code: 285
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*For those who qualify. One coupon per household. No obligation estimate valid for 1 year. *Clog-free guarantee applies to all new Leaf Filter installations. The leading consumer magazine conducted a 16-month outdoor test of gutter guards in 2010 and recognized Leaf Filter as the #1 rated professionally installed gutter guard system. For more information, call 1-855-917-4953. ©2010 Leaf Filter, Inc. All rights reserved. License # 1734. License # 9938. License # 12344. License # 12345. License # 12346. License # 12347. License # 12348. License # 12349. License # 12350. License # 12351. License # 12352. License # 12353. License # 12354. License # 12355. License # 12356. License # 12357. License # 12358. License # 12359. License # 12360. License # 12361. License # 12362. License # 12363. License # 12364. License # 12365. License # 12366. License # 12367. License # 12368. License # 12369. License # 12370. License # 12371. License # 12372. License # 12373. License # 12374. License # 12375. 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CITY OF LENOIR FY-2021 Action Plan

City of Lenoir

P.O. Box 958
Lenoir, NC 28645
(828) 485-4245

For Submittal to the U.S. Department of Housing and Urban Development
April, 2021

**ACTION PLAN 2021
CITY OF LENOIR, NORTH CAROLINA**

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II. INTRODUCTION

The Community Development Block Grant Entitlement Program allows the City of Lenoir to address the housing affordability, community and economic development needs for the low and moderate-income residents of Lenoir. The Consolidated Plan is a planning document which guides the development of affordable housing, community and economic development strategies. The Consolidated Plan serves as a guide to be used in decision making for investors, non-profit organizations, community organizations, program administrators, City officials and concerned citizens. The Consolidated Plan, required by the Department of Housing and Urban Development, is designed to promote and coordinate citizen participation in the development of local priority needs and objectives.

This year the City of Lenoir will be utilizing the entitlement funds from the CDBG program for public facilities renovations at the Old Lenoir High School Complex which include the Gym, the Auditorium and Mack Cooke Stadium.

Mandated by the U.S. Department of Housing and Urban Development, the Consolidated Plan, developed in FY 2020 for a five year period, set forth a five-year plan for addressing the City's housing, community development and economic development needs of its low and moderate – income residents. The following is the summary of the five-year plan and the strategies for the FY 2021 CDBG program year.

III. FIVE YEAR STRATEGY

Summary of the Five Strategy. The City of Lenoir has established the following significant elements for achieving its strategic purposes and objectives through this consolidated plan.

- Installation of streets and sidewalks in CDBG eligible areas.
- Installation of greenways paths and/or bridges in CDBG eligible areas.
- Streets improvements in CDBG eligible areas.
- Installation of water & sewer in CDBG eligible areas.
- Elimination of slum and blight housing units and vacant buildings in the city through the acquisition and demolition and/or condemned structures.
- Increase economic and job opportunities for low and moderate income persons.
- Stimulating homeownership opportunities for low and moderate income homebuyers by providing downpayment assistance through the HOME Unifour Consortium Program.
- Increase the supply of standard, affordable housing through the rehabilitation of existing structures.
- Continue supporting programs offered by non-profits that benefit low and moderate income people and meet the requirements of CDBG Program.
- Encourage efforts on a regional basis to further study and address homelessness.
- Continue efforts to create, maintain or improve new or existing parks, recreational and other public facilities in CDBG eligible areas.
- Continue efforts to reduce and eliminate lead-based paint hazards through education and testing, utilizing services of the Caldwell County Health Department.
- Continuation of efforts to further Fair Housing and minimize relocation or displacement in all programs.

Priority Analysis and Strategy Development. The City of Lenoir has established its general priorities for allocating federal, state and private resources expected to be available over the five-year period of the consolidated plan. The data obtained from the 2010 Census and HUD Databooks indicate that low-income small related, low-income large related and elderly owner households were more likely to experience housing problems than other sub-populations. The growing number of severe housing problems in the 0 to 80% income categories, indicate the need for rehabilitation assistance. The City will continue to support applications for elderly and low-income housing rehabilitation and construction.

The City also supports any applications for funds which goals are to provide affordable, safe and decent housing to low and moderate income individuals and families.

Sources of Funds. All program activities will be paid by federal CDBG funds

IV. SECOND YEAR ACTION PLAN 2021

Strategy Implementation-Year 2

Total CDBG Funding **\$161,762**

Total Resources **\$161,762**

In accordance with 24 CFR Part 91.220 of Title 1 of the Housing and Community Development act of 1974, as amended, the City of Lenoir's One Year Action Plan outlines the activities that will be funded using CDBG funds.

A. Resources

1. Federal

Federal resources are expected to be available to address the priority needs and specific objectives identified in the strategic plan of the CDBG Program. The City anticipates receiving \$161,762 in FY 2021.

B. Activities to be Undertaken

Priority 1. Public Facilities - \$129,410 for renovations at the Old Lenoir High School Complex which include the Gym, the Auditorium and Mack Cooke Stadium.

Geographic Distribution. Low Income Census Tract

Priority 2. Program Administration - \$32,352 in CDBG funds to provide efficient and timely administrative services. Administration will be a key component to the success of the City of Lenoir programs. The staff will be responsible for preparing all documents required of the CDBG Program, monitoring and other requirements of the Program.

V. OTHER ACTIONS

A. Affordable Housing. The City of Lenoir has established its general priorities for allocating federal, state and private resources expected to be available over the five year period. The data obtained from the 2010 Census of Population and Housing and HUD Databooks indicate low-income households are more likely to experience housing problems. Older adults will continue to experience housing problems due to that population's decreased incomes, the age of their homes and their increasing frailty as they age. The City of Lenoir will continue to support individual applications for HOME, CDBG and Rural Development Corporation funds to address these needs.

Priority has been given to improving areas of the city through infrastructure improvements and improvements to public facilities. The City of Lenoir supports any applications, which have goals of providing affordable, safe and decent housing to low and moderate-income families and individuals.

B. Homelessness and Other Special Needs. The City of Lenoir will work closely with the existing network of agencies and organizations that are addressing the needs of the homeless and those threatened with homelessness and those with special needs housing. The City of Lenoir will work with regional efforts by the Western Piedmont Council of Governments or the Unifour Consortium to study the causes and possible remedies for homelessness.

C. Non-Housing Community Development Needs. The City of Lenoir will seek to improve the downtown business area. This revitalization of this area is of extreme importance in maintaining the character of the City. New businesses, restaurants, and industry are needed to create new jobs and to increase the viability of the City.

D. Lead Based Paint Hazard Reduction. The number of homes built before 1970 is 4563 all of which can be classified as potential hazards. Any units assisted with CDBG funds will be addressed for lead hazards on a unit-by-unit basis in accordance with all D-HUD regulations. With limited funds available, the abatement of lead from all units within the city is not possible. Lead based paint hazard and abatement information is made available at the CDBG office for all city residents upon request. Approved measures such as wet scraping to reduce the amount of lead disturbed during rehabilitation will be used.

E. Public Housing Improvements. The Lenoir Housing Authority plans to improve the management and operation of the public housing units by applying for funds to refinance the 97 units currently managed by a private management company. Further, the LHA cooperates with the Western Piedmont Council of Governments to increase homeownership among residents, and encouraging residents to apply for homebuyer assistance funds. The LHA also coordinates efforts with the Lenoir Police Department to reduce crime in at their units.

F. Public Housing Resident Initiatives. The LHA will work in the coming five-year period to increase resident awareness of energy factors, homeownership possibilities, credit counseling,

drug elimination, and community activities. Together with the City of Lenoir, the Western Piedmont Council of Governments, Blue Ridge Community Action the LHA hopes the residents of the authority will be able to accomplish more self-reliance and independence expenditures.

VI. MONITORING. The City of Lenoir will take every measure to ensure the City of Lenoir's long-term compliance, completely and correctly, with provisions of this consolidated plan and all of the provisions of the CDBG program.

The City of Lenoir is committed in its efforts to develop and provide affordable housing and to meet the goals of their five-year strategy outlined in the consolidated plan. The City of Lenoir will review the goals of their one-year strategy on a quarterly basis to determine progress made toward reaching the goals. The City of Lenoir shall be responsible for monitoring only those funds that it receives from DHUD.

All persons receiving assistance under the CDBG program must meet low and moderate-income requirements as determined annually by U.S. Department of Housing and Urban Development.

Any acquisition and relocation will comply with the Uniform Relocation Act.

Any demolition/clearance/construction/site preparation work will be monitored in accordance with Davis-Bacon requirements. Environmental clearance will be received prior to expenditure of any HUD funds. Any asbestos and/or lead-based paint abatements will be done in accordance with applicable state and federal governing laws.

For every \$30,000 in CDBG funds spent on economic development, at least 1 new job will be created for low and moderate-income residents. All required procedures will be followed to ensure compliance with national objective to benefit low to moderate-income persons.

All construction work will be monitored in accordance with any Davis-Bacon requirements.

In order to ensure compliance the Western Piedmont Council of Governments will conduct the monitoring for this program.

VII. Fair Housing – Barriers to Affordable Housing. The City of Lenoir makes every effort in supporting affordable housing. The City serves as the Lead Entity for the Unifour Consortium which has 28 participating local governments. Within the Consortium, there are varying degrees of adopted zoning and land use controls, fees and other costs that will affect the cost of housing. Adopted zoning and subdivision codes that are currently in force are not considered to be excessive or exclusionary. The Consortium staff, the Western Piedmont

Council of Governments, will administer an Individual Development Account program with CDBG funds received by counties. These IDA program will be administered and available throughout the Unifour. The Western Piedmont Council of Governments is a HUD-approved comprehensive housing counseling agency, and as such, it will also continue to provide Home Equity Conversion Mortgage counseling to older adult homeowners.

Lack of education about purchasing home can be a barrier to affordable housing. The lack of a job, money, or even a person's language can be a barrier to fair housing. An analysis of impediments to fair housing has identified various hurdles to fair housing and suggest ways to make housing opportunities more fair.

The City of Lenoir will take an active role in affirmatively furthering fair housing in its jurisdiction through these activities:

- The City of Lenoir will participate in the Unifour Consortium HOME Program, which assists low and moderate-income persons with down payment assistance.
- The City of Lenoir will promote education of housing rights and housing responsibilities through flyers translated into Spanish for our Hispanic population.
- The City of Lenoir will participate in various forums to provide housing and fair housing information to its citizens.
- The City of Lenoir Continued will place handicap accessible sidewalks and improved parking to provide equal access to the city for the handicap and disabled persons of Lenoir.
- The City of Lenoir as Lead Entity of the Unifour Consortium will meet semi-annually to present fair housing information at workshops sponsors by the Catawba Valley Board or Realtors.
- The City will observe April as “Fair Housing Month” by the city adopting a fair housing resolution each April to recognize and support fair housing The City will sponsor public service announcements regarding fair housing and “Fair Housing Month” in local newspaper and/or radio.
- The City of Lenoir will participate semi-annually in community meeting in predominately black neighborhoods in order to present information on various housing programs and to make available printed materials designed to inform citizens of their fair housing rights as outlines in state and federal housing laws.
- The City of Lenoir will supply informational posters, brochures and/or flyers to historically black church and community centers to inform citizens about their fair housing rights.
- The Unifour Consortium will provide down payment assistance for first-time homebuyers, to qualifying low to moderate income minorities and will specifically affirmatively market the down payment assistance program to minority and/or predominately black communities by placing down payment assistance and fair housing posters, brochures, and/or flyers in minority and/or predominately black communities, churches, libraries, and community centers.

VIII. ANTI-POVERTY STRATEGY. The City of Lenoir is seeking new and diverse industries and commercial businesses for the City. Data from the Employment Security Commission of North Carolina states that unemployment in Caldwell County averaged 6.3% in 2015 due to the loss of furniture and textile jobs to overseas labor market. Job-training and job placement is provided through the Workforce Investment Act provide skill training and job placement assistance to over 150 adults and youth each year within Caldwell County.

IX. COORDINATION OF EFFORTS. The City of Lenoir has a strong network of private institutions, non-profit and public agencies that carry out the distribution of funds allocated to help the very-low and low-income families of the City. The staff of the Lenoir Community Development Department has accumulated experience in carrying out these programs. Reporting directly to the city manager and the city council the community development department receives valuable input into most of their activities. The City of Lenoir will continue to work with area service providers and agencies to remain aware of existing programs and make referrals as needed to individuals and families. The WPCOG staff assigned to the City of Lenoir will continue to be involved with various housing, aging, social service and non-profit agencies in order to stay abreast of other activities.

X. SUMMARY OF CITIZEN COMMENTS. A summary of citizen comments regarding the proposed 2021 Action Plan from the March 2, 2021 and the April 19, 2021 public meetings will be included here:

XI. CERTIFICATIONS

Unifour Consortium FY 2021 Action Plan

Unifour Consortium

City of Lenoir, Lead Entity
P.O. Box 958
Lenoir, NC 28645
(828) 485-4245

For Submittal to the U.S. Department of Housing and Urban Development
April, 2021

ACTION PLAN 2021 UNIFOUR HOME CONSORTIUM
CITY OF LENOIR, NORTH CAROLINA

- I. Federal Form 424
- II. Introduction

- III. Five Year Strategy
- IV. Second Year Action Plan 2021
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 - 2. Other
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 - 3. Multi-Family Housing
 - 4. New Construction
 - 5. Program Administration
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 - D. Lead-Based Paint Hazard Reduction
 - E. Public Housing Improvements
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- VI. Monitoring
- VII. Fair Housing – Barriers to Affordable Housing
- VIII. Anti-Poverty Strategy
- IX. Coordination of Efforts
- X. Summary of Citizen Comments
- XI. Certifications

II. INTRODUCTION

The Unifour Consortium, comprised of four counties and twenty-four municipalities, located in the western piedmont region of North Carolina have prepared a Consolidated Plan as required to receive HOME funds and an HOME entitlement jurisdiction. The total twenty-eight participating Consortium members are contiguous and are in agreement as to the components of this plan. The Consolidated Plan serves as a guide for decision-making by investors, non-profit organizations, community organizations, elected officials and concerned citizens. The Consolidated Plan, required by the Department of Housing and Urban Development, is designed to promote and coordinate citizen participation in the development of local priority needs and objectives.

The twenty-eight local governments that comprise the Unifour Consortium sit on the Unifour Consortium Governing Board. Each local government provides one representative to sit on the board. Each representative has one vote. The City of Lenoir serves as the Lead Entity for the Unifour Consortium. All funding from the Department of Housing and Urban Development will flow through the City of Lenoir to the benefit of all twenty-eight local governments. The City of Lenoir assures compliance with all required regulations pertaining to the HOME Program. The City of Lenoir contracts with the Western Piedmont Council of Governments for the administration of the HOME Program.

The Consortium has established its general priorities for allocating HOME funds expected to be available over the five-year period. The data obtained from the 2010 Census of Population and Housing indicates that low and moderate-income households are more likely to experience housing problems. Older adults will continue to experience housing problems due to that population's decreased incomes, the age of their homes and their increasing frailty as they age. Priority has been given to making homeownership more available to low and moderate-income families and individuals. This will be addressed through downpayment assistance and counseling for those wishing to purchase a home.

Specifically, funds will be used to provide up to \$15,000 downpayment assistance loans to low and moderate-income families, with incomes no greater than 80% of the area median income. These loans are 0% interest loans and are to be paid back upon the sale or refinancing of the home.

The downpayment assistance program was selected as the most pressing need at this point due to the increasing number of families moving to the Unifour area seeking employment. However, many of the jobs taken by new residents are lower income jobs. The downpayment assistance program will assist the working poor - those who are able to make rent payments but not save enough funds for a downpayment. By assisting individuals in obtaining their own homes, the Consortium hopes to increase the tax base of the area, strengthen neighborhoods, decrease transience, and empower and inspire families to become a permanent fiber in the local community fabric.

Homelessness and Other Special Needs. The Consortium will work closely with the existing network of agencies and organizations that are addressing the needs of the homeless, those threatened with homelessness and those with special needs housing. Implementation of the Continuum of Care plan will be done as federal funds are made available to agencies dealing directly with homeless issues.

The Consortium will set aside a minimum of at least 15% of its funding each year for investment in housing to be developed, sponsored or owned by community development housing organizations (CHDO's). These CHDO's must be a non-profit organizations whose purposes are to provide housing or housing opportunities to low income persons or families or those with special needs. Further, to qualify for funds participating CHDO's must meet

criteria as defined by HUD and approved by the Consortium. The Executive Committee of the Consortium will recognize and approve CHDO's and will award funding for CHDO projects.

Preference for CHDO funding will be made to organizations addressing the needs of the homeless, persons with HIV/AIDS, at risk persons, older adults, affordable housing opportunities, or concentrating in areas or neighborhoods identified to have a concentrated need for housing assistance.

III. FIVE YEAR STRATEGY

Summary of the Five Year Strategy. Although significant housing initiatives have and will continue to take place by individual members of the Consortium, gaps in housing service have been identified. These include the lack of assistance for low and moderate-income household in purchasing housing, special needs housing development, affordable housing development (both rental and owner occupied), and housing counseling. The Unifour Consortium has established the following significant elements for fillings these gaps and achieving its purpose of creating housing opportunities through this Consolidated Plan.

- o Stimulating homeownership opportunities for very-low and low income homebuyers by the continuation of a four county-wide Downpayment Assistance Program for First-Time Homebuyers.
- o Homeownership opportunities will be stimulated through homebuying counseling for potential homebuyers
- o Work with developers to increase the supply of standard, affordable housing through development of new housing units under the HOME Program.
- o Encourage community based non-profit organizations to develop the resources and capacity to address special needs housing throughout the Consortium area.
- o Increase the supply of standard, affordable housing opportunities through new construction of housing and rehabilitation of existing housing units under HOME Program, utilizing deferred loans/grants to very-low and low-income families.
- o Provide assistance to agencies that assist homeless persons and families and those threatened with homelessness.
- o Encourage efforts on a regional basis to further the study and address homelessness.
- o Continuation of efforts to further Fair Housing and minimize relocation or displacement in all programs.

IV. SECOND YEAR ACTION PLAN 2021

Strategy Implementation Year 2

Total HOME Funding for FY 2021

\$1,154,095

Total Estimated Program Income

300,000

Total Projected Resources

\$1,454,095

In accordance with 24 CFR Part 91.220 of Title 1 of the Housing and Community Development act of 1974, as amended, the City of Lenoir's One Year Action Plan outlines the activities that will be funded using HOME funds.

A. Resources

1. Federal

Federal resources are expected to be available to address the priority needs and specific objectives identified in the strategic plan of the HOME Program. The Unifour Consortium anticipates receiving **\$1,154,095 in FY 2021 HOME funds**

2. Other

The Unifour Consortium will receive a loan repayment in the amount of **\$11,950** from Conover's Cline Village senior apartments.

The Unifour Consortium will receive a loan repayment in the amount of **\$9,788.00** from Hickory's Villas at Northview apartments.

The Unifour Consortium will receive a loan repayment in the amount of **\$7,339.00** from Hudson's Pine Mountain Trace apartments.

The Unifour Consortium will receive a loan repayment in the amount of **\$15,289.00** from Morganton's Glenwood Hills apartments.

The Unifour Consortium will receive a loan repayment in the amount of **\$19,570.00** from Hudson's Woodland Village senior apartments.

The Unifour Consortium will receive a loan repayment in the amount of **\$11,832.00** from Taylorsville's Milstead Woods apartments.

The Unifour Consortium will receive a loan repayment in the amount of **\$6,688.00** from the Lenoir's Viridian apartments.

The Unifour Consortium will receive a loan repayment in the amount of **\$7,249.00** from Hickory's Viewmont Square senior apartments.

The Unifour Consortium will receive a loan repayment in the amount of **\$7,075.00** from Morganton's Sienna apartments.

The Unifour Consortium will receive a loan repayment in the amount of **\$18,347.00** from Claremont's Oxford Crossing apartments.

The Unifour Consortium will receive a loan repayment in the amount of **\$18,347.00** from Lenoir's Arbor Glen senior apartments.

Based on past performance and the current number of loans on the books, additional program income of approximately \$166,426. is estimated to be received from the repayment of down-payment assistance loans, bringing the total program income to be received during FY 2021 to approximately \$300,000.

B. Activities to be Undertaken

Priority 1: Regional Down-payment Assistance Program: \$790,234 in HOME funds to provide Down-payment assistance for approximately 36 homebuyers in four-county area.

These HOME funds will be used to provide down-payment assistance for approximately 37 homebuyers in the four-county area. This program will provide up to 20% in down-payment assistance to low to moderate-income family with an income of no greater than 80% of the area median income. Applicant families will receive assistance on a first-come-first-served basis. The applicant family must have good credit and be able to obtain a loan.

Assistance will be provided in the form of 0% interest deferred loans. Repayment is due if and when a family sells or refinances. If the home is sold after ten years, one half of the loan amount is repayable to the Unifour Consortium at closing as program income and the other half is forgiven. Any such program income will be used for down-payment assistance prior to Treasury funds, in accordance with HUD HOME regulations.

Matching funds will be provided by local lending institutions through such means as reducing, waiving or discounting ordinary fees and charges such as origination fees, attorney fees, appraisal fees, flood certification fees, private mortgage insurance premiums, etc. Because these discounts will serve as the required local match, local government financial participation will not be required.

Applications will be processed through the program administrator's office at the Western Piedmont Council of Governments.

Geographic Distribution. Funds are distributed on a first-come, first-serve basis.

Priority 2: Program Income Administration: \$30,000 or 10% of Program Income funds received will be used to support the administrative services directly related to the expenditure and compliance of Program Income funds received.

Priority 3: CHDO set-asides: \$173,115 will be set-aside community housing development organizations for investment in housing only to be developed, sponsored or owned by community housing development organizations (CHDO's). CHDO's are non-profit community-based organization whose purpose is to provide housing or housing opportunities to low income persons and families or those with special needs. Total matching funds of 25% may be required of CHDO's. Preference will be given to those organizations that address the housing needs of the homeless, those threatened with homelessness, at risk persons, older adults, disabled persons, persons with HIV/AIDS, and CHDO's developing new affordable housing opportunities to low and moderate-income households. The Executive Committee of the Consortium will approve CHDO funding and activities.

Geographic Distribution. Funds will be distributed on a competitive priority needs basis for qualifying CHDO's located in the Consortium jurisdiction.

Priority 4: Development of Multi-Family Housing: \$229,928 will be used to work with developers to increase the supply of standard, affordable housing through the development of new housing units under the HOME Program.

Priority 5: Program Administration: \$115,409 in HOME funds will provide efficient and timely administrative services. Planning and administration will be a key component to the success of the Consortium programs. The staff will be responsible for preparing all documents required of the HOME Program, evaluation of applications, interviews with applicants, monitoring and other

legal requirements of the Program.

Priority 6: Contingency: **\$115,409** will be used as a Contingency Fund which will be used to support any unforeseen need or to provide additional funds to an existing activity.

Resale/Recapture Provision:

The Unifour Consortium uses the Recapture Provision with Recapture from net proceeds. These provisions are imposed for the duration of the period of affordability on all HOME-assisted homebuyer projects through written agreements with the homebuyer, and enforced via a promissory note, deed of trust, and declaration of deed restrictions. The recapture provision is triggered by any transfer of title, either voluntary or involuntary, during the established period of affordability. Recapture is limited to the net proceeds available at sale. The period of affordability is based upon direct HPME subsidy provided to the homebuyer that enabled the homebuyer to purchase the unit. The Unifour Consortium recaptures the entire amount of the direct HOME subsidy provided to the homebuyer before the homebuyer receives a return.

V. OTHER ACTION

A. Affordable Housing. Housing represents the chief means that families have of saving and forming capital. It also represents the key to successful community development. A neighborhood of homeowners is inherently more stable than one which has none. So, the key strengthening our society, or economy, and our families lies in improving access to homeownership. Housing affordability will continue to be addressed through the Unifour Consortium program and by housing programs of individual members of the Unifour Consortium.

B. Homelessness and Other Special Needs. The Consortium will work closely with the existing network of agencies and organizations that are addressing the needs of the homeless, those threatened with homelessness and those with special needs housing. Implementation of the Continuum of Care plan will be done as federal funds are made available to agencies dealing directly with homeless issues.

The Consortium will set aside at least an average of 15% of its funding each year for investment in housing to be developed, sponsored or owned by community development housing organizations (CHDO's). These CHDO's must be non-profit organizations whose purposes are to provide housing or housing opportunities to low income persons or families or those with special needs. Further, to qualify for funds participating CHDO's must meet criteria as defined by HUD and approved by the Consortium. To qualify for funding, each CHDO may have to provide a match of 25%. The Executive Committee of the Consortium will recognize and approve CHDO's and approve funding applications.

Preference for CHDO funding will be made to organizations addressing the needs of the homeless, persons with HIV/AIDS, older adults, affordable housing opportunities, or concentrating in areas or neighborhoods identified to have a concentrated need for housing assistance.

C. Non-Housing Community Development Needs. The Unifour Consortium is not seeking to use funds for non-housing community development needs. However, in accordance

with HUD requirements, the non-housing community development plans of the three entitlement cities within the Unifour Consortium are herein incorporated.

D. Lead-Based Paint Hazard Reduction. The number of homes built before 1978 is 78,348, all of which can be classified as potential hazards. Any funds used for rehabilitation will address the lead hazard on a unit-by-unit basis. With limited funds available, the abatement of lead from all units is not possible. Approved measures such as wet scraping to reduce the amount of lead disturbed during rehabilitation will be used. All recipients of HOME funds will be provided information outlining the dangers of lead-based paint.

E. Public Housing Improvements. Each of the four conventional public housing authorities (Morganton, Lenoir, Valdese and Hickory) are working with their local law enforcement/public safety agencies to reduce crime in their PHA's. Since 1996 over \$1.5 million has been spent to bring the public housing units into compliance with the Americans with Disabilities Act requirements.

F. Public Housing Resident Initiatives. Each of the five housing authorities within the Consortium jurisdiction is self-governing and responsible for administering its own funds. Appointments to each board are made from within their own memberships, and they each have their own policies regarding hiring, contracting and procurement.

Outreach efforts will be coordinated with each housing authority to inform residents of the downpayment assistance program and other housing assistance programs available within their jurisdictions. Within the Consortium jurisdiction there are five housing authorities: Hickory, Lenoir, Morganton, Valdese and the Western Piedmont Council of Governments. Among the assisted housing available are 1,013 units of conventional public housing, and housing subsidies for 1,178 families and individuals through Section 8 vouchers and certificates. There is a need for private landlords for the Section 8 program throughout the Unifour area.

All of the above mentioned housing authorities anticipate no losses from their housing inventories. Those that own and operate conventional housing units as of March, 2018, report 0% vacancy rates and continuous waiting lists of needy families.

Each of the housing authorities will work to accomplish more self-reliance and independence through a variety of programs. They each will continue to strive to increase resident awareness of energy factors, job training, homeownership opportunities, credit counseling, drug elimination and community activities.

VI. MONITORING. The Unifour Consortium will take every measure to ensure the Consortium's long term compliance, completely and correctly, with provisions of the Consolidated Plan and all of the provisions of Title 1 of the National Affordable Housing Act.

The Unifour Consortium is committed in its efforts to develop and provide affordable housing and to meet the goals of their five strategies outlined in this plan. The Consortium will review the goals of their one-year strategy on a quarterly basis to determine progress made toward reaching the goals. The Consortium shall be responsible for monitoring only those funds that it receives from DHUD.

Specifically, for priority 1, the Unifour Consortium will ensure that all participants with the first time homebuyer program meeting HUD income eligibility requirements via income verifications. Such verifications will be maintained on file with each applicant. Each unit

purchased with HOME assistance will be meet price limits, as determined annually by HUD. Each purchase price per unit will be maintained on file for each applicant. To ensure the lead-based paint status of each home purchased with HOME assistance, the year of construction for each unit will be verified through county tax records and maintained in each file. For homes built prior to 1978, verification from a lead-based paint inspector will be required for certification that the unit is free of lead-based paint prior to closing. Under no circumstances will any unit built prior to 1978 be purchased with HOME assistance without proper certification of lead-free conditions if a child or children under age seven will reside in or be cared for within. Each unit purchased with HOME assistance shall be inspected by a qualified inspector to verify its compliance with Section 8 Housing Quality Standards at time of the closing. Such verification shall be maintained within each applicant file.

The Unifour Consortium will take every step necessary to ensure that CHDO's funded through the HOME program comply with the Consolidated Plan and all applicable Federal, State and local laws and policies. Specifically, for homeownership projects, each CHDO shall provide documentation of affordability by such means as deed restrictions, deeds of trust and promissory notes. CHDO's receiving funding for rental projects shall provide income verification for beneficiaries annually throughout the period of affordability. Rental project affordability shall be ensured by deeds of trust and promissory notes. All CHDO's shall provide annual project reports for their HOME assisted units throughout the period of affordability per project.

VII. FAIR HOUSING -BARRIERS TO AFFORDABLE HOUSING. The Unifour Consortium makes every effort in supporting affordable housing. With 28 participating local governments within the Consortium, there are varying degrees of adopted zoning and land use controls, fees and other costs that will affect the cost of housing. Adopted zoning and subdivision codes that are currently in force are not considered to be excessive or exclusionary. Lack of education about purchasing home can be a barrier to affordable housing. The Consortium staff, the Western Piedmont Council of Governments, will administer an Individual Development Account program with CDBG funds received by Caldwell County. This IDA program will be administered and available throughout the Unifour. The Western Piedmont Council of Governments is a HUD-approved comprehensive housing counseling agency, and as such, it will also continue to provide Home Equity Conversion Mortgage counseling to older adult homeowners.

The Unifour Consortium will take an active role in affirmatively furthering fair housing in its jurisdiction through the following activities:

- The Unifour Consortium staff will provide information to various citizens and/or groups about local housing programs offered throughout the area and staff will make available printed materials designed to inform citizens of their fair housing rights as outlined in state and federal housing laws. Information will be translated into Spanish for our Hispanic population.
- The Unifour Consortium will observe April as "Fair Housing Month" by the City adopting a fair housing resolution each April to recognize and support fair housing. The Unifour Consortium will sponsor public service announcements regarding fair housing and "Fair Housing Month" in local newspaper and/or radio.
- The Unifour Consortium will sponsor quarterly Fair Housing Workshops with the Catawba Valley Hispanic Ministry, better known as "Centro Latino". Centro Latino is a non-profit organization offering a wide variety of programs including: health, social and educational services, community building, and advocacy for the Latino community of the Unifour area. Written material will be provided in Spanish and English,
- The Unifour Consortium will participate semi-annually in community meeting in predominately black neighborhoods in order to present information on various

housing programs and to make available printed materials designed to inform citizens of their fair housing rights as outlines in state and federal housing laws.

- The Unifour Consortium will supply informational posters, brochures and/or flyers to historically black church and community centers to inform citizens about their fair housing rights.
- The Unifour Consortium will provide down payment assistance for first-time homebuyers, to qualifying low to moderate income minorities and will specifically affirmatively market the down payment assistance program to minority and/or predominately black communities by placing down payment assistance and fair housing posters, brochures, and/or flyers in minority and/or predominately black communities, churches, libraries, and community centers.
- The Unifour Consortium will annually budget funds for Community Development Housing Organizations (CHDO'S) such as Habitat for Humanity to help finance housing related projects resulting in a home for low to moderate income families.

VIII. ANTI-POVERTY STRATEGY. Each member local government of the Consortium is very aggressive in trying to attracting new and diverse industries and commercial businesses into the area.

IX. COORDINATION OF EFFORTS. The Consortium will continue to work with area service providers and agencies to remain aware of existing programs and make referrals as needed to individuals and families. The WPCOG staff assigned to the Consortium will continue to be involved with various housing, aging, social service and non-profit agencies in order to stay abreast of other activities and expenditures.

The same outreach efforts will be made with area social services providers and non-profit organizations. The Consortium will coordinate its efforts with Blue Ridge Community Action, a local non-profit agency, which provides transitional housing units, new home construction, weatherization, rehabilitation and rental rehabilitation.

The cities of Hickory, Lenoir and Morganton are all HUD entitlement cities. The Consortium will work with each of these cities to coordinate housing initiatives and efforts. If any conflicts or negative effects arise, the Consortium will investigate all possible ways to alleviate the cause(s).

To meet housing and community development needs, individual local governments within the Unifour Consortium have applied for and received funding through other federal housing assistance programs including CDBG, Rural Development Corporation, and the North Carolina Housing Finance Agency. These localized programs assist low and moderate income, elderly and disabled owner occupied households.

X. SUMMARY OF CITIZEN COMMENTS. A summary of citizen comments regarding the proposed 2021 Action Plan from the March 2 and the April 19, 2021 public hearings will be included here:

XI. Certifications

CITY OF LENOIR
COUNCIL ACTION FORM

- I. Agenda Item:** Consideration of an Engineering Service Contract with McGill Associates – Water Interconnect Project
- II. Background Information:** The City of Lenoir is undertaking a water line interconnection project that proposes to accomplish certain work toward the preliminary engineering, survey, design, and permitting of the Project entitled **Water Interconnect**. The project is generally described as the installation of a water main interconnection to Lenoir’s water system including approximately 6,500 linear feet of water main, valves, hydrants, master meter(s), and a booster pump station with a generator. Preliminary cost estimates for the project (which include all engineering, bidding, construction administration and a 15% contingency) are \$2,973,000.
- III.** McGill Associates has provided a contract for services to provide the engineering services throughout the various stages of this project.

The cost summary for the project services is as follows:

Preliminary Engineering Report	\$28,000
Surveying Phase	\$19,000
Design and Permitting Phase	\$135,000
Bidding and Award Phase	\$12,000
<i>Easement Survey and Maps</i>	<i>Hourly Basis</i>

- IV. Staff Recommendation:** Staff would like to begin this project with the first steps of developing the Preliminary Engineering Report (\$28,000) and the Surveying Phase (\$19,000). During this time, other funding options will be explored for the remaining engineering services under this agreement needed to complete the development of the project and for construction. Staff recommends City Council approval to enter into a contract for engineering services with McGill Associates for the Water Interconnect Project.

- V. Reviewed by:**

City Attorney: _____

Finance Director: _____

Public Works/Public Utilities Director:_____

AGREEMENT FOR ENGINEERING SERVICES

This AGREEMENT, made and entered into this the _____ day of _____ 2021, by and between the **City of Lenoir** (OWNER) and **McGill Associates, P.A.** (ENGINEER).

WHEREAS, the OWNER proposes to accomplish certain work toward the preliminary engineering, survey, design, and permitting of the Project entitled **Water Interconnect** generally described as the installation of a water main interconnection to Lenoir's water system including approximately 6,500 linear feet of water main, valves, hydrants, master meter(s), and booster pump station with generator, and

WHEREAS, the ENGINEER desires to render professional services in accordance with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and benefits contained herein, it is hereby mutually understood and agreed as follows:

SECTION 1 - GENERAL SERVICES

The ENGINEER shall:

- 1.1. The ENGINEER shall, as directed by the OWNER, provide professional engineering services for the OWNER in all phases of the Project; serve as OWNER's professional engineering representative for the Project; and provide professional consultation and advice to OWNER during the performance of the services hereunder.
- 1.2. The ENGINEER shall provide all personnel required in performing the Project unless otherwise provided herein. Such personnel shall not be employees of or have any contractual relationship with the OWNER. All services rendered hereunder shall be performed by the ENGINEER or under his supervision and all personnel engaged in the Project shall be fully qualified under North Carolina law to perform such services.
- 1.3. The ENGINEER shall assist in the pursuit of obtaining approvals and permits from governmental authorities having jurisdiction over the Project, unless otherwise agreed to herein.
- 1.4. The ENGINEER shall seek and obtain authorization from the OWNER or the OWNER's assignee before proceeding with the Project, or before performing any Additional Services as described in Section 3, or before performing any other services which would not be included in the fee for Basic Services set forth in Section 6 hereof, subject to OWNER's right to terminate as herein provided.
- 1.5. The ENGINEER shall comply with applicable federal, state and local laws and regulations regarding equal employment opportunity. The ENGINEER is further obligated to include all requirements hereunder in any subcontract written by him in association with this Agreement.

SECTION 2 - BASIC SERVICES

2.1 PRELIMINARY ENGINEERING REPORT

- 2.2.1 Consult with the OWNER to fully determine the OWNER's requirements for the project and to discuss project schedules, gather initial data, coordination, and other preliminary matters.
- 2.2.2 Review the latest mapping, operating reports and data furnished by the City and other entities.
- 2.2.3 Prepare a Preliminary Engineering Report to include following:
 - a. Identify and evaluate existing conditions related to the project.
 - b. Evaluate water hydraulic model for connection of the water system to another water system, and the impacts upon both systems
 - c. Prepare an alternatives analysis and a preliminary opinion of probable costs for each alternative.
 - d. Prepare a map showing the proposed water line route and booster pump station.
 - e. Identify possible permanent easements needed for the water main based upon a review of GIS mapping and DOT records.
 - f. Conduct a planning session with the OWNER and other entities identified by the OWNER to review findings and the proposed water facilities.
 - g. Submit the draft Preliminary Engineering Report to City staff for review and comment.
 - h. Incorporate comments from City staff and then submit the final Preliminary Engineering Report to the OWNER.

2.2 SURVEYING PHASE

- 2.2.1 Consult with the OWNER to fully determine the OWNER's requirements for the project and to gather initial data.
- 2.2.2 Conduct a route survey to provide topography of the proposed work area and to locate existing structures and conflicts.
- 2.2.3 Produce survey mapping of the project area for use in preparing the design.

2.3 DESIGN AND PERMITTING PHASE

- 2.3.1 Consult with the OWNER to fully determine the OWNER's requirements for the project and to discuss project schedules, gather initial data, coordination, and other preliminary matters.
- 2.3.2 Consult with the OWNER to discuss critical design elements and objectives for the project, based on the findings of the Preliminary Engineering Report, for concurrence and acceptance.
- 2.3.3 Prepare preliminary design layout and calculations.

- 2.3.4 Review preliminary design with OWNER for concurrence and acceptance.
- 2.3.5 Coordinate the provision of any subsurface investigation by others, if any, and assist with solicitations and preparing site maps identifying test locations.
- 2.3.6 Prepare bid documents, contract documents, technical specifications, and construction drawings to detail the character and scope of the work including all design functions and coordination for all construction sequencing of the Project as determined in the Preliminary Engineering Report.
- 2.3.7 Prepare final design calculations for submission to review agencies.
- 2.3.8 Prepare and submit permit application and supporting documents to Public Water Supply Section to assist in obtaining the construction approval.
- 2.3.9 Prepare and submit permit application and supporting documents to Land Quality Section to assist in obtaining the erosion and sediment control approval, if required.
- 2.3.10 Prepare and submit encroachment agreement to NCDOT for approval.
- 2.3.11 Respond to review agency comments and modify documents as necessary to achieve permit approvals.
- 2.3.12 Perform internal quality control and constructability reviews of the project.
- 2.3.13 Prepare an opinion of probable cost after submission of plans and specifications for permitting and advise the OWNER of any adjustment of the Project cost caused by changes in scope, design requirements or construction costs.
- 2.3.14 Submit final design plans to OWNER for concurrence and acceptance for bidding.
- 2.3.15 Furnish up to two (2) hard copies of the final design documents to the OWNER.

2.3 BIDDING AND AWARD PHASE

Upon written authorization from OWNER, ENGINEER shall:

- 2.3.1 Assist the OWNER in advertising, receiving, opening and evaluating bids.
- 2.3.2 Schedule a Pre-Bid Conference with all prospective bidders and the OWNER to address questions and to allow prospective bidders to visit the project site.
- 2.3.3 Consult with, and advise the OWNER as to the acceptability of contractors and subcontractors and make recommendations as to the lowest, responsive, responsible bidder.
- 2.3.4 Assist the OWNER in the preparation and execution of construction contracts and in checking Performance and Payment Bonds and Insurance Certificates for compliance.

SECTION 3 - ADDITIONAL SERVICES

If authorized by the OWNER, the ENGINEER will furnish or obtain from others additional services of the following types, which are not considered Basic Services under this Agreement.

- 3.1 Additional services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction. The OWNER may initiate minor changes in the project scope to be incorporated by the ENGINEER, subsequent to the permit submittals, as not to impede progress. No work on any such changes shall occur by the ENGINEER unless preapproved by the OWNER.
- 3.2 Revising previously approved studies, reports, design documents, drawings or specifications, when such revisions are due to causes beyond the control of the ENGINEER.
- 3.3 Providing geotechnical and subsurface investigations, archeological surveys and any other environmental site surveys necessary for the construction of the project.
- 3.4 Preparing easement maps or plats.**
- 3.5 Preparing and submitting funding applications, bid packages, or other documents to NCDEQ Division of Water Infrastructure or other agencies.
- 3.6 Preparing documents for alternate bids requested by the OWNER for work, which is not executed, or documents for out-of-sequence work other than agreed upon in the Planning, Design, and Permitting Phase.
- 3.7 Providing Construction or Post-Construction Phase Services (to be performed under separate agreement).
- 3.8 Providing Funding Administration services or required documentation.
- 3.9 Preparing to serve or serving as a witness for the OWNER in any litigation, condemnation or other legal or administrative proceeding involving the Project.
- 3.10 Additional services in connection with the Project, including services normally furnished by OWNER and services not otherwise included in this Agreement.

SECTION 4 - OWNERS RESPONSIBILITIES

The OWNER shall:

- 4.1 Provide full information as to the requirements for the Project.
- 4.2 Assist the ENGINEER by placing at his disposal in a timely manner all available information pertinent to the Project including previous documents and plans and any other data relative to the evaluation, design, and construction of the Project. Subject to the generally accepted standard of care, ENGINEER and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to the OWNER.
- 4.3 Designate a person to act as OWNER's representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions pertinent to the services in this Agreement.
- 4.4 Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by the ENGINEER and render decisions and comments pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.
- 4.5 Guarantee access to and make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform the services under this Agreement, provided the same does not unreasonably interfere with the operation of the existing facilities.
- 4.6 Obtain any right-of-way easements from public bodies, entities or persons necessary for satisfactory construction of the Project.
- 4.7 Obtain any subsurface geotechnical investigations or other types of testing and analysis needed for the Project.
- 4.8 Pay for permit fees, and all costs incidental to advertising for bids, and receiving bids or proposals from licensed Contractors.
- 4.9 Provide such legal, accounting and insurance counseling services as may be required for the Project, and such auditing services as may be required to ascertain how or for what purpose any Contractor will or has used the monies paid to him under the construction contract.
- 4.10 Give prompt notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the Project.
- 4.11 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project, subject to the obligations of the ENGINEER outlined in Sections 1.3 and 2.2 of this Agreement.
- 4.12 Furnish, or direct the ENGINEER to provide necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 4.13 Bear all costs incident to compliance with the requirements of this Section 4, except where Contractor will assume responsibility for the same.

SECTION 5 - PERIOD OF SERVICES

- 5.1 Unless this Agreement has been terminated as provided in paragraph 7.1, the ENGINEER will be obligated to render services hereunder for a period, which may reasonably be required for the services described herein. The ENGINEER may decline to render further services hereunder if the OWNER fails to give prompt approval of the various phases as outlined. Upon receiving a written authorization to proceed, the ENGINEER shall provide the OWNER with a written schedule of completion for the services so authorized.
- 5.2 If the Project is delayed significantly for reasons beyond the ENGINEER's control, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation.

SECTION 6 - PAYMENT TO THE ENGINEER

6.1 PAYMENT FOR BASIC SERVICES

- 6.1.1 The OWNER agrees to pay the ENGINEER for Basic Services as outlined in Section 2 the following lump sum and hourly fees, inclusive of all reimbursable expenditures.

Preliminary Engineering Report	\$28,000
Surveying Phase	\$19,000
Design and Permitting Phase	\$135,000
Bidding and Award Phase	\$12,000
<i>Easement Survey and Maps</i>	<i>Hourly Basis</i>

6.2 PAYMENT FOR ADDITIONAL SERVICES

- 6.2.1 The OWNER will pay the ENGINEER for Additional Services as outlined in Section 3 an amount based on actual time spent and expenses incurred by principals and employees of the ENGINEER assigned to the Project in accordance with the attached ENGINEER's standard rate and fee schedule Attachment "B", which is subject to update on an annual basis.

6.3 TIMES OF PAYMENT

- 6.3.1 The OWNER will make prompt monthly payments in response to the ENGINEER's monthly statements for services rendered under this Agreement.

6.4 GENERAL

- 6.4.1 If the OWNER fails to make any payment due the ENGINEER on account of his services and expenses within sixty days after receipt of the ENGINEER's bill therefor, the ENGINEER may, after giving seven days written notice to the OWNER, suspend services under this Agreement until he has been paid in full all amounts due him on account of his services and expenses.
- 6.4.2 If the Agreement is terminated at the completion of any phase of the Basic Services called for under Section 2, progress payment to be made to the ENGINEER on account of services rendered shall constitute total payment for services rendered. If this Agreement is terminated during any phase of the Basic Services, the ENGINEER shall be paid for services rendered on the basis of a reasonable estimate of the portion of such phase completed prior to termination. In the event of any termination, the ENGINEER will be paid for all his reasonable expenses resulting from such termination, and for unpaid reimbursable expenses.
- 6.4.3 If, prior to termination of this Agreement, any work performed by the ENGINEER, under Section 2, is suspended in whole or in part for more than three months or is abandoned, after written notice from the OWNER, the ENGINEER shall be paid for services performed prior to receipt of such notice from the OWNER as provided in paragraph 6.4.2 for termination during any phase of service.

SECTION 7 - GENERAL CONDITIONS

7.1 TERMINATION

- 7.1.1 The OWNER has the right to terminate this agreement for any reason, and without cause by providing fifteen (15) days written notice to the ENGINEER of such termination and specifying the effective date of such termination; provided, however, that during such period of ten (10) days the ENGINEER shall have the opportunity to remedy such failures or violations to avoid such termination.
- 7.1.2 In the event of termination, as provided herein, the ENGINEER shall be paid for all services performed and actual expenses incurred up to the date of termination pursuant to Section 6.4.2 herein.

7.2 OWNERSHIP OF DOCUMENTS

- 7.2.1 All documents, calculations, drawings, specifications, maps, field notes, data and other items generated during the performance of services shall be considered intellectual property and remain the property of the ENGINEER as instruments of service. After ENGINEER has been paid in full, the OWNER shall be provided a set of record drawings, and copies of other documents, in consideration of which the OWNER will use them solely in connection with the Project, and not for the purpose of making subsequent extensions or enlargements hereto and not for resale. Re-use for extension of the Project, or for new projects shall require written permission of the ENGINEER and shall entitle him to further compensation at a rate to be agreed upon by OWNER and ENGINEER at the time of such re-use.

7.3 CHOICE OF LAW

- 7.3.1 This Agreement shall be governed by the internal laws of the State of North Carolina.

7.4 OPINIONS OF PROBABLE COSTS

- 7.4.1 Since the ENGINEER has no control over the cost of labor, materials, or equipment, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, the opinions of probable costs for the Project provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as a design professional familiar with the construction industry, but the ENGINEER cannot and does not guarantee that proposals, bids or the Project construction cost will not vary from opinions of probable costs prepared by him.
- 7.4.2 If the lowest bona fide proposal or bid exceeds the established Project construction cost limit, the OWNER will (1) give written approval to increase such cost limit, or (2) authorize negotiating or rebidding the project within a reasonable time. The providing of such service shall be the limit of the ENGINEER's responsibility in this regard and having done so, the ENGINEER shall be entitled to payment for his services in accordance with this Agreement.

7.5 INSURANCE AND CLAIMS

- 7.5.1 ENGINEER shall provide and maintain, at its own expense, during the term of this Agreement the following insurance covering its operations.

- A. AUTOMOBILE LIABILITY - bodily injury and property damage liability insurance covering all owned, and hired automobiles for limits for bodily injury of not less than \$1,000,000 per person and \$2,000,000 per accident, and property damage limits of not less than \$1,000,000 per accident. The automobile liability insurance coverage amounts may be satisfied with a combination of primary and excess/umbrella coverage.
 - B. COMMERCIAL GENERAL LIABILITY - Bodily injury and property damage liability shall protect the ENGINEER performing work under this Agreement from claims of bodily injury or property damage which arise from operation of this Agreement, whether such operations are performed by ENGINEER or anyone directly or indirectly working for or on ENGINEER'S behalf. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/\$2,000,000 aggregate and \$1,000,000 property damage each occurrence/\$2,000,000 aggregate. This insurance shall include coverage for products/completed operations, personal and advertising injury liability and contractual liability in an amount not less than \$1,000,000 each occurrence / \$2,000,000 aggregate. The liability insurance coverage amounts may be satisfied with a combination of primary and excess/umbrella coverage.
 - C. PROFESSIONAL LIABILITY – Insuring against professional negligence/ errors and omissions on an occurrence basis with policy limits of \$2,000,000 per claim/\$2,000,000 annual aggregate.
 - D. WORKERS' COMPENSATION – Worker's Compensation insurance meeting the statutory requirements of the State of North Carolina, even if not required by law to maintain such insurance. Said Workers' Compensation insurance shall have at least the following limits: Employers Liability - \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit.
- 7.5.2 ENGINEER's total liability, in the aggregate, of ENGINEER and ENGINEER's officers, directors, members, partners, agents, employees, and sub-consultants, to the OWNER and to anyone claiming by, through, or under OWNER for any and all claims, losses, cost, or damages whatsoever arising out of, resulting from, or in any way related to the Project, this Agreement, or ENGINEER's performance, from any cause including but not limited to negligence, professional errors or omissions, strict liability, breach of contract, or indemnity, shall not exceed the total insurance proceeds paid on behalf of or to ENGINEER by ENGINEER's insurers in settlement or satisfaction of claims under the terms and conditions of ENGINEER's insurance policies applicable thereto.

7.6 SUCCESSORS AND ASSIGNS

- 7.6.1 The OWNER and the ENGINEER each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the OWNER nor the ENGINEER will assign, sublet or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the OWNER and the ENGINEER.

7.7 INDEMNIFICATION

- 7.7.1 OWNER agrees to indemnify, defend and hold ENGINEER, its owners, agents, employees, officers, directors and subcontractors harmless from any and all claims, and costs brought against ENGINEER which arise in whole or in part out of the failure by the OWNER to promptly and completely perform its obligations under this agreement, and as assigned in the Exhibit "Scope of Services" and any Additional Services or from the inaccuracy or incompleteness of information supplied by the OWNER and reasonably relied upon by ENGINEER in performing its duties or for unauthorized use of the deliverables generated by ENGINEER.

7.8 ENTIRE AGREEMENT

- 7.8.1 This Agreement contains all of the agreements, representations and understandings of the parties hereto and supersedes any previous understandings, commitments, proposals, or agreements, whether oral or written, and may only be modified or amended as herein provided; and as mutually agreed.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

McGILL ASSOCIATES, P.A.

By: _____
Douglas Chapman, PE
Principal – Hickory Office Manager

CITY OF LENOIR

ATTEST: _____
Shirley M. Cannon
City Clerk

By: _____
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PRE-AUDIT CERTIFICATION:

THIS INSTRUMENT has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act as amended.

By: _____
Donna Bean, Finance Director
City of Lenoir

APPROVED AS TO LEGAL FORM:

By: _____
Timothy J. Rohr, Wilson Lackey & Rohr LLC
City Attorney

BASIC FEE SCHEDULE**JANUARY 2020**

PROFESSIONAL FEES	I	II	III	IV
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1. EXPENSES

- a. Mileage - \$0.65/mile
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- d. Telephone, reproduction, postage, lodging, and other incidentals shall be a direct charge per receipt.

2. ASSOCIATED SERVICES -

- a. Associated services required by the project such as soil analysis, materials testing, etc., shall be at cost plus ten (10) percent.

COUNCIL ACTION FORM

- I. Agenda Item:** Consideration of an Engineering Service Contract with McGill Associates – Whitnel Water Transmission Main Replacement
- II. Background Information:** The City of Lenoir is undertaking a water transmission main replacement project that proposes to accomplish certain work toward the preliminary engineering, survey, design, and permitting of the project entitled **Whitnel Water Transmission Main Replacement**. The project is generally described as the installation of a water main along Waterworks Road and Sawmills School Road from the Lenoir Water Treatment Plant to the existing 20-inch water transmission main near the Sawmills meter including approximately 15,500 linear feet of 24-inch water main, valves, air release valves, hydrants and major piping connections. Preliminary cost estimates for the project (which include all engineering, bidding, construction administration and a 10% contingency) are \$5,070,000.
- III.** McGill Associates has provided a contract for services to provide the engineering services throughout the various stages of this project.

The cost summary for the project services is as follows:

Preliminary Engineering Report	\$20,000
Surveying Phase	\$29,000
Design and Permitting Phase	\$209,000
Bidding and Award Phase	\$12,000
<i>Easement Survey and Maps</i>	<i>Hourly Basis</i>

- IV. Staff Recommendation:** Staff would like to begin this project with the first steps of developing the Preliminary Engineering Report (\$20,000) and the Surveying Phase (\$29,000). During this time, other funding options will be explored for the remaining engineering services under this agreement needed to complete the development of the project and for construction. Staff recommends City Council approval to enter into a contract for engineering services with McGill Associates for the Whitnel Water Transmission Main Replacement.

- V. Reviewed by:**

City Attorney: _____

Finance Director: _____

Public Works/Public Utilities Director: _____

AGREEMENT FOR ENGINEERING SERVICES

This AGREEMENT, made and entered into this the _____ day of _____ 2021, by and between the **City of Lenoir** (OWNER) and **McGill Associates, P.A.** (ENGINEER).

WHEREAS, the OWNER proposes to accomplish certain work toward the preliminary engineering, survey, design, and permitting of the Project entitled **Whitnel Water Transmission Main Replacement** generally described as the installation of a water main along Waterworks Road and Sawmills School Road from the Lenoir Water Treatment Plant to the existing 20-inch water transmission main near the Sawmills meter including approximately 15,500 linear feet of 24-inch water main, valves, air release valves, hydrants, major piping connections, and

WHEREAS, the ENGINEER desires to render professional services in accordance with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and benefits contained herein, it is hereby mutually understood and agreed as follows:

SECTION 1 - GENERAL SERVICES

The ENGINEER shall:

- 1.1. The ENGINEER shall, as directed by the OWNER, provide professional engineering services for the OWNER in all phases of the Project; serve as OWNER's professional engineering representative for the Project; and provide professional consultation and advice to OWNER during the performance of the services hereunder.
- 1.2. The ENGINEER shall provide all personnel required in performing the Project unless otherwise provided herein. Such personnel shall not be employees of or have any contractual relationship with the OWNER. All services rendered hereunder shall be performed by the ENGINEER or under his supervision and all personnel engaged in the Project shall be fully qualified under North Carolina law to perform such services.
- 1.3. The ENGINEER shall assist in the pursuit of obtaining approvals and permits from governmental authorities having jurisdiction over the Project, unless otherwise agreed to herein.
- 1.4. The ENGINEER shall seek and obtain authorization from the OWNER or the OWNER's assignee before proceeding with the Project, or before performing any Additional Services as described in Section 3, or before performing any other services which would not be included in the fee for Basic Services set forth in Section 6 hereof, subject to OWNER's right to terminate as herein provided.
- 1.5. The ENGINEER shall comply with applicable federal, state and local laws and regulations regarding equal employment opportunity. The ENGINEER is further obligated to include all requirements hereunder in any subcontract written by him in association with this Agreement.

SECTION 2 - BASIC SERVICES

2.1 PRELIMINARY ENGINEERING REPORT

- 2.2.1 Consult with the OWNER to fully determine the OWNER's requirements for the project and to discuss project schedules, gather initial data, coordination, and other preliminary matters.
- 2.2.2 Review the latest mapping, operating reports and data furnished by the City.
- 2.2.3 Prepare a Preliminary Engineering Report to include following:
 - a. Identify and evaluate existing conditions related to the project.
 - b. Confirm water hydraulic model results for proposed project.
 - c. Prepare a preliminary opinion of probable costs.
 - d. Prepare a map showing the proposed water line route.
 - e. Identify possible permanent easements needed for the water main based upon a review of GIS mapping and DOT records.
 - f. Conduct a planning session with the OWNER to review findings.
 - g. Submit the draft Preliminary Engineering Report to City staff for review and comment.
 - h. Incorporate comments from City staff and then submit the final Preliminary Engineering Report to the OWNER.

2.2 SURVEYING PHASE

- 2.2.1 Consult with the OWNER to fully determine the OWNER's requirements for the project and to gather initial data.
- 2.2.2 Conduct a route survey to provide topography of the proposed work area and to locate existing structures and conflicts.
- 2.2.3 Produce survey mapping of the project area for use in preparing the design.

2.3 DESIGN AND PERMITTING PHASE

- 2.3.1 Consult with the OWNER to fully determine the OWNER's requirements for the project and to discuss project schedules, gather initial data, coordination, and other preliminary matters.
- 2.3.2 Consult with the OWNER to discuss critical design elements and objectives for the project, based on the findings of the Preliminary Engineering Report, for concurrence and acceptance.
- 2.3.3 Prepare preliminary design layout and calculations.
- 2.3.4 Review preliminary design with OWNER for concurrence and acceptance.
- 2.3.5 Coordinate the provision of any subsurface investigation by others, if any, and assist with solicitations and preparing site maps identifying test locations.

- 2.3.6 Prepare bid documents, contract documents, technical specifications, and construction drawings to detail the character and scope of the work including all design functions and coordination for all construction sequencing of the Project as determined in the Preliminary Engineering Report.
- 2.3.7 Prepare final design calculations for submission to review agencies.
- 2.3.8 Prepare and submit permit application and supporting documents to Public Water Supply Section to assist in obtaining the construction approval.
- 2.3.9 Prepare and submit permit application and supporting documents to Land Quality Section to assist in obtaining the erosion and sediment control approval, if required.
- 2.3.10 Prepare and submit encroachment agreement to NCDOT for approval.
- 2.3.11 Respond to review agency comments and modify documents as necessary to achieve permit approvals.
- 2.3.12 Perform internal quality control and constructability reviews of the project.
- 2.3.13 Prepare an opinion of probable cost after submission of plans and specifications for permitting and advise the OWNER of any adjustment of the Project cost caused by changes in scope, design requirements or construction costs.
- 2.3.14 Submit final design plans to OWNER for concurrence and acceptance for bidding.
- 2.3.15 Furnish up to two (2) hard copies of the final design documents to the OWNER.

2.3 BIDDING AND AWARD PHASE

Upon written authorization from OWNER, ENGINEER shall:

- 2.3.1 Assist the OWNER in advertising, receiving, opening and evaluating bids.
- 2.3.2 Schedule a Pre-Bid Conference with all prospective bidders and the OWNER to address questions and to allow prospective bidders to visit the project site.
- 2.3.3 Consult with, and advise the OWNER as to the acceptability of contractors and subcontractors and make recommendations as to the lowest, responsive, responsible bidder.
- 2.3.4 Assist the OWNER in the preparation and execution of construction contracts and in checking Performance and Payment Bonds and Insurance Certificates for compliance.

SECTION 3 - ADDITIONAL SERVICES

If authorized by the OWNER, the ENGINEER will furnish or obtain from others additional services of the following types, which are not considered Basic Services under this Agreement.

- 3.1 Additional services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction. The OWNER may initiate minor changes in the project scope to be incorporated by the ENGINEER, subsequent to the permit submittals, as not to impede progress. No work on any such changes shall occur by the ENGINEER unless preapproved by the OWNER.
- 3.2 Revising previously approved studies, reports, design documents, drawings or specifications, when such revisions are due to causes beyond the control of the ENGINEER.
- 3.3 Providing geotechnical and subsurface investigations, archeological surveys and any other environmental site surveys necessary for the construction of the project.
- 3.4 Preparing easement maps or plats.**
- 3.5 Preparing and submitting funding applications, bid packages, or other documents to NCDEQ Division of Water Infrastructure or other agencies.
- 3.6 Preparing documents for alternate bids requested by the OWNER for work, which is not executed, or documents for out-of-sequence work other than agreed upon in the Planning, Design, and Permitting Phase.
- 3.7 Providing Construction or Post-Construction Phase Services (to be performed under separate agreement).
- 3.8 Providing Funding Administration services or required documentation.
- 3.9 Preparing to serve or serving as a witness for the OWNER in any litigation, condemnation or other legal or administrative proceeding involving the Project.
- 3.10 Additional services in connection with the Project, including services normally furnished by OWNER and services not otherwise included in this Agreement.

SECTION 4 - OWNERS RESPONSIBILITIES

The OWNER shall:

- 4.1 Provide full information as to the requirements for the Project.
- 4.2 Assist the ENGINEER by placing at his disposal in a timely manner all available information pertinent to the Project including previous documents and plans and any other data relative to the evaluation, design, and construction of the Project. Subject to the generally accepted standard of care, ENGINEER and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to the OWNER.
- 4.3 Designate a person to act as OWNER's representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions pertinent to the services in this Agreement.
- 4.4 Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by the ENGINEER and render decisions and comments pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.
- 4.5 Guarantee access to and make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform the services under this Agreement, provided the same does not unreasonably interfere with the operation of the existing facilities.
- 4.6 Obtain any right-of-way easements from public bodies, entities or persons necessary for satisfactory construction of the Project.
- 4.7 Obtain any subsurface geotechnical investigations or other types of testing and analysis needed for the Project.
- 4.8 Pay for permit fees, and all costs incidental to advertising for bids, and receiving bids or proposals from licensed Contractors.
- 4.9 Provide such legal, accounting and insurance counseling services as may be required for the Project, and such auditing services as may be required to ascertain how or for what purpose any Contractor will or has used the monies paid to him under the construction contract.
- 4.10 Give prompt notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the Project.
- 4.11 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project, subject to the obligations of the ENGINEER outlined in Sections 1.3 and 2.2 of this Agreement.
- 4.12 Furnish, or direct the ENGINEER to provide necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 4.13 Bear all costs incident to compliance with the requirements of this Section 4, except where Contractor will assume responsibility for the same.

SECTION 5 - PERIOD OF SERVICES

- 5.1 Unless this Agreement has been terminated as provided in paragraph 7.1, the ENGINEER will be obligated to render services hereunder for a period, which may reasonably be required for the services described herein. The ENGINEER may decline to render further services hereunder if the OWNER fails to give prompt approval of the various phases as outlined. Upon receiving a written authorization to proceed, the ENGINEER shall provide the OWNER with a written schedule of completion for the services so authorized.
- 5.2 If the Project is delayed significantly for reasons beyond the ENGINEER's control, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation.

SECTION 6 - PAYMENT TO THE ENGINEER

6.1 PAYMENT FOR BASIC SERVICES

- 6.1.1 The OWNER agrees to pay the ENGINEER for Basic Services as outlined in Section 2 the following lump sum and hourly fees, inclusive of all reimbursable expenditures.

Preliminary Engineering Report	\$20,000
Surveying Phase	\$29,000
Design and Permitting Phase	\$209,000
Bidding and Award Phase	\$12,000
<i>Easement Survey and Maps</i>	<i>Hourly Basis</i>

6.2 PAYMENT FOR ADDITIONAL SERVICES

- 6.2.1 The OWNER will pay the ENGINEER for Additional Services as outlined in Section 3 an amount based on actual time spent and expenses incurred by principals and employees of the ENGINEER assigned to the Project in accordance with the attached ENGINEER's standard rate and fee schedule Attachment "B", which is subject to update on an annual basis.

6.3 TIMES OF PAYMENT

- 6.3.1 The OWNER will make prompt monthly payments in response to the ENGINEER's monthly statements for services rendered under this Agreement.

6.4 GENERAL

- 6.4.1 If the OWNER fails to make any payment due the ENGINEER on account of his services and expenses within sixty days after receipt of the ENGINEER's bill therefor, the ENGINEER may, after giving seven days written notice to the OWNER, suspend services under this Agreement until he has been paid in full all amounts due him on account of his services and expenses.
- 6.4.2 If the Agreement is terminated at the completion of any phase of the Basic Services called for under Section 2, progress payment to be made to the ENGINEER on account of services rendered shall constitute total payment for services rendered. If this Agreement is terminated during any phase of the Basic Services, the ENGINEER shall be paid for services rendered on the basis of a reasonable estimate of the portion of such phase completed prior to termination. In the event of any termination, the ENGINEER will be paid for all his reasonable expenses resulting from such termination, and for unpaid reimbursable expenses.
- 6.4.3 If, prior to termination of this Agreement, any work performed by the ENGINEER, under Section 2, is suspended in whole or in part for more than three months or is abandoned, after written notice from the OWNER, the ENGINEER shall be paid for services performed prior to receipt of such notice from the OWNER as provided in paragraph 6.4.2 for termination during any phase of service.

SECTION 7 - GENERAL CONDITIONS

7.1 TERMINATION

- 7.1.1 The OWNER has the right to terminate this agreement for any reason, and without cause by providing fifteen (15) days written notice to the ENGINEER of such termination and specifying the effective date of such termination; provided, however, that during such period of ten (10) days the ENGINEER shall have the opportunity to remedy such failures or violations to avoid such termination.
- 7.1.2 In the event of termination, as provided herein, the ENGINEER shall be paid for all services performed and actual expenses incurred up to the date of termination pursuant to Section 6.4.2 herein.

7.2 OWNERSHIP OF DOCUMENTS

- 7.2.1 All documents, calculations, drawings, specifications, maps, field notes, data and other items generated during the performance of services shall be considered intellectual property and remain the property of the ENGINEER as instruments of service. After ENGINEER has been paid in full, the OWNER shall be provided a set of record drawings, and copies of other documents, in consideration of which the OWNER will use them solely in connection with the Project, and not for the purpose of making subsequent extensions or enlargements hereto and not for resale. Re-use for extension of the Project, or for new projects shall require written permission of the ENGINEER and shall entitle him to further compensation at a rate to be agreed upon by OWNER and ENGINEER at the time of such re-use.

7.3 CHOICE OF LAW

- 7.3.1 This Agreement shall be governed by the internal laws of the State of North Carolina.

7.4 OPINIONS OF PROBABLE COSTS

- 7.4.1 Since the ENGINEER has no control over the cost of labor, materials, or equipment, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, the opinions of probable costs for the Project provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as a design professional familiar with the construction industry, but the ENGINEER cannot and does not guarantee that proposals, bids or the Project construction cost will not vary from opinions of probable costs prepared by him.
- 7.4.2 If the lowest bona fide proposal or bid exceeds the established Project construction cost limit, the OWNER will (1) give written approval to increase such cost limit, or (2) authorize negotiating or rebidding the project within a reasonable time. The providing of such service shall be the limit of the ENGINEER's responsibility in this regard and having done so, the ENGINEER shall be entitled to payment for his services in accordance with this Agreement.

7.5 INSURANCE AND CLAIMS

- 7.5.1 ENGINEER shall provide and maintain, at its own expense, during the term of this Agreement the following insurance covering its operations.

- A. AUTOMOBILE LIABILITY - bodily injury and property damage liability insurance covering all owned, and hired automobiles for limits for bodily injury of not less than \$1,000,000 per person and \$2,000,000 per accident, and property damage limits of not less than \$1,000,000 per accident. The automobile liability insurance coverage amounts may be satisfied with a combination of primary and excess/umbrella coverage.
 - B. COMMERCIAL GENERAL LIABILITY - Bodily injury and property damage liability shall protect the ENGINEER performing work under this Agreement from claims of bodily injury or property damage which arise from operation of this Agreement, whether such operations are performed by ENGINEER or anyone directly or indirectly working for or on ENGINEER'S behalf. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/\$2,000,000 aggregate and \$1,000,000 property damage each occurrence/\$2,000,000 aggregate. This insurance shall include coverage for products/completed operations, personal and advertising injury liability and contractual liability in an amount not less than \$1,000,000 each occurrence / \$2,000,000 aggregate. The liability insurance coverage amounts may be satisfied with a combination of primary and excess/umbrella coverage.
 - C. PROFESSIONAL LIABILITY – Insuring against professional negligence/ errors and omissions on an occurrence basis with policy limits of \$2,000,000 per claim/\$2,000,000 annual aggregate.
 - D. WORKERS' COMPENSATION – Worker's Compensation insurance meeting the statutory requirements of the State of North Carolina, even if not required by law to maintain such insurance. Said Workers' Compensation insurance shall have at least the following limits: Employers Liability - \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit.
- 7.5.2 ENGINEER's total liability, in the aggregate, of ENGINEER and ENGINEER's officers, directors, members, partners, agents, employees, and sub-consultants, to the OWNER and to anyone claiming by, through, or under OWNER for any and all claims, losses, cost, or damages whatsoever arising out of, resulting from, or in any way related to the Project, this Agreement, or ENGINEER's performance, from any cause including but not limited to negligence, professional errors or omissions, strict liability, breach of contract, or indemnity, shall not exceed the total insurance proceeds paid on behalf of or to ENGINEER by ENGINEER's insurers in settlement or satisfaction of claims under the terms and conditions of ENGINEER's insurance policies applicable thereto.

7.6 SUCCESSORS AND ASSIGNS

- 7.6.1 The OWNER and the ENGINEER each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the OWNER nor the ENGINEER will assign, sublet or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the OWNER and the ENGINEER.

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