

**LENOIR CITY COUNCIL
TUESDAY, MARCH 1, 2022
6:00 P.M.**

PRESENT: Mayor Joe Gibbons presiding. Councilmembers present were Jonathan Beal, Todd Perdue, Ike Perkins, Mayor Pro-Tem Crissy Thomas, Ralph Prestwood, David Stevens and City Attorney Timothy J. Rohr, City Manager Scott Hildebran, City Clerk Shirley Cannon, Police Chief Brent Phelps, and Communications Director Joshua Harris.

ZOOM: Councilmember Kent Greer, Fire Chief Ken Hair, Recreation Director Kenny Story, Economic Development Director Kaylynn Horn, Finance Director Donna Bean, Planning Director Jenny Wheelock, Public Works Director Jared Wright, and Public Utilities Director Radford Thomas.

Others in attendance Candace Simmons, Caldwell Free Press.

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.

**CONDOLENCES; FAMILY OF
STEVEN STEWART:**

- B. On behalf of City Council, Mayor Gibbons offered condolences to the family of Mr. Steven Stewart due to the passing of his mother, Sandra Stewart, earlier in the week. Mr. Stewart serves on the ABC Board.

**COMMENDED; PUBLIC WORKS
DIRECTOR JARED WRIGHT:**

- C. On behalf of City Council, Mayor Gibbons commended Jared Wright, Director of Public Works and Engineering, for his service and professionalism during his tenure with the City. Director Wright submitted his resignation effective Friday, March 4 to accept another position.

Mayor Gibbons thanked Director Wright for his knowledge and ability and stated he would be greatly missed. Mayor Gibbons also remarked that everyone enjoyed working with Director Wright and wished him the very best in his new endeavors.

Director Wright thanked Mayor Gibbons and City Council and remarked it was an honor to work with the City of Lenoir and Council.

**COMMENDED; JOSHUA HARRIS, COMMUNICATIONS DIRECTOR
& LESTER WHITTINGTON, MLK CENTER DIRECTOR; BLACK HISTORY MONTH:**

- D. On behalf of City Council, Mayor Gibbons commended Joshua Harris, Communications Director, and Lester Whittington, Martin Luther King, Jr. Center Director, for the great articles that were published about Black History Month along with the outstanding displays that Director Whittington put together at the MLK Center in honor of Black History Month that was celebrated during the month of February.

Mayor Gibbons also thanked Candace Simmons, Caldwell Free Press, for the great job she has done covering all of the events. It was noted additional events would be held to celebrate Black History Month in the near future.

ANNUAL REPORT; POLICE

DEPARTMENT: E. Chief of Police, Brent Phelps, presented the Police Department's 2021 Annual Report to City Council.

A copy of the full report is available online at www.cityoflenoir.com/police.

Chief Phelps discussed the changes to the National Incident-Based Reporting System (NIBRS) and reviewed the highlights of the report. He stated that, due to the data numbers decreasing in 2020 because of the pandemic, the Department compared data from years 2019 and 2021 which will be their new baseline.

Chief Phelps shared there was an increase in homicides, weapons violations, and domestic cases possibly due to people being home and confined during the pandemic. He further shared the number of commitments for mental health services almost doubled, but said he is unsure of the reason for it. In addition, Chief Phelps reported the number of overdoses increased and Officers administered the drug Narcan 55 times and saved 54 lives. He clarified for Council that all police officers received training in administering Narcan. Chief Phelps expressed major concern regarding the level of addiction in individuals and pointed out the threat of going to jail does not matter to them.

Chief Phelps stated there were 46 incidents of use of force by Officers and explained that, although an Officer may pull their weapon or taser and not use it, it still has to be documented as a use of force. Next he briefly shared information about the K-9 dogs. He stated they were used during search warrant situations and elevated situations.

Next, Chief Phelps reported most car crashes occur between Smith Crossroads and Excelsa due to the large number of ingress/egress options that are available at businesses located on US Highway 321. He emphasized the Department's goal is to slow people down before they reach the main intersection.

In addition, Chief Phelps reported the North Carolina League of Municipalities (NCLM) is currently assessing their Departmental policies in order to make sure the Department is following all risk assessment guidelines. When the NCLM's assessment is complete, Staff will review the report with City Council. Once completed, the City should see a reduction in insurance rates.

Also, he shared the Department is currently working on succession planning due to upcoming retirements and shared that fewer people are choosing law enforcement as a career. Chief Phelps pointed out the Department had 22,000 calls for service and 136 nuisance cases. He also showed a picture of the Department's new police car color and design.

On behalf of City Council, Mayor Gibbons thanked Chief Phelps for the good report and for all the Department does in keeping the citizens of Lenoir safe every day.

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

III. CONSENT AGENDA ITEMS

- A. Minutes: Approval of the minutes of the City Council meeting of Tuesday, February 15, 2022 as submitted.
- B. Minutes: Approval of the closed session minutes of the City Council meeting of Tuesday, February 15, 2022, as reviewed by the City Attorney, City Council and City Manager.
- C. Minutes: Approval of the minutes of the Committee of the Whole meeting of Tuesday, February 22, 2022 as submitted.
- E. Final Change Order No. 1 & Closeout of Construction Contract; Hotel Street Extension Project: Staff recommends approval of the Final Adjusting Change Order No. 1 and moving forward with the closeout of the construction contract for the Hotel Street Extension Project. **Please note that this action only refers to closeout of the construction contract. The project budget ordinance will remain active until pending right of way acquisitions are completed.** (A copy of the Final Adjusting Change Order No. 1 is hereby incorporated into these minutes by reference. Refer to page 63.)
- F. Final Offer to Purchase Real Property; Parkview Subdivision: Approval of the Final Offer to Purchase Real Property by resolution in the amount of \$19,000 following submission of no upset bids, and as submitted by Wild Winds Farms, Inc. to purchase the nine (9) lots owned by the City of Lenoir located in the Parkview Subdivision. Parcel numbers are: 09148 2 2, 09148 2 21, 09148 2 23, 09148 2 25, 09148 2 29, 09148 2, 69, 09148 2, 10, 09148, 2 34, 09148 2, 47 as submitted. (A copy of the resolution is hereby incorporated into these minutes by reference. Refer to page 64-65.)

Councilmember Perkins moved to remove Item D. from the Consent Agenda for additional clarification and discussion. By consensus of the Council, this item was removed from the Consent Agenda.

First Motion

Upon a motion by Councilmember Perkins, Council voted 7 to 0 to approve items A, B, C, E and F on the Consent Agenda as recommended and as presented by City Manager Hildebran.

- D. Authorizing Resolution; Mattern & Craig, Inc.: Approval of a Resolution authorizing the City Manager to enter into a Consulting Agreement with Mattern & Craig, Inc. for temporary Administrative and Management Services Assistance as submitted.

(A copy of the resolution and consulting agreement is hereby incorporated into these minutes by reference. Refer to page 66-71.)

City Manager Hildebran explained the purpose of the resolution and agreement was for the City to have additional assistance available three days a week due to the recent resignation of our Public Works Director. Mr. Hildebran said this individual would also assist Radford Thomas, Public Utilities Director, as needed.

Second Motion

Following a brief discussion and upon a motion by Councilmember Perkins, Council voted 7 to 0 to approve the Authorizing Resolution authorizing the City Manager to enter into a Consulting Agreement with Mattern & Craig, Inc. for temporary Administrative and Management Services Assistance as submitted.

IV. REQUESTS AND PETITIONS OF CITIZENS

V. REPORTS OF BOARDS AND COMMISSIONS

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

A. Items of Information

CALDWELL EDC: 1. The Caldwell County Economic Development Commission (EDC) will meet on Tuesday, March 8 at 8:00 a.m.

LENOIR BUSINESS ADVISORY BOARD: 2. The Lenoir Business Advisory Board (LBAB) will meet on Thursday, March 10 at 6:00 p.m.

CITY/COUNTY SERVICES COMMITTEE: 3. The City/County Services Committee will meet on Monday, March 14 at noon.

NATIONAL LEAGUE OF CITIES CONFERENCE: 4. The National League of Cities (NLC) Congressional City Conference will be held in Washington, DC, on March 14 through 16. City Manager Scott Hildebran, City Attorney T.J. Rohr and Councilmember Jonathan Beal will be attending.

INTRODUCTION/WELCOME; INTERIM PUBLIC WORKS DIRECTOR: 5. Mayor Gibbons introduced and welcomed Mr. Ed Evans who will be filling in as the City's Interim Public Works Director until the position is filled. Mayor Gibbons informed Mr. Evans that everyone is looking forward to working with him.

B. ITEMS FOR COUNCIL ACTION

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

ANNOUNCEMENT; PLANNING BOARD VACANCY:

- A. Mayor Gibbons announced a vacancy exists on the Lenoir Planning Board due to the resignation of board member Kent Greet who resigned due to being appointed by City Council. Mayor Gibbons said he would be presenting an individual for consideration of approval by Council in the near future.

IX. REPORT AND RECOMMENDATIONS OF COUNCILMEMBERS

X. ADJOURNMENT

A. There being no further business, the meeting was adjourned at 6:44 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 (9) nine vacant parcels located in the Parkview Subdivision acquired via tax foreclosure, (Parcel numbers are: 09148 2 2, 09148 2 21, 09148 2 23, 09148 2 25, 09148 2 29, 09148 2 69, 09148 2 10, 09148 2 34, 09148 2 47, and more particularly described on the following pages); 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 (9) nine vacant parcels described above, in the amount of \$19,000, submitted by Wild Winds Farm's, LLC; and

WHEREAS, Wild Winds Farm's LLC has paid the required five percent (5%) deposit on his offer;

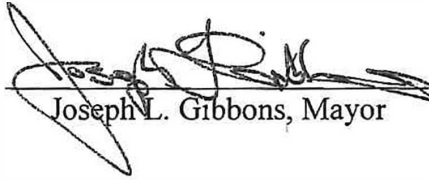
NOW, THEREFORE, BE IT RESOLVED, the LENOIR CITY COUNCIL of the City of Lenoir resolves that:

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 Wild Winds Farm's, LLC.

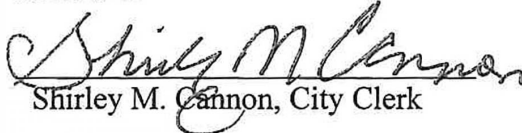
This the 15th day of February, 2022.

SEAL



Joseph L. Gibbons, Mayor

ATTEST:



Shirley M. Cannon, City Clerk

CITY OF LENOIR, NC
CHARTERED
JANUARY 28, 1851
SEAL

OFFICE OF THE MAYOR
Joseph L. Gibbons



Resolution Authorizing the City Manager to Enter into a Consulting Agreement with Mattern & Craig, Inc. for Temporary Management Services Assistance

WHEREAS, the City of Lenoir ("the City"), a North Carolina municipal corporation, was established in 1841 and incorporated in 1851; and

WHEREAS, Mattern & Craig, Inc. ("M&C"), founded in 1978 in Roanoke, Virginia is an employee-owned, professional engineering and surveying firm with offices in Roanoke, Virginia; Kingsport & Johnson City, Tennessee (Tri-Cities); Asheville & Hickory, NC; and Charleston, SC; and

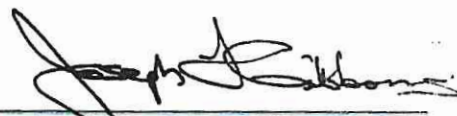
WHEREAS, the City is in need of temporary administrative and management services assistance for the next few months as the City initiates the recruitment process for the Public Works Director position; and

WHEREAS, the City and M&C desire to enter into a Consulting Agreement (the "Agreement") for purpose of M&C providing temporary administrative and management services assistance to the City.

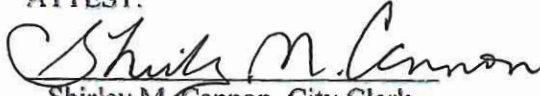
NOW BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LENOIR, NORTH CAROLINA: The City Manager is hereby authorized to execute, on behalf of the City, a Consulting Agreement, by and between the City and M&C temporary administrative and management services assistance for the next few months as the City initiates the recruitment process for the Public Works Director position.

Adopted this the 1st day of March, 2022.

SEAL


Joseph L. Gibbons, Mayor

ATTEST:


Shirley M. Cannon, City Clerk

Post Office Box 958 • Lenoir, North Carolina 28645-0958 • (828) 757-2200



This Consulting Agreement, dated effective March 1, 2022 (this "Agreement"), is made and entered into by and among City of Lenoir (the "City") and Mattern & Craig, Inc. (the "Consultant").

ARTICLE 1 SCOPE OF WORK

1.1 Services. The City has engaged Consultant to provide management services in connection with the City's Public Works Department and associated, ongoing projects undertaken by the City. Consultant will provide assistance to the City Manager and the Department in providing guidance and directive in day-to-day operations and general project progress. Consultant shall relay any required executive decisions to either the City Manager or the Public Utilities Director and receive other specific directives for consulting services from these City representatives.

1.2 Time and Availability. Consultant shall devote 24 hours per week for the month of March in performing the services for the City as stated herein. Consultant shall typically perform such consulting services throughout a continuous 3-day period each week giving due regard to the needs of the City's daily business. However, the Consultant shall have discretion in selecting the days and times according as its schedule demands. If the City deems it necessary for the Consultant to provide more than 24 hours in any given week, Consultant is not obligated to undertake such work until the Consultant and City have agreed on future schedule adjustment in the remaining weeks. Upon completion of the first month's service, the Consultant and City will review the performance, Departments needs, and effectiveness of this arrangement to determine if continuation of the services is warranted and/or agreeable to both parties. Extension of this agreement shall be made in writing 3 days in advance of the 1st day of each subsequent month.

1.3 Confidentiality. In order for Consultant to perform the consulting services, it may be necessary for the City to provide Consultant with Confidential Information (as defined below) regarding the City's business and products. The City will rely heavily upon Consultant's integrity and prudent judgment to use this information only in the best interests of the City.

1.4 Standard of Conduct. In rendering consulting services under this Agreement, Consultant shall conform to normal professional standards of work and business ethics. Consultant shall not use time, materials, or equipment of the City without the prior written consent of the City. In no event shall Consultant take any action or accept any assistance or engage in any activity that would result in conflict of interest or guarantee results of work performed by or for the City.

1.5 Outside Services. Consultant shall not use the service of any other person, entity, or organization in the performance of Consultant's duties without the prior written consent of an authorized officer of the City. Should the City consent to the use by Consultant of the services of any other person, entity, or organization, no information regarding the services to be performed under this Agreement shall be disclosed to that person, entity, or organization until such person, entity, or organization has executed an agreement to protect the City.

1.6 **Reports.** Consultant shall periodically provide the City with written reports of his or her observations and conclusions regarding the consulting services. Upon the termination of this Agreement, Consultant shall, upon the request of City, prepare a final report of Consultant's activities.

ARTICLE 2 INDEPENDENT CONTRACTOR

2.1 **Independent Contractor.** Consultant is an independent contractor and is not an employee, partner, or co-venturer of, or in any other service relationship with, the City. The manner in which Consultant's services are rendered shall be within Consultant's sole control and discretion. Consultant is not authorized to speak for, represent, or obligate the City in any manner without the prior express written authorization from an authorized officer of the City.

2.2 **Taxes.** Consultant shall be responsible for all taxes arising from compensation and other amounts paid under this Agreement, and shall be responsible for all payroll taxes and fringe benefits of Consultant's employees. Neither federal, nor state, nor local income tax, nor payroll tax of any kind, shall be withheld or paid by the City on behalf of Consultant.

2.3 **Benefits.** Consultant and Consultant's employees shall not be eligible for, and shall not participate in, any employee pension, health, welfare, or other fringe benefit plan of the City. No workers' compensation insurance shall be obtained by City covering Consultant or Consultant's employees.

ARTICLE 3 COMPENSATION FOR CONSULTING SERVICES

3.1 **Compensation.** The City shall pay to Consultant \$175 per hour for services rendered to the City under this Agreement. The monthly compensation shall be paid on the first of the month following the month the services were provided. The monthly compensation shall be paid *based on required weekly time documentation* submitted to the City Manager on Tuesday, each week.

3.2 **Reimbursement.** The City agrees to reimburse Consultant for all actual reasonable and necessary expenditures, which are directly related to the consulting services. These expenditures include, but are not limited to, expenses related to travel (i.e., meals, parking, mileage, etc.), telephone calls, and postal expenditures. Expenses incurred by Consultant shall be reimbursed by the City within 15 days of Consultant's proper written request for reimbursement.

ARTICLE 4 TERM AND TERMINATION

4.1 **Term.** This Agreement shall be effective as of March 1st, 2022, and shall continue in full force and effect for 1 month with allowance for extensions up to 3 consecutive months.

The City and Consultant may negotiate to extend the term of this Agreement and the terms and conditions under which the relationship shall continue beyond this agreed upon Term.

4.2 Termination. The City may terminate this Agreement for "Cause," after giving Consultant written notice of the reason. Cause means: (1) Consultant has breached the provisions of Article 5 or 6 of this Agreement in any respect, or materially breached any other provision of this Agreement and the breach continues for 30 days following receipt of a notice from the City; (2) Consultant has committed fraud, misappropriation, or embezzlement in connection with the City's business. In the event of any termination, the Consultant will be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.

4.3 Responsibility upon Termination. Any equipment provided by the City to the Consultant in connection with or furtherance of Consultant's services under this Agreement, including, but not limited to, vehicles, computers, laptops, and personal management tools, shall, immediately upon the termination of this Agreement, be returned to the City.

ARTICLE 5 CONFIDENTIAL INFORMATION

5.1 Obligation of Confidentiality. In performing consulting services under this Agreement, Consultant may be exposed to and will be required to use certain "Confidential Information" (as hereinafter defined) of the City. Consultant agrees that Consultant will not and Consultant's employees, agents, or representatives will not use, directly or indirectly, such Confidential Information for the benefit of any person, entity, or organization other than the City, or disclose such Confidential Information without the written authorization of the President of the City, either during or after the term of this Agreement, for as long as such information retains the characteristics of Confidential Information.

5.2 Definition. "Confidential Information" means information not generally known and proprietary to the City or to a third party for whom the City is performing work, including, without limitation, information concerning any patents or trade secrets, confidential or secret designs, processes, formulae, source codes, plans, devices or material, research and development, proprietary software, analysis, techniques, materials, or designs (whether or not patented or patentable), directly or indirectly useful in any aspect of the business of the City, any vendor names, customer and supplier lists, databases, management systems and sales and marketing plans of the City, any confidential secret development or research work of the City, or any other confidential information or proprietary aspects of the business of the City. All information which Consultant acquires or becomes acquainted with during the period of this Agreement, whether developed by Consultant or by others, which Consultant has a reasonable basis to believe to be Confidential Information, or which is treated by the City as being Confidential Information, shall be presumed to be Confidential Information.

5.3 Property of the City. Consultant agrees that all plans, manuals, and specific materials developed by the Consultant on behalf of the City in connection with services rendered under this Agreement, are and shall remain the exclusive property of the City. Promptly upon

the expiration or termination of this Agreement, or upon the request of the City, Consultant shall return to the City all documents and tangible items, including samples, provided to Consultant or created by Consultant for use in connection with services to be rendered hereunder, including, without limitation, all Confidential Information, together with all copies and abstracts thereof.

ARTICLE 6 CONFLICT OF INTEREST AND NON-SOLICITATION

6.1 Conflict of Interest. Consultant covenants and agrees not to consult or provide any services in any manner or capacity to any outside agent that creates a direct conflict of interest with the City during the duration of this Agreement. A direct conflict of interest with the City for purposes of this Agreement is defined as any individual, partnership, corporation, and/or other business entity that would benefit from an engagement in the business of contracting with the City.

6.2 Non-Solicitation. Consultant covenants and agrees that during the term of this Agreement, Consultant will not, directly or indirectly, through an existing corporation, unincorporated business, affiliated party, successor employer, or otherwise, solicit, hire for employment or work with, on a part-time, consulting, advising, or any other basis, other than on behalf of the City any employee or independent contractor employed by the City while Consultant is performing services for the City.

ARTICLE 7 GENERAL PROVISIONS

7.1 Construction of Terms. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, that provision shall be severed and shall not affect the validity or enforceability of the remaining provisions.

7.2 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws (and not the laws of conflicts) of the State of North Carolina.

7.3 Complete Agreement. This Agreement constitutes the complete agreement and sets forth the entire understanding and agreement of the parties as to the subject matter of this Agreement and supersedes all prior discussions and understandings in respect to the subject of this Agreement, whether written or oral.

7.4 Dispute Resolution. If there is any dispute or controversy between the parties arising out of or relating to this Agreement, the parties agree that such dispute or controversy will be negotiated in good faith for a period of 7 days from date of notice of all disputes prior to exercising their rights under law. Except where clearly prevented by the area in dispute, both parties agree to continue performing their respective obligations under this Agreement until the dispute is resolved. If the City determines no resolution to a dispute can be reached, City may elect termination of the Agreement under Article 4 without initiating legal proceedings against the Consultant related to the Consultant's services.

7.5 Modification. No modification, termination, or attempted waiver of this Agreement, or any provision thereof, shall be valid unless in writing signed by the party against whom the same is sought to be enforced.

7.6 Waiver of Breach. The waiver by a party of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any other or subsequent breach by the party in breach.

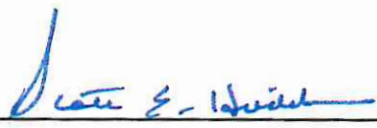
7.7 Successors and Assigns. This Agreement may not be assigned by either party without the prior written consent of the other party; provided, however, that the Agreement shall be assignable by the City without Consultant's consent in the event the City is acquired by or merged into another corporation or business entity. The benefits and obligations of this Agreement shall be binding upon and inure to the parties hereto, their successors and assigns.

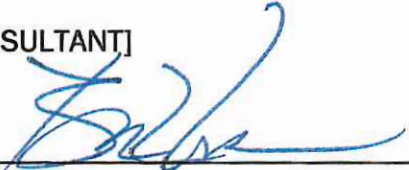
7.8 No Conflict. Consultant warrants that Consultant has not previously assumed any obligations inconsistent with those undertaken by Consultant under this Agreement.

IN WITNESS WHEREOF, this Agreement is executed as of the date set forth above.

[CITY]

[CONSULTANT]

By: 

By: 

Title: CITY MANAGER

Title: PRINCIPAL

Date: 3/1/2022

Date: 3/4/22