

**LENOIR CITY COUNCIL
MONDAY, APRIL 19, 2021
6:00 P.M.**

PRESENT: Mayor Joe Gibbons presiding. Councilmembers present were Jonathan Beal, Todd Perdue, Ike Perkins, Crissy Thomas and Ben Willis. City Attorney T. J. Rohr, City Manager Scott Hildebran, Communications Director Joshua Harris and Public Utilities Director Jared Wright were also in attendance at the meeting.

ABSENT: Councilmember Ralph Prestwood and David Stevens.

VIA TELECONFERENCE:

Participating via teleconference was City Clerk Shirley Cannon.

Department Directors participating via teleconference were Finance Director Donna Bean, Fire Chief Ken Hair, Police Captain Andy Wilson, Recreation Director Kenny Story, Planning Director Jenny Wheelock, Economic Development Director Kaylynn Horn, and Public Utilities Director Radford Thomas,

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.

**SPECIAL RECOGNITION; MEN'S 2021
HIBRITEN HIGH SCHOOL SOCCER TEAM:**

- B. On behalf of City Council, Mayor Gibbons presented a resolution to 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. Mr. Jim Blanton, Head Coach, along with Assistant Coach Mark Henderson and Athletic Director Derek Reeves, accepted the resolution on behalf of the team and Hibriten High School.

A copy of the resolution is here by incorporated into these minutes by reference. (Refer to page 124.)

On behalf of City Council Mayor Gibbons congratulated the team for all of their success and hard work during the season. He stated City Council was very proud of the Soccer Team and all they have accomplished.

Mr. Jim Blanton, Head Coach, stated he was proud of the team and remarked they have done a monumental job this season in competing. He shared he was a graduate of Hibriten plus a former player and stated it has been an honor to coach there for the past eighteen years. Mr. Blanton also recognized several

players who were in the audience.

Mrs. Courtney Wright, Principal, commended the team members for their professionalism off and on the playing field and thanked all of the coaches for their dedication and hard work. She stated all of the players were great men and the skills they have learned playing sports will prepare them for life. Mrs. Wright referred to an e-mail she received from someone at another school who also commended all of the Hibriten players for the great sportsmanship they exhibited throughout a game there even though they didn't win. Mrs. Wright congratulated the team and stated they were great representatives of Hibriten High School and the City of Lenoir.

Assistant Coach Mark Henderson also praised the team for their dedication, work ethic, talent and sportsmanship. Coach Henderson remarked they were all great examples of student athletes. He thanked City Council for the honor and recognition.

Mayor Gibbons congratulated everyone and stated it was an honor to recognize the team. He further remarked it was amazing what all they had been able to accomplish during the pandemic.

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, April 6, 2021 as submitted.
2. 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 (NCDECU) 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. The legal ad was published on Wednesday, March 17 meeting the 30-day notice requirement for the rental or lease of City-owned property. (A copy of the authorizing resolution, lease agreement and legal notice is hereby incorporated into these minutes by reference. Refer to pages 125-136.)
3. 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 game.

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

IV. REQUESTS AND PETITIONS OF CITIZENS

V. REPORTS OF BOARDS AND COMMISSIONS

FY2021-2025 UNIFOUR CONSORTIUM CONSOLIDATED PLAN & FY2021 ACTION PLAN FOR THE CITY OF LENOIR:

- A. Rick Oxford, Plan Administrator, Western Piedmont Council of Governments, held the second of two public meetings to receive public comments regarding the proposed FY2021 Action Plan of the City of Lenoir and the Unifour HOME Consortium as part of the five-year Consolidated Plan. 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.

A copy of the 2021 Action Plan and Unifour Consortium HOME Plan are on file in the City Clerk's office and at the Western Piedmont Council of Governments.

Mr. Oxford reported the City of Lenoir will receive \$161,762 in CDBG funds and \$1,154,095 in HOME funds. He clarified this was year two of the five-year plan. In addition, Mr. Oxford reported the City is utilizing \$129,410 of CDBG funding for renovations at the former Lenoir High School Complex which includes the gym, auditorium and Mack Cooke Stadium.

Mr. Oxford also reviewed funding for the HOME program. This funding assists first time homebuyers. Currently, there are around 36-40 families that have received this assistance and, since its inception, this program has assisted 3,000 families. He stated the City was committed in its efforts to develop and provide affordable housing and to meet the goals of the City's five-year strategy as outlined in the consolidated plan.

Mr. Oxford also explained the process of how CHODO funding works. A CHDO is a private nonprofit, community-based organization that has staff with the capacity to develop affordable housing for the community it serves.

He pointed out Habitat may use this funding to build homes and pointed out they are seeking individuals who will actually assist with the building of the home plus purchasing it. All individuals who are interested in building a Habitat home are encouraged to submit an application plus they have to meet the requirements.

Mr. Oxford also explained developers may apply for a low interest loan for multi-family housing projects. The developers design the project, finalize their funding and submit a letter of commitment for the project. If the project is funded, they may receive tax credits. The City of Lenoir currently has a multi-family housing project, Kattz Corner, that was funded.

Upon a motion by Councilmember Perkins, Councilmembers voted 5 to 0 to approve the FY2021 Action Plan of the City of Lenoir and the Unifour HOME Consortium Plan as part of the five-year Consolidated Plan as presented by Rick Oxford, Plan Administrator.

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

A. Items of Information

PLANNING

BOARD: 1. The Planning Board will conduct a virtual meeting on Monday, April 26 at 5:30 p.m.

COMMITTEE OF THE

WHOLE: 2. The Committee of the Whole will meet on Tuesday, April 27 at 8:30 a.m. at City Hall, Third Floor.

FOOTHILLS REGIONAL AIRPORT

AUTHORITY: 3. The Foothills Regional Airport Authority will meet on Wednesday, April 28 at noon.

B. ITEMS FOR COUNCIL ACTION

ENGINEERING SERVICES CONTRACT;

MCGILL ASSOCIATES; WATER INTERCONNECT PROJECT:

1. Staff recommends City Council approval to enter into a contract for Engineering Services with McGill Associates for the Water Interconnect Project as presented. The estimated cost of the project is \$3,000,000.

(A copy of the Engineering Services Contract is hereby incorporated into these minutes by reference. Refer to pages 137-148.)

City Manager Hildebran along with Public Works Director Radford Thomas stated the estimated cost for engineering services with McGill is \$194,000. Director Thomas also pointed out the purpose of this project is to mitigate risks for the City's water system. Mr. Hildebran reported the City will expend \$47,000 of the \$194,000 cost during the first phase of the project.

Upon a motion by Councilmember Perdue, Council voted 5 to 0 to approve the Engineering Services Contract in the amount of \$194,000 as recommended by City Staff.

ENGINEERING SERVICES CONTRACT; MCGILL ASSOCIATES WHITNEL WATER TRANSMISSION MAIN REPLACEMENT:

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

(A copy of the Engineering Services Contract is hereby incorporated into these minutes by reference. Refer to pages 149-160.)

Public Utilities Director Radford Thomas reported the estimated cost of the project is \$5,000,000 and the cost of the engineering services contract is \$270,000. City Manager Hildebran reported the City will expend \$49,000 of the \$270,000 cost for surveying during the initial phase of the project. The engineering funds will be used towards the preliminary engineering, survey, design and permitting of the project. He stated this project was discussed during the Budget Retreat Session in March and reminded Council the City would apply for loans and/or grant funding to assist with the cost of the project should the project receive funding.

Upon a motion by Councilmember Thomas, Council voted 5 to 0 to approve the Engineering Services Agreement with McGill Associates in the amount of \$270,000 for the Whitnel Water Transmission Main Replacement Project as recommended by City Staff.

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

COMMENDED; CITY STAFF FOR LITTER CLEAN UP PROJECT:

- A. On behalf of City Council, Mayor Gibbons thanked Public Works Director Jared Wright, City Staff and several Councilmembers for their participation in the City's Clean Lenoir Litter Sweep day on Wednesday, April 14. Director Wright stated the City plans to make this an annual event and shared 150 bags of garbage were picked up. He further expressed his appreciation to everyone that participated in the event. Caldwell County also held a litter sweep pickup day on Saturday, April 17 that was organized by Commissioner Donnie Potter. Mr. Potter participated in the City's campaign as well.

IX. REPORT AND RECOMMENDATIONS OF COUNCIL MEMBERS

REMINDER; VACCINE APPOINTMENTS AVAILABLE:

- A. Councilmember Ike Perkins along with Mayor Gibbons continued to encourage everyone to schedule an appointment for the COVID vaccine in order to protect themselves and others against the virus.

X. ADJOURNMENT

- A. There being no further business, the meeting was adjourned at 6:42 p.m.

Shirley M. Cannon, City Clerk

Joseph L. Gibbons, Mayor



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

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: [Signature]
Name: Scott Hildebrand
Title: City Manager

North Carolina:
Caldwell County:

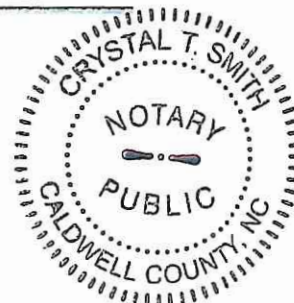
This is the 20 day of April, 2021, before me, Crystal T. Smith, a Notary Public, personally came Scott Hildebrand, who, being duly sworn, says that she/he is a duly authorized officer of the foregoing entity and that the foregoing was signed and sealed by her/him on behalf of the said entity by its authority duly given, and acknowledged the said writing to be the act and deed of said entity.

Witness my hand and notarial seal, this 20 day of April, 2021.

[Signature]
Notary Public

My Commission Expires:

1/20/24



Lessee:
State Employees' Credit Union

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

North Carolina:
Wake County:

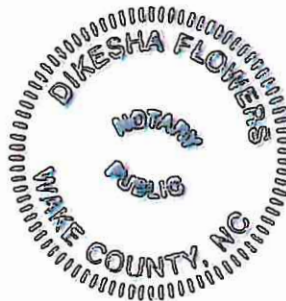
This the 11th day of February, 2021, before me, Diksha Flowers a Notary Public, personally came J. Michael Banks, who, being duly sworn, says that he is Senior Vice-President, Property Management of State Employees' Credit Union and the said writing was signed and sealed by him on behalf of the said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



Minutes-City of Lenoir Council Meeting
Monday, April 19, 2021



Exhibit A

AFFP

CITY OF LENOIR CITY COUNCIL NO

Affidavit of Publication

STATE OF NORTH CAROLINA } SS
COUNTY OF *Caldwell*

Dale Morefield, being duly sworn, says:

That he is Publisher of the News-Topic, a daily newspaper of general circulation, printed and published in Lenoir, *Caldwell* County, North Carolina; that the publication, a copy of which is attached hereto, was published in the said newspaper on the following dates:

March 17, 2021

That said newspaper was regularly issued and circulated on those dates.

SIGNED:

Publisher

Subscribed to and sworn to me this 17th day of March 2021.

Michael C. Lambert Sr.
Michael C. Lambert Sr., Notary, County, North Carolina

My commission expires: May 17, 2022.

30044252 30928629 828-757-2680

News-Topic
CITY OF LENOIR
P.O. BOX 958
LENOIR, NC 28645

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

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.

Minutes-City of Lenoir Council Meeting
Monday, April 19, 2021

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 By: Scott Hildebran
Shirley M. Cannon
City Clerk
Scott Hildebran
City Manager

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
Donna Bean, Finance Director
City of Lenoir

APPROVED AS TO LEGAL FORM:

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



ATTACHMENT "A"

Designing, Documenting, Delivering

BASIC FEE SCHEDULE

JANUARY 2020

PROFESSIONAL FEES	I	II	III	IV
Senior Principal	\$225			
Principal – Regional Manager – Director	\$190	\$205	\$210	\$215
Practice Area Lead	\$160	\$170	\$195	\$210
Senior Project Manager	\$170	\$185	\$195	\$200
Project Manager	\$155	\$165	\$175	\$180
Project Engineer	\$110	\$125	\$140	\$145
Engineering Associate	\$95	\$100	\$110	\$115
Planner- Consultant – Designer	\$100	\$115	\$135	\$150
Engineering Technician	\$90	\$105	\$115	\$120
CAD Operator – GIS Analyst	\$80	\$85	\$95	\$100
Construction Services Manager	\$130	\$145	\$155	\$160
Construction Administrator	\$95	\$110	\$120	\$125
Construction Field Representative	\$85	\$90	\$95	\$100
Environmental Specialist	\$85	\$95	\$100	\$105
Surveyor	\$90	\$95	\$100	\$105
Surveying Associate	\$70	\$75	\$80	\$85
Survey Technician	\$75	\$80	\$85	\$90
Survey Field Technician	\$60	\$65	\$70	\$75
Administrative Assistant	\$70	\$75	\$80	\$85

1. EXPENSES

- a. Mileage - \$0.65/mile
- b. Robotics/GPS Equipment - \$25/hr.
- c. Survey Drone - \$100/hr.
- 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.

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.
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- 4.1 Provide full information as to the requirements for the Project.
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 - 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.

Minutes-City of Lenoir Council Meeting
Monday, April 19, 2021

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: _____

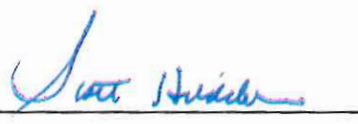
Douglas Chapman, PE
Principal – Hickory Office Manager

CITY OF LENOIR

ATTEST:


Shirley M. Cannon
City Clerk

By: _____

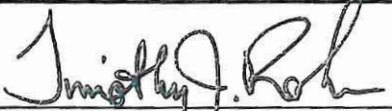

Scott Hildebran
City Manager

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



ATTACHMENT "A"

Shaping Our Future Together

BASIC FEE SCHEDULE

JANUARY 2020

PROFESSIONAL FEES	I	II	III	IV
Senior Principal	\$225			
Principal – Regional Manager – Director	\$190	\$205	\$210	\$215
Practice Area Lead	\$160	\$170	\$195	\$210
Senior Project Manager	\$170	\$185	\$195	\$200
Project Manager	\$155	\$165	\$175	\$180
Project Engineer	\$110	\$125	\$140	\$145
Engineering Associate	\$95	\$100	\$110	\$115
Planner- Consultant – Designer	\$100	\$115	\$135	\$150
Engineering Technician	\$90	\$105	\$115	\$120
CAD Operator – GIS Analyst	\$80	\$85	\$95	\$100
Construction Services Manager	\$130	\$145	\$155	\$160
Construction Administrator	\$95	\$110	\$120	\$125
Construction Field Representative	\$85	\$90	\$95	\$100
Environmental Specialist	\$85	\$95	\$100	\$105
Surveyor	\$90	\$95	\$100	\$105
Surveying Associate	\$70	\$75	\$80	\$85
Survey Technician	\$75	\$80	\$85	\$90
Survey Field Technician	\$60	\$65	\$70	\$75
Administrative Assistant	\$70	\$75	\$80	\$85

1. EXPENSES

- a. Mileage - \$0.65/mile
- b. Robotics/GPS Equipment - \$25/hr.
- c. Survey Drone - \$100/hr.
- 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.