

**LENOIR CITY COUNCIL
TUESDAY, JULY 20, 2021
6:00 P.M.**

PRESENT: Mayor Joe Gibbons presiding. Councilmembers present were Mayor Pro-Tem Crissy Thomas, Jonathan Beal, Todd Perdue, Ike Perkins, Ralph Prestwood, David Stevens and Ben Willis. City Attorney T. J. Rohr, City Manager Scott Hildebran, and City Clerk Shirley Cannon were also present.

Department Directors in attendance were Communications Director Joshua Harris, Fire Chief Ken Hair, Recreation Director Kenny Story, Planning Director Jenny Wheelock, Economic Development Director Kaylynn Horn, and Public Works Director Jared Wright. Public Utilities Superintendent Kevin Matheson and Carmen Boone, News-Topic were also in attendance.

Police Chief Brent Phelps participated in the meeting via Zoom.

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.

**SYMPATHY
EXTENDED:**

B. On behalf of City Council, Mayor Gibbons asked everyone to keep the family of Jeffrey Peal in their thoughts and prayers. Mr. Peal passed away on Monday, July 19 as a result of injuries sustained in an automobile accident. He was currently serving on the Alexander County Board of Commissioners.

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, June 15, 2021 as submitted.
 2. Minutes: Approval of the closed session minutes of the City Council meeting of Tuesday, June 15, 2021 as reviewed by the City Attorney, City Council and City Manager.
 3. Minutes: Approval of the minutes of the Committee of the Whole meeting of Tuesday, June 22, 2021 as submitted.
 4. Minutes: Approval of the closed session minutes of the Committee of the Whole meeting of Tuesday, June 22, 2021 as reviewed by the City Attorney, City Council and City Manager.
 5. Final Offer to Purchase; located in the 500 Block of Wheeler Street: Approval of the Final Offer to Purchase Real Property by Resolution in the amount of \$500.00 following the submission of all upset bids, as submitted by Thomas Neal Moody for property located in the 500 Block of Wheeler Street, being 0.29 acre, NCPIN#2749577733 and Caldwell County Tax

ID#0-5-173A as submitted. The legal advertisement for the Notice of Offer to Purchase Real Property was published in the News-Topic on Tuesday, June 22, 2021. Staff recommends the City accept the Final Offer to Purchase because the City did not receive any additional upset bids. (A copy of the resolution is hereby incorporated into these minutes by reference. Refer to pages 280-281.)

6. Water Sales Purchase Agreement; Joyceton Water Works, Inc.: Staff recommends City Council Approval of the proposed Water Sales Agreement between the City of Lenoir and Joyceton Waterworks, Inc. to provide up to 125,000 gallons of drinking water per day at the applicable wholesale water rate for a two-year term. (A copy of the water sales agreement is hereby incorporated into these minutes by reference. Refer to pages 282-288.)

Upon a motion by Councilmember Stevens, Council voted 7 to 0 to approve the above items on the Consent Agenda as recommended and as presented 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

AUGUST

CALENDAR:

1. By consensus of the Council, the calendar for the month of August was approved listing various meetings and events.

BRING BACK THE MUSIC

SUMMER JAZZ CONCERT:

2. The "Bring Back the Music" Summer Jazz Concert will be held on Saturday, July 24 at 6:30 p.m. at the Martin Luther King, Jr. Center.

CANCELLED; PLANNING

BOARD:

3. The Planning Board cancelled its meeting on Monday, July 26 at 5:30 p.m. The next meeting will be held on Monday, August 23 at 5:30 p.m.

CANCELLED; COMMITTEE OF THE

WHOLE:

4. The Committee of the Whole will not meet in July. The next meeting will be held on Tuesday, August 24 at 8:30 a.m. at City Hall.

CRUISE-IN:

5. A Cruise-In event will be held on Saturday, August 7 from 3:00 p.m. – 8:00 p.m. in downtown Lenoir.

B. ITEMS FOR COUNCIL ACTION

RESOLUTION FOR PROPERTY CONDEMNATIONS;

320 and 340 WILKESBORO BOULEVARD SE:

1. Staff recommends approval of a Resolution Regarding Condemnation of Portions of Property for Fee-Simple Interests to Construct A Public Road as

outlined. Under Chapter 40A of the North Carolina General Statutes, the City of Lenoir has the power of eminent domain to acquire property to improve streets and sidewalks and to install and maintain public utilities. It is in the public interest to acquire fee simple interests to construct a public street.

- A. It is necessary to acquire by condemnation, on a permanent basis, portions of the property belonging to John R. Flowers, Jr., identified as NCPIN# 2759473522, located at 320 Wilkesboro Boulevard SE, Lenoir, NC, being particularly described in Deed Book 1587, at Page 563, Caldwell County Registry. The City of Lenoir estimates the sum of \$6,925.00 to be just compensation for the property to be condemned.
- B. It is necessary to acquire by condemnation, on a permanent basis, portions of the property belonging to David L. and Doris E. Williams, identified as NCPIN# 2759473592 and NCPIN# 2759474564, located at 340 Wilkesboro Boulevard Se, Lenoir, NC, being particularly described in Deed Book 1518, at Page 319 and Deed Book 1596 at Page 1674, Caldwell County Registry. The City of Lenoir estimates the sum of \$14,600.00 to be just compensation for the property to be condemned.

A copy of the resolution is hereby incorporated into these minutes by reference. Refer to pages (289-291.)

The intent of the proposed condemnations is to create an access road that runs behind NAPA/Flowers, Blue Ridge Tire, American Motels, and Domino's Pizza so that traffic from those businesses, as well as from Hampton Inn and Suites and Viridian Apartments, can access the traffic signals at Hibriten Drive's intersection with Wilkesboro Boulevard.

As required by law, the City sent a notice of condemnation action to David L. and Doris Williams and Carolina Trust Bank by certified mail on May 7, 2021. All three parties signed for the deliveries. The City sent a notice of condemnation action to Mr. and Mrs. John R. Flowers, Jr., Bank of America, Truist Bank, and Duke Energies by certified mail on June 15, 2021. All but Duke Energies signed for the deliveries.

City Attorney Rohr reviewed the background information by stating these three (3) tracts of land are located between the Hampton Inn and Suites and Hibriten Drive on Wilkesboro Boulevard. Blue Ridge Tire and Flowers/NAPA Auto Parts operate on the properties. City Council for some time has expressed concern about the amount of traffic that enters and exits from Wilkesboro Boulevard to this area, including Viridian Apartments, from intersections without traffic lights. All three (3) tracts of land are shown in plat maps at the Caldwell County Register of Deeds with portions of the properties set aside for "easement for future road."

In addition, P.B. Realty, which originally owned these three (3) tracts, gave

the City a sanitary sewer easement across the entire area before these tracts were transferred. City Staff reports that there is already a sanitary sewer line in the proposed roadway.

In 2019, P. B. Realty obtained a judgment in 17CVS 224, Caldwell County, against David and Doris Williams to legally establish its right to establish the private road, at approximately the same location that the City proposed to condemn the Williams's property for the establishment of a public road.

In April 2020, P.B. Realty conveyed its interests in the proposed road to the City of Lenoir. The City has attempted to purchase the proposed road premises from Mr. and Mrs. Williams and Mr. Flowers. Since all three (3) tracts are also subject to deeds of trust in favor of certain financial institutions, those institutions would also have to agree to sign any deeds. Mr. and Mrs. Williams have not replied to any of the City's attempts to settle this matter. While Mr. Flowers has indicated that he is willing to sign a deed for the road, the financial institutions with an interest in his property have not responded to the City's attempts to contact them.

Due to the lack of response from the entities with interests in the three tracts, the City of Lenoir engaged Sweeting Appraisal Services to provide estimates of the just compensation each property owner is entitled to as a result of the City's proposed condemnations. Those amounts are noted above.

Following a brief discussion and upon a motion by Councilmember Perdue, City Council voted 7 to 0 to approve the Resolution Regarding Condemnation of Portions of Property for Fee-Simple Interests to Construct a Public Road as outlined and as described above for portions of property located at 320 and 340 Wilkesboro Boulevard SE as presented by City Attorney T.J. Rohr and as recommended by City Staff.

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

BOARD APPOINTMENTS:

- A. Mayor Gibbons announced the following two individuals for consideration of approval to the City's Authorities/Boards/Commissions at the June 15 City Council meeting. These individuals were presented for consideration of approval at the July 20 City Council meeting.

Planning Board

Curtis Baker 4-yr. term

Lenoir Business Advisory Board

Jennifer Indicott 3-yr. term (re-appt.)

Upon a motion by Councilmember Willis, Council voted 7 to 0 to appoint Curtis Baker to serve a four-year term on the Lenoir Planning Board and to re-appoint

Jennifer Indicott to serve a three-year term on the Lenoir Business Advisory Board.

IX. REPORT AND RECOMMENDATIONS OF COUNCILMEMBERS

X. ADJOURNMENT

1. There being no further business, the meeting was adjourned at 6:25 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

WHEREAS, the City of Lenoir owns certain property, located in the 500 Block of Wheeler Street, Lenoir, NC, and being approximately 0.29 acre, and being Caldwell County Tax Parcel ID#06-5-1-73A and NCPIN 2749577733, and more particularly described on the following page; and

WHEREAS, North Carolina General Statute §160A-269 permits the City to sell property by upset bid, after receipt of an offer for the property; and

WHEREAS, the City has received an offer to purchase the property described above, in the amount of \$500.00, submitted by Thomas Neal Moody, Lenoir, NC; and

WHEREAS, Thomas Neal Moody has paid/will pay the required five percent (5%) deposit on his offer;

NOW, THEREFORE, BE IT RESOLVED, the LENOIR CITY COUNCIL of the City of Lenoir resolves that:

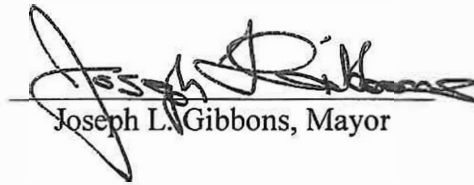
1. The City Council authorizes sale of the property described above through the upset bid procedure of North Carolina General Statute § 160A-269.
2. The City Clerk shall cause a notice of the proposed sale to be published. The notice shall describe the property and the amount of the offer, and shall state the terms under which the offer may be upset.
3. Any person may submit an upset bid to the office of the City Clerk within ten (10) days after the notice of sale is published. Once a qualifying higher bid has been received, that bid will become the new offer.
4. If a qualifying higher bid is received, the City Clerk shall cause a new notice of upset bid to be published, and shall continue to do so until a 10-day period has passed without any qualifying upset bid having been received. At that time, the amount of the final high bid shall be reported to the City Council.
5. A qualifying higher bid is one that raises the existing offer by not less than ten percent (10%) of the first \$1,000.00 of that offer and five percent (5%) of the remainder of that offer.
6. A qualifying higher bid must also be accompanied by a deposit in the amount of five percent (5%) of the bid; the deposit may be made in cash, cashier's check, or certified check. The City will return the deposit on any bid not accepted, and will return the deposit on an offer subject to upset if a qualifying higher bid is received. The City will return the deposit of the final high bidder at closing.
7. The terms of the final sale are that the City Council must approve the final high

offer before the sale is closed, which it will do within 30 days after the final upset bid period has passed, and the buyer must pay with cash, cashier's check or certified check at the time of closing.

8. The City reserves the right to withdraw the property from sale at any time before the final high bid is accepted and the right to reject at any time all bids.
9. If no qualifying upset bid is received after the initial public notice, the offer set forth above is hereby accepted. The appropriate City Officials are authorized to execute the instruments necessary to convey the property to Thomas Neal Moody of Lenoir, North Carolina.

This the 20th day of July, 2021.

SEAL



Joseph L. Gibbons, Mayor

ATTEST:



Shirley M. Cannon City Clerk

STATE OF NORTH CAROLINA
COUNTY OF CALDWELL

AGREEMENT TO PURCHASE WATER

THIS CONTRACT is made and entered into this ____ day of _____, 20__ by and between the City of Lenoir, a North Carolina Municipal Corporation hereinafter referred to as "Lenoir" and the Joyceton Waterworks Inc., hereinafter referred to as "Joyceton".

WITNESSETH

WHEREAS, Lenoir and Joyceton, both having the power and authority to enter into this agreement, and the signatories hereto have been authorized to execute this document on behalf of the Lenoir City Council and Joyceton; and

WHEREAS, Lenoir currently owns and operates a water treatment and distribution system, and is engaged in the enterprise of managing, operating, and maintaining said system and selling potable water to the public within its service area; and

WHEREAS, Joyceton owns and operates a water distribution system, and is also engaged in the enterprise of managing, operating, and maintaining the system and selling potable water to the public within its service area; and

WHEREAS, Lenoir and Joyceton mutually desire to enter into an agreement to sell and purchase water in accordance with the terms and provisions contained herein; and

WHEREAS, Lenoir has determined that it has the capability to sell water to Joyceton throughout the term of this agreement without impairing services to the users connected to its water system; and

WHEREAS, Lenoir and Joyceton each has or holds and will continue to have or hold throughout the term of this agreement, all appropriate permits necessary to effectuate their respective responsibilities under this agreement or will use their best efforts to obtain such permits;

NOW THEREFORE, in consideration of the mutual covenants, conditions and terms contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. This agreement shall commence on the ____ day of _____, 2021, and unless earlier terminated in accordance with the terms herein, shall expire on

the ____ day of ____, (Hereinafter referred to as the "Water Service Period".)

2. Lenoir agrees to provide and sell to Joyceton up to 125,000 GALLONS (ONE HUNDRED TWENTY-FIVE THOUSAND GALLONS) of potable water maximum daily flow, measured through metered connections which are located, prescribed and maintained by Lenoir, at or above minimum State of North Carolina and Federal Standards for Public Water. Such maximum daily flow shall be based on a thirty (30) day average daily flow. Such maximum daily flow to be reviewed every five (5) years.
3. Joyceton agrees to use best efforts not to exceed the above maximum daily flow provided for in Section 2 of this agreement, unless Lenoir expressly agrees that said maximum daily purchase(s) may exceed 125,000 gallons for a specified period of time.
4. The water purchased by Joyceton from Lenoir shall be transmitted on a continuous basis unless there is an unforeseen break, outage or interruption of Lenoir's water supply or water distribution system. In which case, Lenoir shall notify Joyceton of the circumstances and provide timely updates so as to keep Joyceton informed of the status of repairs or remedy(ies) for any such interruption.
5. Joyceton agrees to timely pay Lenoir for water purchased on a monthly basis, in accordance with invoices, which shall be based upon meter readings conducted by Lenoir at all metered connections between the Lenoir and Joyceton water systems. Lenoir agrees to read said water meters monthly and deliver to Joyceton a written report summarizing said meter readings within fifteen (15) working days of each monthly meter reading. Lenoir will submit to Joyceton a written invoice based on such meter readings by the 20th day of the following month. Joyceton agrees to pay Lenoir the amounts of each such monthly invoice within 30 calendar days of the date of each invoice.
6. The initial Base Water Rate charged to Joyceton for water purchases shall be \$2.26 per one thousand gallons of water provided by Lenoir to Joyceton. In the event the average daily flow during any monthly billing period exceeds the maximum daily flow of 125,000 gallons, the following surcharges (The "Surcharge Rate") will apply to the overage:

(125,001) to (175,000) gallons – \$2.49/1000 gallons
 (175,001) to (225,000) gallons – \$2.74/1000 gallons
 (225,001) gallons or more – \$3.01/1000 gallons

Over the term of this agreement or any extension thereof, Lenoir may, at its sole discretion, increase the Base Water Rate and /or the Surcharge Rate as it deems necessary. Lenoir shall not increase said rates to Joyceton more than one time during any fiscal year of twelve (12) months ending on June 30 of each year. Lenoir agrees to notify Joyceton in writing of planned increases with an explanation of the factors used to determine set increase in rates at least ninety (90) days prior to June 30 of any fiscal year, with rate increases that are to become effective on July 1 of that same year.

7. Lenoir agrees to maintain /repair /replace existing Lenoir water meters at the connection point(s) between the Lenoir and the Joyceton water system as may be necessary to accurately measure the flow of water through the meter(s) to Joyceton under this agreement.
8. Joyceton shall provide a minimum of six-months advance written notice to Lenoir prior to the expiration of this agreement or subsequent extensions of this agreement if Joyceton desires to extend the terms of this agreement. Upon timely receipt of such notice of Joyceton desire to extend this agreement, Lenoir shall, within sixty (60) days after having received such notification, notify Joyceton in writing of its agreement to such extension of this agreement.
9. In the event that Lenoir elects not to extend this agreement, Lenoir shall continue to provide and sell water to Joyceton, under the same terms of the agreement, until Joyceton has had sufficient opportunity to secure an alternate source(s) of potable water; however, Lenoir shall not be bound to continue to provide and sell water to Joyceton beyond a period of twenty-four (24) months past the date of its written notification to Joyceton of its intention not to extend this agreement.
10. Joyceton agrees that Joyceton and its water customers shall, during the period of this agreement, abide by and adhere to all water use policies, restrictions, and ordinances adopted now or subsequently adopted by Lenoir, of which they are subsequently notified, which impose water use restrictions, water conservation requirements, moratoriums, and other such limitations on the use of water during times of emergency or drought conditions or during other situations which for public health or financial reasons justify said policies, restrictions, and ordinances.
11. Lenoir shall promptly notify Joyceton upon becoming aware of any activity, problem or circumstance within the Lenoir system that might present a danger to the health, safety and welfare of Joyceton water users. Further, Lenoir shall take appropriate action to remedy such activity, problem or circumstance within the Lenoir system and to avoid or minimize disruptions in service.
12. In the event of damage or destruction of Lenoir's key water facilities or any emergency which, in the reasonable judgment of Lenoir, is likely to result in

material loss or damage to the system or constitute a material threat to human health or safety, Lenoir may suspend operation of its water system, after thirty (30) days written notice to Joyceton of such actions unless in the event of an emergency. Lenoir's response to emergencies and other such unusual circumstances shall be in accordance with applicable policies, regulations, laws and requirements and with such personnel and equipment as necessary to maintain or restore the operations of its water system in a timely manner with the least possible disruption or inconvenience to the users connected to both the Lenoir and Joyceton water systems.

13. Joyceton shall not resell, give away, transfer or otherwise dispose of water purchased from Lenoir to third-party water systems without the prior written permission of Lenoir.
14. Joyceton agrees to permit Lenoir to pass water through the Joyceton water distribution system to destinations and/or to other third-party water systems beyond Joyceton system, provided that Lenoir:
 - a) Submits a written notice to Joyceton outlining the agreed-upon purposes, quantities and conditions of said pass through of water.
 - b) That said request does not significantly diminish Joyceton capacity to provide services to its water customers.
 - c) Lenoir subsequently pays to Joyceton a Pass Through charge of \$0.03 cents per 1000 gallons of pass through water. Joyceton may request a modification of such charge by providing ninety (90) days advance written notice during the period of this agreement.
 - d) Lenoir agrees to install metering equipment to measure and determine the quantities or such Pass Through water passing through Joyceton water system and report monthly to Joyceton such amounts and meter readings.
15. Lenoir and Joyceton both represent that no litigation is pending or threatened against either party which would impair their ability to perform their respective duties and obligations under the terms, covenants and provisions of this agreement.
16. Resolution of Disputes

The Parties agree that should any disputes arise under this agreement, including but not limited to disputes pertaining to services, rates, or invoices, said disputes shall be resolved, if at all possible, through good faith negotiations between the parties. It is the intent of Lenoir and Joyceton that pursuit of legal action shall be a remedy of last resort and that a negotiated resolution, including the use of outside experts or mediators, shall be the preferred means of resolving disputes hereunder.

17. Default and Termination

This agreement may be terminated prior to its stated expiration date by Lenoir or Joyceton in accordance with the terms and conditions set forth below.

A. Termination for cause by Lenoir. Upon the happening of any of the following events of default by Joyceton, Lenoir shall have the right to terminate this agreement:

- a) The failure of Joyceton to perform or observe and initiate a cure after thirty (30) days advance written notice any of its material covenants, agreements, obligations and/or duties created by this agreement.
- b) The failure of Joyceton to make any payment required pursuant to the terms of this agreement within sixty (60) days of its receipt of notice from Lenoir that any such payment is overdue.

B. Termination for cause by Joyceton. Upon the happening of any of the following events of default by Lenoir, Joyceton shall have the right to terminate this agreement:

- a) The failure of Lenoir to perform or observe any of its material covenants, agreements, obligations and/or duties created by this agreement.
- b) The failure of Lenoir to provide Joyceton with the amounts of water in accordance with the terms of this agreement, or to provide adequate water quality for Joyceton within standards established by the North Carolina Department of Environmental Quality or any other governmental agency with designated jurisdiction over said water quality parameters as provided in this agreement.

18. Upon the happening of any event which may constitute good cause for termination of this agreement as stated above, the aggrieved party shall provide written notice to the party committing the alleged violation setting forth in detail the alleged failure and/or deficiency. Thereafter, within thirty (30) days of receipt of notice of the alleged default, the parties to this agreement shall meet to discuss the circumstances and attempt to reach a resolution.

19. **NOTICES:** For the purposes of this agreement, all notices required shall be deemed to have been properly served and shall be only served when posted by Certified United States Mail, Postage Prepaid, Return Receipt Requested, Addressed to the Party to whom directed at the address herein set forth or at such other address as may from time to time be designated in writing by either party:

To Lenoir:

City of Lenoir
Scott E. Hildebran, City Manager
PO Box 958
Lenoir, North Carolina 28645

To Joyceton:

Joyceton Waterworks Inc.

20. This agreement embodies the entire agreement between the parties in connection with this transaction, and there are no oral or parole agreements, representations or inducements existing between the parties relating to this transaction, which are not expressly set forth herein. This agreement may not be modified except by a written agreement signed by all parties to this agreement. Neither party shall be entitled to sell, convey or otherwise alienate the rights and obligations created herein without the prior written permission of the other party to this agreement. This agreement is non-assignable.
21. Nothing contained herein shall be construed to place the parties in the relationship of partners or joint venturers, and neither party shall have the power to obligate or bind the other party in any manner whatsoever. No joint agency is established by this Agreement pursuant to Article 20, Part 1 of Chapter 160A of the North Carolina General Statutes, by other similar statutory authority authorizing interlocal cooperation between units of local government, or otherwise.
22. No written waiver by any party to this agreement at any time of any breach of any other provision of this agreement shall be deemed a waiver of a breach of any provision herein or consent to any subsequent breach of the same or any other provision.
23. The captions and article numbers appearing in this agreement are inserted only as a matter of convenience and do not define, limit, construe or describe the scope of such paragraphs or articles of this agreement or in any way affect this agreement.
24. This agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina.
25. Words of any gender used in this agreement shall be held to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires.
26. If any provision under this agreement or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of this agreement or its application that can be given effect without the invalid provision or application.

27. This agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this agreement to produce or account for more than one such fully executed counterpart.

28. Except as provided herein, the rights and remedies provided for in this agreement are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

CITY OF LENOIR, NORTH CAROLINA

By: _____
Joseph L. Gibbons, Mayor

(SEAL)
Attest:

By: _____
Shirley M. Cannon, City Clerk

JOYCETON WATERWORKS INC.

By: _____
_____, Owner

(SEAL)
Attest:

By: _____
_____, Secretary

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

By: _____

_____, Finance Officer
City of Lenoir, North Carolina

Approved as to form:

By: _____

Timothy J. Rohr, City Attorney
City of Lenoir, North Carolina

By: _____

_____, Finance Director
Joyceton Waterworks Inc.

Approved as to form:

By: _____

_____, Attorney
Joyceton Waterworks Inc.

**Resolution of the Lenoir City Council Regarding
Condemnation of Portions of Property for a Fee-Simple
Interest to Construct a Public Road**

RECITALS:

WHEREAS, the City of Lenoir has the power of eminent domain and may under N.C. Gen. Stat. § 40A-3(b) acquire by purchase, gift, or condemnation any property for the purpose of opening, widening, extending, or improving roads, streets, alleys and sidewalks, establishing, extending, enlarging, or improving any of the public enterprises listed in N.C. Gen. Stat. § 160A-311, and establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic lines and systems; and

WHEREAS, the City is authorized to institute any and all necessary legal actions under Chapter 40A of the North General Statutes to condemn and appropriate private property for certain public purposes; and

WHEREAS, the City has determined that it is necessary and in the public interest to acquire property in fee simple for the construction of a public road sometimes referred to as the "Linkside Connector" ("the Project") and

WHEREAS, the City finds that the acquisition and improvement of property in the Project area is necessary and serves the public purposes of:

- a. Improving the function and appearance of those areas,
- b. Providing safer access to other public roads for nearby property owners, tenants, invitees, and guests, and
- c. Reducing the amount of U.S. Highway 64/N.C. Highway 18/N.C. Highway 90 ("Wilkesboro Boulevard") traffic directly accessing and leaving nearby properties by intersections uncontrolled by traffic lights; and

WHEREAS, the City has determined that it is necessary to acquire by condemnation on a permanent basis portions of the properties identified in "Exhibit A" attached hereto and incorporated by reference (the "Condemned Properties"), to complete the Project.

NOW, THEREFORE BE IT RESOLVED that:

1. The City adopts as true and correct the foregoing recitals and incorporates them as findings herein.
2. For the purpose specified above, it is necessary, practical, and in the best interest of the public and the City that the City acquire in its name fee simple

title to portions of the Condemned Properties as may be required and which are necessary for completion of the Project.

3. The City, its officers, employees and attorneys, including designated outside counsel if necessary, be and are hereby authorized and directed to institute such actions as may be proper for the acquisition of fee simple interests in portions of the Condemned Properties by eminent domain proceedings under Chapter 40A of the North Carolina General Statutes, and to prepare, sign, execute, serve, publish, and file in the name of the City all eminent domain papers, affidavits, and pleadings. The attorneys are authorized to prepare such other instruments and documents as may be necessary in connection therewith.

4. The City finds and determines that portions of the Condemned Properties are necessary for the public purposes of construction of the Project and hereby authorizes the acquisition of said Condemned Properties by eminent domain proceedings. The City further authorizes the City Attorney, his staff or designated outside counsel to correct minor errors or scrivener's errors to said descriptions, if any, with regard to the condemnation proceeding without further action of the Council.

5. The City Manager is authorized to have the construction plans updated, revised, or corrected, and to use such plans in the condemnation actions, including committing to said plans, updates, revisions or corrections, without further action by this Council.

6. The City finds and determines that just compensation for the taking in each particular case is as follows:

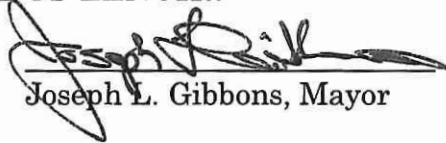
- a. David L. and Doris E. Williams
340 Wilkesboro Blvd SE, Lenoir, NC, 28645
Deed Book 1518 at Page 319 and Deed Book 1596 at Page 1674,
Caldwell County Register of Deeds
Caldwell County Tax PINs 2759473592 and 2759474564
\$14,600.00
- b. John R. Flowers, Jr.
320 Wilkesboro Blvd SE, Lenoir, NC, 28645
Deed Book 1587, Page 563, Caldwell County Register of Deeds
Caldwell County Tax PIN 2759473522
\$6,925.00

THIS RESOLUTION shall become effective immediately upon adoption.

ADOPTED this the 20th day of July, 2021.

CITY OF LENOIR:

By:


Joseph L. Gibbons, Mayor

ATTEST:


Shirley M. Cannon, City Clerk

CITY OF LENOIR, NC
CHARTERED
JANUARY 28, 1851

SEAL