

**COMMITTEE OF THE WHOLE
CITY HALL, THIRD FLOOR**

TUESDAY, OCTOBER 25, 2022

8:30 A.M.

Present: Mayor Pro-Tem Crissy Thomas, Kent Greer, Ike Perkins, Jonathan Beal, and David Stevens.

Zoom: Mayor Joe Gibbons participated in the meeting via Zoom.

Absent: Councilmembers Todd Perdue and Ralph Prestwood.

Staff Present: City Manager Scott Hildebran, City Clerk Shirley Cannon, Finance Director Donna Bean, Economic Development Director Kaylynn Horn, Public Services Director Radford Thomas, Public Works Operations Manager Jon Hogan, Public Utilities Operations Manager Jeff Church, Parks & Recreation Director Kenny Story, Fire Chief Ken Hair, Police Chief Brent Phelps, Downtown Engagement Coordinator, Matthew Anthony Planning Director Jenny Wheelock, Code Enforcement Robert Teague and Communications Director Joshua Harris.

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

II. Citizen Comment

III. Committee Items:

A. Update; Public Services: Radford Thomas, Public Services Director presented the following items for consideration of approval by City Council.

1. Engineering Services Agreement; McGill Associates: Staff recommends City Council approval to enter into a contract for engineering services with McGill Associates for the Finley Area Water System Improvements Project as submitted.

A copy of the Engineering Services Agreement is hereby attached to these minutes as information.

Director Thomas reviewed the background of the project and stated the City received a Notice of Intent for the \$6.3 million funding award, which has to be spent by December 2026. Director Thomas also stated the project has to be submitted by February 2023. He further stated that McGill Associates is ready to begin the project which will include a 100,000 gallon water tank along with all of the 2" pipe being replaced with 6" pipe.

City Manager Scott Hildebran informed Council that Representative Destin Hall was successful in helping the City obtain the funding and asked City Council to forward their thanks and appreciation to him.

Motion

Upon a motion by Councilmember Perkins, City Council voted 5 to 0 to adopt the Engineering Services Agreement with the City of Lenoir and McGill Associates as presented and as recommended by City Staff.

Additional updates dates from Public Services Director Radford Thomas:

- Reported the paperwork for the purchase of the Joyceton WaterWorks has been signed.
 - Stated he has worked with Sharon Harmon, Yokefellow, regarding the Crossroads Sewer Project.
 - Currently has several grant applications underway including the Asset Inventory Assessment for Water and Sewer, and Brownfields grant. The BRIC grant has been re-submitted through other programs for the Arrowood Bridge Replacement Project.
 - Staff has completed some Brownfield Assessment work at The Campus.
2. Software Service Agreement; Norfield Development Partners, LLC: Staff recommends City Council approval to enter into a contract for software services between the City of Lenoir and Norfield Development Partners, LLC as presented and as submitted.

Public Utilities Manager Jeff Church clarified this request is for a software program which will benefit the City with 811 utility location.

Motion

Upon a motion by Councilmember Greer, City Council voted 5 to 0 to approve a Software Service Agreement between the City of Lenoir and Norfield Development Partners, LLC as presented.

3. Easement at Intersection of Powell Road & Nuway Circle: City Manager Hildebran informed Council that Blue Ridge Energy owns the property located at the intersection of US Hwy 321, Nuway Circle, and abutting Powell Road N.E. A boundary survey was done in 2019 indicating NCDOT maintains an easement on tax parcel 2850244270 – Blue Ridge Energy property.

As background information, on March 16, 1999, the City of Lenoir adopted a resolution requesting that NCDOT approve Powell Road as a City maintained street and that the street be added to the official Powell Bill Map.

Per a request from Blue Ridge Energy and on advice of City Attorney Rohr, it is requested that City Council formally authorize a letter to NCDOT stating that the city does not oppose DOT removing this easement from Blue Ridge's property. At that point, Blue Ridge Energy and NCDOT can then decide how best to document the release of the easement.

Motion

Following a brief discussion, and upon a motion by Councilmember Beal, City Council

voted 5 to 0 to authorize City Attorney T. J. Rohr to send a letter to the NC Department of Transportation (NCDOT) stating that the City does not oppose NCDOT removing this easement from Blue Ridge's Energy's property.

D. Update; Public Utilities-Jeff Church

- The water plant is conducting routine maintenance on the sediment basins, including hosing the basins down. He thanked the Fire Department for the loaning of the hoses and equipment.
- Staff continues to work on the final punch list items for the Mueller Water Meter Replacement Project. A member of the Mueller team will be on site Tuesday through Thursday of this week.

E. Update; Public Works-Jon Hogan reported on the following items:

Operational:

- Reported that fall paving will begin on Tuesday, November 1. They will start with Swanson Drive, Ronquill Park Place and Stage Street.
- Leaf season begins November 1. Crews are currently training and preparing for the season.

Projects:

1. Hospital Avenue Sidewalk Project – awaiting DOT approval of R-O-W certification. Draft bid documents and 100% construction plans have been submitted to EBS portal awaiting approval.
2. Lenoir Fire Department Infrastructure Sinkhole – WK Dickson has provided a civil drawing for (4) repairs and/or replacement options as well as construction estimates that range from \$2.2 million to \$3.6 million. Staff will seek further estimates for comparison.
3. Greenway Culvert (Red Roof) –received an estimate in the amount of a lump sum of \$62,000 from Shotcrete for pipe repair. Currently awaiting a quote from Mike Willis for an estimate of the project.

Councilmember Perkins asked about the timeline for Scroggs Street to be paved with Director Hogan replying this street is ranked low on the list of streets to be paved, but stated he would check into it.

V. Community Development

A. Lenoir Business Advisory Board: Kaylynn Horn, Economic Development Director, stated the Board met on Thursday, October 13. Minutes of the September 8 meeting are submitted as information. Director Horn presented the following report:

1. Social District Operations & Management Plan: Staff recommends approval of the Social District Operations and Management Plan as submitted.

Main Street Event Coordinator Matthew Anthony thanked City Council for their efforts and support. He said the social district is an exciting change and will make a difference. He stated it will be January 1, 2023 before the plan can be implemented.

A copy of the plan is attached to these minutes as information.

Chief Phelps stated the social district cannot be activated for 45 days and businesses will have to obtain a permit. He noted ALE will also be involved in the project. Staff will need to acquire the appropriate signage for sidewalks and establish boundaries within the downtown district.

Matthew Anthony also mentioned that training would be held on Monday, November 14 beginning at 6:00 p.m.

Motion

Upon a motion by Councilmember Beal, City Council voted 5 to 0 to adopt the Social District Operations & Management Plan as presented and as submitted.

- B. Lenoir Tourism Development Authority: The Lenoir Tourism Development Authority (LTDA) met on Thursday, October 13. Minutes of the June 30, 2022 meeting were submitted as information. No report was given at this time.
- C. Planning Board: Planning Director Wheelock reported the Planning Board did not meet in October as there were no business items to go before the Board. Director Wheelock introduced Robert Teague, the newly hired Code Compliance officer.

Director Wheelock also updated City Council on prospective development requests that may come before them for action in the next few months. She shared there may be a bid offer to purchase City owned property beside of 428 Folk Street.

Councilmember Stevens requested refurbishing the mile markers on the Greenway.

- D. Parks & Recreation Advisory Board: The Parks & Recreation Advisory Board met on Monday, October 24. Parks & Recreation Director Kenny Story, presented updates on the following items:
- Fall baseball ends tonight.
 - Basketball registration is ongoing and will end on November 18 for ages 4-13.
 - Lenoir Youth Soccer Association season will end the first week of November.
 - CCC&TI Women's Softball Team continues to practice at Optimist Park.
 - MLK Center will host a drive through Trick or Treat event on Monday, October 31 starting at 5:00 p.m.
 - App State Baseball Team & Coaches held a Baseball Clinic on Monday, October 17 from 5:30 p.m. – 7:30 p.m. Around 80 youth participated in the clinic. Thank you to the players and coaches for offering this clinic for our departments and our City.

- Parks & Recreation will be hosting a Pickleball Tournament on Friday, November 4 from 9:00 a.m. – 12:00 p.m. There are 12 men's teams and 12 women's teams. This event is a fundraiser for CCC&TI.
- The Pickleball courts as well as the tennis courts, skate park, and batting cages have new LED lighting installed on them. This project was funded through a Duke Energy incentive and the estimated cost of the project is \$4,900.00. A total of 58 new lights were installed.
- The lighting project at Mack Cook Stadium will begin once we receive the material and Duke Energy can schedule the installation.
- The Department received the paperwork for the PARTF grant agreement on October 21. Upon City Staff receiving a copy of the signed agreement between the City of Lenoir and the PARTF representatives in Raleigh, the City can move forward with the improvements at the Lenoir Aquatic & Fitness Center. The City has three years to complete the project.
- Work continues at The Campus with the HVAC system being installed.
- Reported a window was broken Saturday night at Mulberry Recreation by a youth who kicked a soccer ball against it. Staff reviewed the incident as it was captured on the security camera at Mulberry.

VI. Finance and Administration

A. September Financial Summary: Finance Director Donna Bean discussed the Financial Summary as of September 30, 2022. The over/under balance in the General Fund is \$11,018,348.23, Downtown District (\$128,511.86) and Water & Sewer Fund (\$999,779.37).

Director Bean stated expenditures in the General Fund are at 26% and should be around 25%. She reported the City has purchased equipment and other capital improvement items and noted the majority of the City's funding comes from property taxes

In addition, Director Bean stated the Downtown District's expenditures are at 51% of their budget due to the purchase of holiday decorations and other items. Director Bean reported the Water /Sewer Fund is on target with their revenues and expenditures are slightly above last year's purchases.

As information, Public Services Director Radford Thomas shared Staff is seeing a nine to twelve month lead-time on purchasing Capital Improvement items and the City may have to make some adjustments regarding rotating stock. Fire Chief Ken Hair remarked the timeline to purchase a new fire apparatus is currently two and a half years.

B. Job Description; Horticulture Specialist: Finance Director Bean reviewed a job description for the addition of a Horticulture Specialist for the City of Lenoir's Public Works Department for City Council's consideration of approval.

A copy of the job description is attached to these minutes as information.

Director Bean stated the purpose of the position is to make improvements to the downtown landscape. Public Works Director Jon Hogan mentioned they are working on a design for the Master Plan for downtown plus US Hwy 321, which is considered as the “gateway.”

Motion

Upon a motion by Councilmember Beal, City Council voted 5 to 0 to approve the job description for the position of a Horticulture Specialist for the City of Lenoir’s Public Works Department as submitted.

- C. Amendment; Personnel Policy: Finance Director Donna Bean recommends City Council approve the updates to the Personnel Resolution as presented. Director Bean stated the updates include changing the hiring rate to the minimum rate on the pay scale, which will help the City become more competitive in the job market. She also reported the title of Human Resources Officer would be changed to read as Human Resources Manager to better reflect the duties of the position.

A copy of the amendment to the Personnel Policy is attached to these minutes as information.

Motion

Upon a motion by Councilmember Perkins, City Council voted 5 to 0 to approve the recommended updates to the City of Lenoir’s Personnel Resolution as recommended by Finance Director Bean.

- D. Consideration of Employee Holiday Bonus: Finance Director Bean asked City Council for their consideration of approval of a holiday bonus for City employees this year. Director Bean stated funding would come from former lapsed salaries and no additional funding is needed from the General Fund. She stated this is the seventh year employees have received a bonus. Employees will receive a \$250.00 bonus check on Tuesday, November 22 following Council’s approval. Director Bean remarked the bonus is very much appreciated by employees.

A copy of the holiday bonus request is attached to these minutes as information.

Councilmember Stevens led a brief discussion regarding how the bonus boosts the morale of employees each year.

Motion

Upon a motion by Councilmember Stevens, City Council voted 5 to 0 to approve the \$250.00 Employee Holiday Bonus for City employees as presented and as requested by Finance Director Bean.

- E. Update; Public Communications: Joshua Harris, Public Information Officer, presented the Communications Report for the month of July. Director Harris reported there were 5 news releases, 193 photos, 4 videos, 164 social posts, 24 questions & answers and 5

e-sign ups. The website has 594 new followers, social reach is 187,958, and video views 3,336. There were 41,952 Facebook, Twitter, and Instagram followers.

Director Harris stated he has done several public service announcements for Foothills Radio Group recently and mentioned the Customer Service Team has sent out a new training video for everyone to watch. In addition, he shared the most popular items viewed on the website include Hospital Avenue, Finley Avenue and the Downtown Master Plan.

VII. Public Safety

A. Update; Police Department: Brent Phelps, Police Chief, presented the following item for City Council's consideration of approval.

1. Resolution; Surplus Property: Staff requests approval of a resolution declaring a badge and service weapon {Sig Sauer Model P220R .45 caliber (Serial Number 3 7 B 0 5 2 6 1 2)} of Sherry Beavers as surplus property.

A copy of the resolution is attached to these minutes as information.

Motion

Upon a motion by Councilmember Greer, City Council voted 5 to 0 to adopt the resolution declaring a badge and service weapon {Sig Sauer Model P220R .45 caliber (Serial Number 3 7 B 0 5 2 6 1 2)} as surplus property as recommended by Chief Phelps.

Next, Chief Phelps reported that 20 MPH speed limit signs and rumble strips have been put in place, based on City Council's last action, on Pennwood Street NE, Glenview Street NE, Circle Drive NE, and Ridgecrest Street NW in the Lower Creek area.

Chief Phelps gave an update on the new service weapons that were purchased with drug funds. He also mentioned Staff are currently completing fall in-service training for driving/firearms.

In addition, he mentioned Staff is still gathering information for their 3rd Quarterly Report and the report would be submitted at a later date.

B. Update; Fire Department, Quarterly Report: Fire Chief, Ken Hair, reviewed information in the Department's 3rd Quarterly Report for July, August & September as

follows:

- * Reported the purchase of the new truck for the Fire Marshall is more conducive to the functions of his duties.
- * Three of the four vacancies for full-time positions have been filled.
- * The response volume was up mainly due to an increase in medical and public service responses.

- * The Department ordered 4 new SCBAs from the Capital Outlay budget.
- * Staff is finishing up maintenance and testing on hydrants this week.
- * Staff has performed several fire prevention programs this month due to October being Fire Prevention Month.
- * Staff has provided several medical and ambulance standbys for football games and events.
- * They filled the last vacancy that was open in full-time earlier this month and the Department is now fully staffed for full-time positions and have one part-time position remains vacant.
- * The new hires for the Part-time Fire Inspection positions started work this month and everything is going well. Three people are working one day a week to help catch up on fire inspections and Staff will evaluate the program in January for efficiency and needs being met.

VIII. OTHER

- A. The November calendar was provided in packet as information listing committee meetings and upcoming events.

IX. ADJOURN

There being no further business, the meeting was adjourned at 9:45 a.m.

Attachments

Engineering Services Agreement w/McGill
Social District Operations & Management Plan
September Financial Plan
Horticulture Job Description
Surplus Resolution

AGREEMENT FOR ENGINEERING SERVICES

This AGREEMENT, made and entered into this the ____ day of _____ 2022, by and between the **City of Lenoir** (OWNER) and **McGill Associates, P.A.** (ENGINEER).

WHEREAS, the OWNER proposes to accomplish certain work for the Project entitled **Finley Area Water System Improvements** generally described as the installation of a 150,000 gallon elevated water tank, a duplex booster pump station, 15,000 linear feet of water lines and water line replacements, water service reconnections, fire hydrants, and all related appurtenance to create a new pressure zone.

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 DESIGN PHASE

- 2.1.1 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.
- 2.1.2 Conduct a route survey to provide topography of the proposed work area and to locate existing structures and conflicts.
- 2.1.3 Review preliminary design with OWNER for concurrence and acceptance.
- 2.1.4 Coordinate the provision of any subsurface investigation by others, if any, and assist with solicitations and preparing site maps identifying test locations.
- 2.1.5 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.
- 2.1.6 Prepare final design calculations for submission to review agencies.
- 2.1.7 Prepare and submit permit application and supporting documents to Public Water Supply Section to assist in obtaining the construction approval.
- 2.1.8 Prepare and submit permit application and supporting documents to Land Quality Section to assist in obtaining the erosion and sediment control approval, if required.
- 2.1.9 Respond to review agency comments and modify documents as necessary to achieve permit approvals.
- 2.1.10 Perform internal quality control and constructability reviews of the project.
- 2.1.11 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.
- 2.1.12 Submit final design plans to OWNER for concurrence and acceptance for bidding.
- 2.1.13 Furnish up to one (1) hard copy and one (1) electronic copy of the final design documents to the OWNER.

2.2 BIDDING AND AWARD PHASE

Upon written authorization from OWNER, ENGINEER shall:

- 2.2.1 Assist the OWNER in advertising, receiving, opening and evaluating bids.
- 2.2.2 Schedule a Pre-Bid Conference with all prospective bidders and the OWNER to address the project requirements and receive questions.
- 2.2.3 Consult with, and advise the OWNER as to the acceptability of contractors and subcontractors and make recommendations as to the lowest, responsive, responsible bidder.

- 2.2.4 Assist the OWNER in the preparation and execution of construction contracts and in checking Performance and Payment Bonds and Insurance Certificates for compliance.

2.3 FUNDING ADMINISTRATION

- 2.3.1 Review Contractor and OWNER documentation of DBE solicitations and Good Faith Efforts for completeness and submit to the funding agency for approval.
- 2.3.2 Prepare Project Bid documentation and coordinate with funding agency to secure approval of the funding contract.
- 2.3.3 Review all documentation submitted by the Contractor for reporting of compliance with funding requirements.
- 2.3.4 Review pay applications for approval and release of funds by the funding agency.
- 2.3.5 Review Davis-Bacon wage rate documentation as necessary.

2.4 CONSTRUCTION PHASE

Upon successful completion of the Bidding and Award Phase, and upon written authorization from OWNER, ENGINEER shall:

- 2.4.1 Provide General Administration of Construction Contract. Consult with OWNER and act as OWNER's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities, and authority of ENGINEER as assigned in the General Conditions shall not be modified, except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor will be issued through ENGINEER, which shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and the General Conditions except as otherwise provided in writing. ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractors, suppliers, or other individuals or entities performing or furnishing any of the Work. ENGINEER shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.
- 2.4.2 Provide a Construction Field Representative (CFR) to periodically observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents. During such visits and on the basis of on-site observations as an experienced and qualified design professional, keep the OWNER informed of the progress of the work, and endeavor to guard the OWNER against defects and deficiencies in the work of the Contractor.
- 2.4.3 The purpose of ENGINEER's visits and the representation by the Construction Field Representative, (CFR), will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the

Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. ENGINEER shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. However, ENGINEER shall give prompt notice to the OWNER whenever ENGINEER observes or otherwise becomes aware of any defect in the Project or of any material deviation of Contractor's work from the Contract Documents.

2.4.4 Based on ENGINEER's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

- a. Determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe Contractor's Work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).
- b. By recommending any payment, ENGINEER shall not thereby be deemed to have represented that observations made by ENGINEER to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment including final payment will impose on ENGINEER responsibility to supervise, direct, or control Contractor's Work in progress or for the means,

methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to OWNER free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

- 2.4.5 Recommend to OWNER that Contractor's Work be rejected while it is in progress if, on the basis of ENGINEER's observations, ENGINEER believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
- 2.4.6 The total construction contract time is assumed to be twelve (12) months. As part of this contract, field observation will be provided by a CFR on a part-time basis during active work. Additional requested CFR time will be considered Additional Services under Section 3 of this Agreement.
- 2.4.7 Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
- 2.4.8 Review and take action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and any approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Review of Shop Drawings and Samples identified as frivolous in the General Conditions of the construction contract documents, or review of substitute materials as defined in the same, shall be deemed as Additional Services.
- 2.4.9 Promptly after notice that Contractor considers the entire Work ready for its intended use, in company with OWNER and Contractor, conduct a pre-final observation visit to determine if the Work is substantially complete. If after considering any objections of OWNER, ENGINEER considers the Work substantially complete, ENGINEER shall deliver a certificate of Substantial Completion to OWNER, DWI, and Contractor.
- 2.4.10 In company with OWNER's representative, conduct a final observation visit to determine if the completed Work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall also provide a notice that the Work is acceptable to the best of ENGINEER's knowledge, information, and belief and based on the extent of the services provided by ENGINEER under this Agreement.

- 2.4.11 Schedule construction progress meetings as needed during active work periods with the OWNER, DWI, ENGINEER and all other applicable parties discuss matters related to the Project. Prepare and distribute minutes of the meeting to all parties.
- 2.4.12 Issue instructions to the Contractor from the OWNER as to interpretations and clarifications to the project design plans, specifications and contract documents.
- 2.4.13 Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by OWNER or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if ENGINEER in its discretion concludes that to do so would be inappropriate. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
- 2.4.14 Prepare information required to resolve problems due to actual field conditions and to respond to Requests for Information (RFI) from the Contractor.
- 2.4.15 Coordinate and track the testing of infrastructure and placing same into service for the project. Additional visits required due to work not being ready for testing, retesting, or Contractor scheduling conflicts shall be considered Additional Services.
- 2.4.16 Review the Contractor's final application for payment and make recommendation as to approval once all issues with the project final observation site visit have been completed and resolved.
- 2.4.17 Require such testing of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.
- 2.4.18 Review and determine the acceptability of any schedules that Contractor is required to submit to ENGINEER, including Progress Schedule, Schedule of Submittals and Schedule of Values.
- 2.4.19 Prepare for the OWNER a set of record drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished. One (1) hard copy and one (1) electronic PDF copy of the record drawings will be furnished to the OWNER.
- 2.4.20 Provide or make available all Project files and information to effect project closeout.

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 Performing acquisition services for properties and/or easements.
- 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 Additional or extended services during construction made necessary by prolongation of the construction contract, award of multiple contracts, or default by the Contractor under any prime construction contract if such construction contract is delayed beyond the original completion date.
- 3.8 Providing construction materials testing services.
- 3.9 Evaluation of unsuitable subgrade materials during construction.
- 3.10 Reviewing Shop Drawings and Samples identified as frivolous in the General Conditions of the construction contract documents, or review of substitute materials as defined in the same General Conditions.
- 3.11 Preparing to serve or serving as a witness for the OWNER in any litigation, condemnation or other legal or administrative proceeding involving the Project.
- 3.12 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.

Design and Permitting Phase	\$338,000
Bidding and Award Phase	\$18,000
Construction Phase	\$276,000
Funding Administration	\$35,000

6.2 PAYMENT FOR ADDITIONAL SERVICES

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

6.3 TIMES OF PAYMENT

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

6.4 GENERAL

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

SECTION 7 - GENERAL CONDITIONS

7.1 TERMINATION

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

7.2 OWNERSHIP OF DOCUMENTS

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

7.3 CHOICE OF LAW

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

7.4 OPINIONS OF PROBABLE COSTS

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

7.5 INSURANCE AND CLAIMS

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

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

7.6 SUCCESSORS AND ASSIGNS

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

7.7 INDEMNIFICATION

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

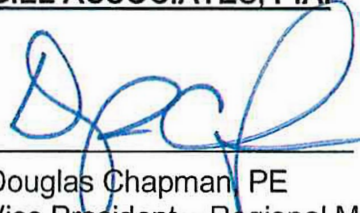
7.8 ENTIRE AGREEMENT

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

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

McGILL ASSOCIATES, P.A.

By: _____


Douglas Chapman, PE
Vice President – Regional 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, & Hall, P.C.
City Attorney



ATTACHMENT "A"
BASIC FEE SCHEDULE

August 2022

PROFESSIONAL FEES	I	II	III	IV
Senior Principal	\$245			
Principal – Regional Manager – Director	\$210	\$215	\$230	\$235
Practice Area Lead	\$180	\$195	\$210	\$220
Senior Project Manager	\$195	\$205	\$210	\$215
Project Manager	\$165	\$175	\$180	\$185
Project Engineer	\$125	\$135	\$150	\$160
Engineering Associate	\$110	\$115	\$120	\$125
Planner- Consultant – Designer	\$110	\$120	\$145	\$160
Engineering Technician	\$100	\$115	\$120	\$130
CAD Operator – GIS Analyst	\$80	\$90	\$100	\$105
Construction Services Manager	\$130	\$150	\$170	\$180
Construction Administrator	\$105	\$120	\$130	\$135
Financial Services Manager	\$125	\$135	\$145	\$155
Grant Administrator	\$110	\$120	\$135	\$145
Construction Field Representative	\$85	\$100	\$105	\$115
Environmental Specialist	\$85	\$95	\$100	\$105
Administrative Assistant	\$75	\$80	\$90	\$105

1. EXPENSES

- a. Mileage - \$0.70/mile
- b. Flow Monitoring Equipment: Pressure Flow Meter- \$400/wk.; Gravity Flow Meter - \$1,000/deployment
- c. 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.



SOFTWARE AS A SERVICE AGREEMENT

This **Software As a Service Agreement** (the "Agreement") is made as of September 29, 2022, ("Effective Date") between City of Lenoir with principal offices at 510 B Greer Circle SW, Lenoir, NC 28645 ("Customer") and Norfield Development Partners, LLC, a Delaware corporation, with its principal office at 181 Main Street Norwalk, CT ("Norfield").

And

The Customer wishes to obtain access to the SaaS Services AND Services from the Company, which the Company agrees to provide as per the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties intending to be legally bound hereby agree as follows:

BY ACCEPTING THIS AGREEMENT, IN COMPLIANCE WITH NORTH CAROLINA LAW, THE CUSTOMER AGREES TO THIS AGREEMENT. THIS AGREEMENT IS A LEGALLY BINDING CONTRACT BETWEEN THE CUSTOMER AND NORFIELD AND SETS FORTH THE TERMS THAT GOVERN THE LICENSE PROVIDED TO THE CUSTOMER HEREUNDER. IF THE UNDERSIGNED IS ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, THE UNDERSIGNED REPRESENTS THAT THE CUSTOMER HAS THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT. IF THE CUSTOMER DOES NOT AGREE TO THIS AGREEMENT, THE CUSTOMER MUST NOT DOWNLOAD, INSTALL, OR USE THE SOFTWARE, AND THE CUSTOMER MAY NOT USE THE SERVICES.

SECTION 1. DEFINITIONS.

1.1 "Affiliates" means an entity controlled by, under common control with, or controlling such party, where control is denoted by having fifty percent (50%) or more of the voting power (or equivalent) of the applicable entity. Subject to the terms and conditions of this Agreement, Affiliates may use the license granted hereunder.

1.2 "Agreement" means the Software As A Services Agreement, any applicable Product Addendum, and the Order Form.

1.3 "Devices" means (whether physical or virtual) a server, system, workstation, computer, mobile device, or end point upon which or through the Services are used and/or on which the Software is installed.

1.4 "Documentation" means the official user documentation prepared and provided by NORFIELD to the Customer on the use of the Services or Software (as updated from time to time). For the avoidance of doubt, any online community site; unofficial documentation, videos, white papers, or related media; or feedback do not constitute Documentation.

1.5 "Order Form" means the NORFIELD order page, product information dashboard, or other NORFIELD ordering document that specifies the Customer purchase of the Services, pricing, and other related information.

1.6 "Product Addendum(a)" means additional terms and conditions set forth in Section 16 that relate to the applicable Services, Software, or Documentation.



1.7 "Services" means the products and software services, including any application programming interface that accesses functionality, that are provided to the Customer by NORFIELD.

1.8 "Software" means the object code versions of any downloadable software provided by NORFIELD solely for the purpose of accessing the Services, including but not limited to an agent, together with the updates, new releases or versions, modifications or enhancements, owned and provided by NORFIELD to the Customer pursuant to this Agreement.

1.9 "User" means the list of persons authorized by NORFIELD to use the Services, Software, and Documentation. User(s) may only include the Customer employees, consultants, and contractors.

1.10 "The Customer Data" means data, files, or information accessed, used, communicated, stored, or submitted by the Customer or the Users related its use of the Services or Software.

SECTION 2. PROVISION OF SERVICES.

2.1 Services License. Upon payment of fees and subject to continuous compliance with this Agreement, NORFIELD hereby grants the Customer a limited, nonexclusive, non-transferable access, to use, and install (if applicable) the Services, Software, and Documentation during the Term (defined below). NORFIELD may deliver the Services or Software to the Customer with the assistance of its Affiliates, licensors, and service providers. The Customer may provide, make available to, or permit the Users to use or access the Services, the Software, or Documentation, in whole or in part, solely for the purpose of the Company's internal business operations.

SECTION 3. LICENSE RESTRICTIONS, OBLIGATIONS AND GRANTS.

3.1 Subject to the terms and conditions of this Agreement, NORFIELD grants to Customer during the Term of this Agreement the nontransferable, nonexclusive right to permit Users access. License Restrictions. The Customer may not (i) provide, make available to, or permit individuals other than the Users to use or access the Services, the Software, or Documentation, in whole or in part; (ii) copy, reproduce, republish, upload, post, or transmit the Services, Software, or Documentation (except for back-up or archival purposes, which will not be used for transfer, distribution, sale, or installation on the Customer's Devices); (iii) license, sell, resell, rent, lease, transfer, distribute, or otherwise transfer rights to the Services, Software, or Documentation unless as authorized in this Agreement; (iv) modify, translate, reverse engineer, decompile, disassemble, create derivative works, or otherwise attempt to derive the source code of the Services, Software, or Documentation; (v) create, market, distribute additions or enhancements or incorporate into another product the Services or Software without prior written consent of NORFIELD; (vi) remove any proprietary notices or labels on the Services, Software, or Documentation, unless authorized by NORFIELD; (vii) license the Services, Software, or Documentation if the Customer is a direct competitor of NORFIELD for the purposes of monitoring the availability, performance, or functionality or for any other benchmarking or competitive purposes; (viii) use the Services or Software to store or transmit infringing, libelous, unlawful, or tortious material or to store or transmit material in violation of third party rights, including privacy rights; (ix) use the Services or Software to violate any rights of others; (x) use the Services or Software to store or transmit malicious code, Trojan horses, malware, spam, viruses, or other destructive technology ("Viruses"); (xi) interfere with, impair, or disrupt the integrity or performance of the Services or any other third party's use of the Services; (xii) use the Services in a manner that results in excessive use, bandwidth, or storage; or (xiii) alter, circumvent, or provide the means to alter or circumvent the Services or Software, including technical limitations, recurring fees, or usage limits.



3.2 The Customer Obligations. The Customer acknowledges, agrees, and warrants that: (i) The Customer will be responsible for the Users' activity and compliance with this Agreement, and if the Customer become aware of any violation, the Customer will immediately terminate the offending User's access to the Services, Software, and Documentation and notify NORFIELD; (ii) the Customer will comply with all applicable local, state, federal, and international laws; (iii) the Customer will establish a constant internet connection and electrical supply for the use of the Services, ensure the Software is installed on a supported platform as set forth in the Documentation, and the Services and Software are used only with public domain or properly licensed third party materials; (iv) the Customer will install only the Software which is licensed hereunder; (v) the Customer have obtained sufficient consent and rights to access, use and store the Customer Data and any other system or network and will be solely responsible for the accuracy, security, quality, integrity, and legality of the same; and (vi) the Customer will keep the Customer registration information, billing information, and technical data accurate, complete, and current for as long as the Customer subscribe to the Services, Software and Documentation.

SECTION 4. PROPRIETARY RIGHTS.

4.1 Ownership of NORFIELD Intellectual Property. The Services, Software, and Documentation are licensed, not sold. Use of "purchase" in conjunction with licenses of the Services, Software and Documentation shall not imply a transfer of ownership. Except for the limited rights expressly granted by NORFIELD to the Customer, the Customer acknowledges and agrees that all right, title and interest in and to all copyright, trademark, patent, trade secret, intellectual property (including without limitation algorithms, business processes, improvements, enhancements, modifications, derivative works, information collected and analyzed in connection with the Services) and other proprietary rights, arising out of or relating to the Services, the Software, the provision of the Services or Software, and the Documentation, belong exclusively to NORFIELD or its suppliers or licensors. All rights, title, and interest in and to content, which may be accessed through the Services or the Software is the property of the respective owner and may be protected by applicable intellectual property laws and treaties. This Agreement gives the Customer no rights to such content, including use of the same. NORFIELD and its Affiliates are hereby granted a royalty-free, fully-paid, worldwide, exclusive, transferable, sub-licensable, irrevocable and perpetual license to use or incorporate into its products and services any information, data, suggestions, enhancement requests, recommendations or other feedback provided by the Customer or the Users relating to the Services or Software. All rights not expressly granted under this Agreement are reserved by NORFIELD.

4.2 Ownership of The Customer Data. The Customer and the Users retain all right, title, and interest in and to all copyright, trademark, patent, trade secret, intellectual property and other proprietary rights in and to the Customer Data. NORFIELD's right to access and use the same are limited to those expressly granted in this Agreement. No other rights with respect to the Customer Data are implied.

SECTION 5. TERM; TERMINATION.

5.1 Term. Unless terminated earlier in accordance with this Section, this Agreement will begin on the Effective Date and end thirty-six (36) months after the Effective Date (the "Initial Term"). Thereafter, the Term will automatically renew for additional successive twelve (12) month terms (each "Renewal Term" and collectively the "Initial Term", the "Term"). Either Party may forego automatic renewal of this agreement by giving the other Party at least thirty (30) days written notice of termination prior to the expiration of the then-current Term.



5.2 The Customer Termination Rights.

5.2.1 The Initial Term. Customer may terminate this contract at any time and for any reason by giving written notice of termination to Norfield no less than thirty (30) days prior to the effective date of termination. If the Customer terminates this contract by giving such notice, the Customer will remain responsible for paying for all services Norfield provides through the effective date of termination. If the Customer has made any advance payments for services Norfield is to provide after the effective date of termination, Norfield will refund the pro rata amount of such advance payments. If the Customer terminates this contract by giving such notice, then from the effective date of termination neither party will have any further obligation to the other except for those obligations that would have survived the end of the contract period.

5.3 NORFIELD Suspension or Termination Rights. NORFIELD may suspend or terminate this Agreement upon thirty (30) day prior written notice or immediately if the Customer become subject to bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors; the Customer infringes or misappropriates NORFIELD's intellectual property; or pursuant to the receipt of a subpoena.

5.4 Effect of Termination. The Customer will retrieve the Customer Data or copies of the Customer Data from NORFIELD prior to the effective termination date. Upon termination of this Agreement, the Customer acknowledges and agrees that NORFIELD will delete the Customer Data. The Customer Data, once deleted, is not able to be recovered. Without prejudice to any other rights, upon termination, The Customer must cease all use of the Services, Software, and Documentation and destroy or return (upon request by NORFIELD) all copies of the Services, Software, and Documentation. Sections 1, 3, 4, 5.4, 7, 8, 10, 11, 12, 13, 14, 15, and 16 (if applicable) shall survive any termination or expiration of this Agreement.

SECTION 6. UPGRADING/DOWNGRADING ACCOUNT TYPE.

The Customer may, at anytime during the Term, upgrade or downgrade to a different NORFIELD account type. The change in account type will take effect immediately. After an upgrade in account type, the Customer will be billed immediately for the additional fees due under the upgraded account type for the remaining time of the applicable Term. The amount due and owing for the upgraded account type will be reduced by what the amount the Customer have already paid for the applicable Term. In regard to a downgraded account type, the Customer will be credited on the next statement for the reduced fees due under the downgraded account type.

SECTION 7. FEES AND PAYMENT.

7.1 Price: Customer shall pay monthly license and subscription fee and one-time set up and configuration fee set forth in Price A. Payment shall be made by Customer to NORFIELD in full without any right of set-off or deduction except as set out in Section 6, and Customer shall pay the Price and such costs within 30 days from the date of invoice.

7.2 Tax: Customer shall be responsible for any applicable sales or use taxes or any value added or similar taxes payable with respect to the licensing of the Software, or arising out of or in connection with this Agreement, other than taxes levied or imposed based upon NORFIELD's income. In the event that NORFIELD pays any such taxes on behalf of Customer, NORFIELD shall invoice Customer for such taxes and Customer agrees to pay such taxes in accordance with this Agreement.

7.3 Interest: Failure by Customer to pay any amounts invoiced under this Agreement in full in accordance with this Agreement shall make Customer liable to pay NORFIELD interest at the rate of 1.5% per month on the remaining amount due, or at the highest amount permitted by



NORFIELD

applicable law such interest to accrue on a daily basis after as well as before any judgment relating to collection of the amount due.

SECTION 8. TAXES.

All fees are exclusive of taxes, and the Customer shall pay or reimburse NORFIELD for all taxes arising out of transactions contemplated by this Agreement. If the Customer is required to withhold any tax for payments due, the Customer shall gross the Customer payments to NORFIELD so that NORFIELD receives sums due in full, free of any deductions. The Customer will provide documentation to NORFIELD showing that taxes have been paid to the relevant taxing authority. "Taxes" means any sales, VAT, use, and other taxes (other than taxes on NORFIELD's income), export and import fees, customs duties and similar charges imposed by any government or other authority. The Customer hereby confirms that NORFIELD can rely on the name and address that the Customer provide to NORFIELD when the Customer agree to the fees or in connection with the Customer payment method as being the place of supply for sales tax and income tax purposes or as being the place of supply for VAT purposes where the Customer has established the Customer business.

SECTION 9. DATA; DATA PROTECTION.

9.1 Data. NORFIELD agrees that the Customer Data, if categorized in accordance with Section 9, shall be treated as confidential by NORFIELD. The Customer agree that the Customer and Users are responsible for maintaining and protecting backups of the Customer Data directly or indirectly processed using the Services and that NORFIELD is not responsible for exportation of, the failure to store, the loss, or the corruption of the Customer Data. The Customer agrees that NORFIELD and its Affiliates will collect, access, process, and use technical and related information about the Customer and the Users' use of the Services and Software, including the Customer internet protocol address, the hardware and software that the Customer utilizes, and various usage statistics, to assist with the necessary operation and function of the Services and Software and to facilitate in the provision of updates, support, invoicing, marketing, and research and development. NORFIELD may remove the Customer Data or any other data, information, or content of data or files used, stored, processed or otherwise by The Customer or the Users that NORFIELD, in its sole discretion, believes to be or is: (a) a Virus; (b) illegal, libelous, abusive, threatening, harmful, vulgar, pornographic, or obscene; (c) used for the purpose of spamming, chain letters, or dissemination of objectionable material; (d) used to cause offense, defame or harass; or (e) infringing the intellectual property rights or any other rights of any third party.

9.2 Data Protection. Each party shall comply with its respective obligations under applicable data protection laws. The Customer and Users warrant that through Customer's use of the Services during the Term: (i) in respect of the personal data the Customer or the Users collect, use, process, access, or disclose, the Customer alone shall determine the purpose for and manner in which personal data is, or will be, processed, if any; and (ii) the Customer warrants that it has obtained all necessary consents from Users or any other third party required under applicable law: (a) to disclose or process their personal data to NORFIELD, its Affiliates or their respective agents and (b) for NORFIELD, its Affiliates or their respective agents to collect, use, process, access, or disclose the personal data set forth herein or as otherwise designated by the Customer or Users. The Customer agrees that the Customer, the Users', and any third party personal data provided to NORFIELD, its Affiliates or their respective agents may be stored, transferred, and processed by NORFIELD, its Affiliates or their respective agents in any country in which NORFIELD, its Affiliates or their respective agents maintain

facilities or personnel, and the Customer and the Users consent to any such transfer of the personal data outside of the Customer (or the Users') country. The Customer warrants and undertakes that any



instructions given by the Customer to NORFIELD, its Affiliates or their respective agents will be in accordance with applicable law.

SECTION 10: WARRANTIES

10.1 Warranty of Functionality. NORFIELD warrants to Customer during the Term of this Agreement that the Service will comply with the material functionality described in the Software Materials and that such functionality will be maintained in all material respects in subsequent upgrades to the Service. Customer's sole and exclusive remedy for NORFIELD'S breach of this warranty shall be that NORFIELD shall use commercially reasonable efforts to correct such errors or modify the Service to achieve the material functionality described in the Software Materials within a reasonable period of time. However, NORFIELD shall have no obligation with respect to this warranty claim unless notified of such claim within (15) days of the first material functionality problem. Further, NORFIELD shall have no obligation with respect to this warranty claim, and Customer may not terminate the Agreement, where any alleged nonconformity is due to User error as reasonably determined by the parties after investigation and analysis by NORFIELD's Product Support Center. NORFIELD does not warrant that the Service will be free of non-material errors, bugs, or minor interruption, or that all such errors will be corrected.

10.2 Data Maintenance and Backup Warranty. NORFIELD warrants during the Term of this Agreement, that it will, at a minimum, utilize and maintain the backup procedures. In the event of a breach of this provision, NORFIELD will use commercially reasonable efforts to correct Customer Data or restore Customer Data within five (5) business days (or as otherwise agreed in writing between the parties depending upon the back-up options selected by Customer). Provided NORFIELD complies with the agreed to procedures, it shall be deemed to have satisfied its obligation with respect to this warranty.

10.3 Non-Infringement Warranty. NORFIELD warrants that it is the sole owner of and or has full power and authority to grant the license and use of the Service and other rights granted by the Agreement to Customer with respect to the Service and that neither the performance by Customer in its utilization of the Service, nor the license of and authorized use by Customer of the Service as described herein, will in any way constitute an infringement or other violation of any U. S. copyright, trade secret, trademark, patent, invention, proprietary information, non-disclosure, or other rights of any third party.

10.4 DISCLAIMER OF WARRANTIES

EXCEPT AS OTHERWISE STATED IN SECTION 10 ABOVE, NORFIELD DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR FREE, OR THAT THE SERVICE WILL MEET CUSTOMER REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE SYSTEM THAT MAKES THE SERVICE AVAILABLE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THE SERVICE WILL OPERATE IN COMBINATION WITH OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY NORFIELD OR THE OPERATION OF THE SERVICES WILL BE SECURE OR THAT VENDOR AND ITS THIRD PARTY VENDORS WILL BE ABLE TO PREVENT THIRD PARTIES FROM ACCESSING CUSTOMER DATA OR CUSTOMER'S CONFIDENTIAL INFORMATION, OR ANY ERRORS WILL BE CORRECTED OR ANY STORED CUSTOMER DATA WILL BE ACCURATE OR RELIABLE. THE WARRANTIES STATED IN SECTION 10 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY

VENDOR. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A



PARTICULAR PURPOSE. EXCEPT AS STATED IN SECTION 10 ABOVE, THE SERVICE IS PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND IS FOR COMMERCIAL USE ONLY. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR THE CUSTOMER'S PURPOSE.

SECTION 11. CONFIDENTIAL INFORMATION.

As used in this Agreement and to the extent permitted by NC Law, and subject to North Carolina's public records law, Chapter 132, "Confidential Information" means any nonpublic information or materials disclosed by either party to the other party, either directly or indirectly, in writing, orally, or by inspection of tangible objects that the disclosing party clearly identifies as confidential or proprietary. NORFIELD Confidential Information includes the Services, Software, and any information or materials relating to the Services, Software (including pricing), or otherwise. Confidential Information may also include confidential or proprietary information disclosed to a disclosing party by a third party. The receiving party to the extent permitted by NC Law and subject to North Carolina's public records law, Chapter 132 will: (i) hold the disclosing party's Confidential Information in confidence and use reasonable care to protect the same; (ii) restrict disclosure of such Confidential Information to those of its employees or agents with a need to know such information and who are under a duty of confidentiality respecting the protection of confidential information, which is substantially similar to those of this Agreement and which would extend to the disclosing party's Confidential Information; (iii) use such Confidential Information only for the purposes for which it was disclosed, unless otherwise set forth herein. The restrictions will not apply to Confidential Information to the extent it (i) is, or through no fault of the recipient has become, generally available to the public; (ii) was lawfully received by the receiving party from a third party without such restrictions; (iv) was known to the receiving party without such restrictions prior to receipt from the disclosing party; (v) was independently developed by the receiving party without breach of this Agreement or access to or use of the Confidential Information. The recipient may disclose Confidential Information to the extent the disclosure is required by law, regulation, or judicial order, provided that the receiving party will provide to the disclosing party prompt notice, where permitted, of such order and will take reasonable steps to contest or limit the steps of any required disclosure. The parties agree that any material breach of Section 3 or this Section will cause irreparable injury and that injunctive relief in a court of competent jurisdiction will be appropriate to prevent an initial or continuing breach of these Sections in addition to any other relief to the applicable party may be entitled.

SECTION 12. DISCLAIMER.

THE SERVICES, SOFTWARE, DOCUMENTATION, AND ALL OTHER PRODUCTS AND SERVICES PROVIDED HEREUNDER, INCLUDING THIRD PARTY HOSTED SERVICES, ARE PROVIDED ON "AS IS" AND "AS IS AVAILABLE" BASIS. NORFIELD DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, ACCURACY, RELIABILITY, SECURITY, CONTINUITY, OR ABSENCE OF DEFECT RELATING TO THE SERVICES, SOFTWARE, DOCUMENTATION, ANY OTHER PRODUCT OR SERVICES, OR RESULTS OF THE SAME PROVIDED TO THE CUSTOMER UNDER THIS AGREEMENT. NORFIELD DOES NOT WARRANT THAT THE SPECIFICATIONS OR FUNCTIONS CONTAINED IN THE SERVICES OR SOFTWARE WILL MEET THE CUSTOMER REQUIREMENTS OR THAT DEFECTS IN THE SERVICES OR SOFTWARE WILL BE CORRECTED. THE CUSTOMER ACCESS, INSTALLATION, AND USE OF THE SOFTWARE AND SERVICES ARE AT THE CUSTOMER SOLE DISCRETION AND RISK, AND THE CUSTOMER ARE SOLELY RESPONSIBLE FOR ANY DAMAGES TO THE CUSTOMER DEVICE(S) OR THE LOSS OR CORRUPTION OF THE CUSTOMER DATA. NORFIELD ALSO SPECIFICALLY DISCLAIMS RESPONSIBILITY OF THIRD PARTY PRODUCTS AND SERVICES WITH WHICH THE



CUSTOMER MAY UTILIZE THE SERVICES AND SOFTWARE, AND THE CUSTOMER SPECIFICALLY DISCLAIM AND WAIVE ANY RIGHTS AND CLAIMS THE CUSTOMER MAY HAVE AGAINST NORFIELD WITH RESPECT TO SUCH THIRD PARTY PRODUCTS AND SERVICES, TO THE MAXIMUM EXTENT PERMITTED BY LAW.

SECTION 13. INDEMNIFICATION.

13.1 NORFIELD Indemnification. NORFIELD will indemnify, defend, and hold the Customer harmless from any third party claim brought against the Customer that the Services, as provided by NORFIELD, infringe or misappropriate any U.S. patent, copyright, trademark, trade secret, or other intellectual property rights of a third party, provided (i) use of the Services by the Customer or Users is in conformity with the Agreement and Documentation; (ii) the infringement is not caused by modification or alteration of the Services; and/or (iii) the infringement was not caused by a combination or use of the Services with products not supplied by NORFIELD. NORFIELD indemnification obligations are contingent upon the Customer: (i) promptly notifying NORFIELD in writing of the claim; (ii) granting NORFIELD sole control of the selection of counsel, defense, and settlement of the claim; and (iii) providing NORFIELD with reasonable assistance, information and authority required for the defense and settlement of the claim. This Section states NORFIELD's entire liability (and shall be the Customer's sole and exclusive remedy) with respect to indemnification to The Customer.

13.2 The Customer Indemnification. TO the extent permitted by NC law, The Customer agrees to indemnify, defend, and hold harmless NORFIELD, its Affiliates and their respective, directors, employees, and agents from and against any claims asserted by any third party arising out of or due to: (i) the Customer Data; (ii) the Customer (or the User's) breach of this Agreement; (iii) the Customer (or the User's) use of the Services, Software, or Documentation in violation of third party rights, including any intellectual property rights, or any applicable laws, or (iv) the Customer (or the User's) misuse of the Services, Software, or Documentation.

SECTION 14. LIMITATION OF LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (I) IN NO EVENT WILL NORFIELD, ITS AFFILIATES AND THEIR RESPECTIVE DIRECTORS, EMPLOYEES, OR AGENTS HAVE ANY LIABILITY, CONTINGENT OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, STATUTORY OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SERVICES, SOFTWARE, DOCUMENTATION, OR ANY OTHER PRODUCTS OR SERVICES PROVIDED HEREUNDER, INCLUDING, BUT NOT LIMITED TO LOST PROFITS, LOST OR CORRUPTED DATA, LOSS OF GOODWILL, WORK STOPPAGE, EQUIPMENT FAILURE OR MALFUNCTION, PROPERTY DAMAGE OR ANY OTHER DAMAGES OR LOSSES, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, STATUTE, INDEMNITY OR OTHERWISE) UPON WHICH ANY SUCH LIABILITY IS BASED; AND (II) THE AGGREGATE LIABILITY OF NORFIELD, ITS AFFILIATES AND THEIR RESPECTIVE DIRECTORS, EMPLOYEES, AND AGENTS, AND THE SOLE REMEDY AVAILABLE TO THE CUSTOMER ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SERVICES, SOFTWARE, OR ANY PRODUCTS OR SERVICES PROVIDED HEREUNDER SHALL BE LIMITED TO TERMINATION OF THIS AGREEMENT AND DAMAGES NOT TO EXCEED THE TOTAL AMOUNT PAYABLE OR PAID TO NORFIELD UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRIOR TO TERMINATION.



SECTION 15. THIRD PARTY PROGRAMS.

The Customer may receive access to third party programs through the Services or Software, or third party programs may be bundled with the Services or Software. These third party software programs are governed by their own license terms, which may include open source or free software licenses, and those terms will prevail over this Agreement as to the Customer's use of the third party programs. Nothing in this Agreement limits the Customer or the Users' rights under, or grants the Customer or the User rights that supersede, the terms of any such third party program.

SECTION 16. GENERAL.

16.1 Notices. All notices to Norfield must be in writing and shall be mailed by registered or certified mail to Norfield Development Partners, LLC, 181 Main Street Floor 2 Suite #2, Norwalk, CT 06851. All notices to the Customer must be in writing and mailed by registered or certified mail to 510 B Greer Circle SW, Lenoir, NC 28645.

16.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the Services, Software, and Documentation provided hereunder and supersedes all prior or contemporaneous communications, agreements and understandings, written or oral, with respect to the subject matter hereof. If other NORFIELD terms or conditions conflict with this Agreement, this Agreement shall prevail and control with respect to the Services, Software, and Documentation provided hereunder. In addition, any and all additional or conflicting terms provided by The Customer, whether in a purchase order, an alternative license, or otherwise, shall be void and shall have no effect.

16.3 Export Control Laws. The Services, Software, and Documentation delivered to the Customer under this Agreement are subject to export control laws and regulations and may also be subject to import and export laws of the jurisdiction in which it was accessed, used, or obtained, if outside those jurisdictions. The Customer shall abide by all applicable export control laws, rules, and regulations applicable to the Services, Software, and Documentation. The Customer agree that the Customer are not located in or are not under the control of or a resident of any country, person, or entity prohibited to receive the Services, Software, or Documentation due to export restrictions and that the Customer will not export, re-export, transfer, or permit the use of the Services, Software, or Documentation, in whole or in part, to or in any of such countries or to any of such persons or entities.

16.4 Modifications. Unless as otherwise set forth herein, this Agreement shall not be amended or modified except in a writing signed by authorized representatives of each party.

16.5 Severability. If any provision of this Agreement is held to be unenforceable, illegal, or void, that shall not affect the enforceability of the remaining provisions. The parties further agree that the unenforceable provision shall be deemed replaced by a provision that is binding and enforceable and that differs as little as possible from the unenforceable provision, with considerations of the object and purpose of this Agreement.

16.6 Waiver. The delay or failure of either party to exercise any right provided in this Agreement shall not be deemed a waiver.

16.7 Force Majeure. NORFIELD will not be liable for any delay or failure to perform obligations under this Agreement due to any cause beyond its reasonable control, including acts of God; labor disputes; industrial disturbances; systematic electrical, telecommunications or other utility failures; earthquakes, storms, or other elements of nature; blockages; embargoes; riots; acts or orders of government; acts of terrorism; and war.



16.8 Construction. Paragraph headings are for convenience and shall have no effect on interpretation.

16.9 Governing Law. This Agreement shall be governed by the laws of the State of North Carolina and of the United States, without regard to any conflict of laws provisions, except that the United Nations Convention on the International Sale of Goods and the provisions of the Uniform Computer Information Transactions Act shall not apply to this Agreement. Norfield and venue in Caldwell County, North Carolina hereby consents to jurisdiction of the state of North Carolina.

16.10 Third Party Rights. Other than as expressly provided herein, this Agreement does not create any rights for any person who is not a party to it, and no person not a party to this Agreement may enforce any of its terms or rely on an exclusion or limitation contained in it.

WHEREAS, the parties have executed this agreement in counterparts, each of which shall be deemed an original, effective as of the date written above.

NORFIELD DEVELOPMENT PARTNERS, LLC ("NORFIELD")

By: CHRISTOPHER LEBLANC

Title: PRESIDENT & CEO

Date: _____

CITY OF LENOIR ("THE CUSTOMER")

By: _____

Title: _____

Date: _____

[Signature]

City Manager

10/25/2022

Price



Norfield

1990-1991
 1991-1992
 1992-1993

10 September 15, 2022

City of Lenoir

EXPIRATION DATE October 15, 2022
QUOTE # 1

Customer Info

City of Lenoir
Derek Noble
510 E Greer Circle SW
Lenoir NC 28645

SALESPERSON		PRODUCT	PAYMENT TERMS OPTIONS		DUE DATE	
Jennifer Rodriguez		Northside LOCATOR LOGIX	Qtr 1 - Quarterly Fee Oct 20 - Annual Fee		Total Fee	
Select Option 1 or 2		DESCRIPTION	UNIT PRICE		LINE TOTAL	
		LOCATOR LOGIX: Quarterly Fee (SaaS) The Locator LOGIX product is provided on Northside cloud servers for use by customer with up to 1,000 tickets annually	\$	108.00	\$	108.00
Opt 1		Annual Fee (SaaS) The Locator LOGIX product is provided on Northside cloud servers for use by customer with up to 1,000 tickets annually	\$	375.00	\$	375.00
Opt 2		Setup and Configuration: The Setup and configuration costs provide for the standard setup and configuration of the Locator LOGIX product: -One Call Center Configuration -Company Setup and Configuration -Member Code Setup -Ticket email destination configuration This does not include additional product customizations, APIs, or custom reports.				
Setup and Config					\$	100.00
Discount: Setup & Configuration		DISCOUNT EXPIRES OCTOBER 15, 2022			\$	(100.00)
Limited Time Promotion Value		Limited Time Promotion - 15 Month Term (applies to both quarterly & annual options)			\$	(33.00)

Errors and Conflicts

[illegible]

To accept this quotation, sign and return.

Perch Folie

THANK YOU FOR YOUR BUSINESS!



MAINTENANCE AND OPERATIONS PLAN

UPDATED: OCTOBER 22, 2022

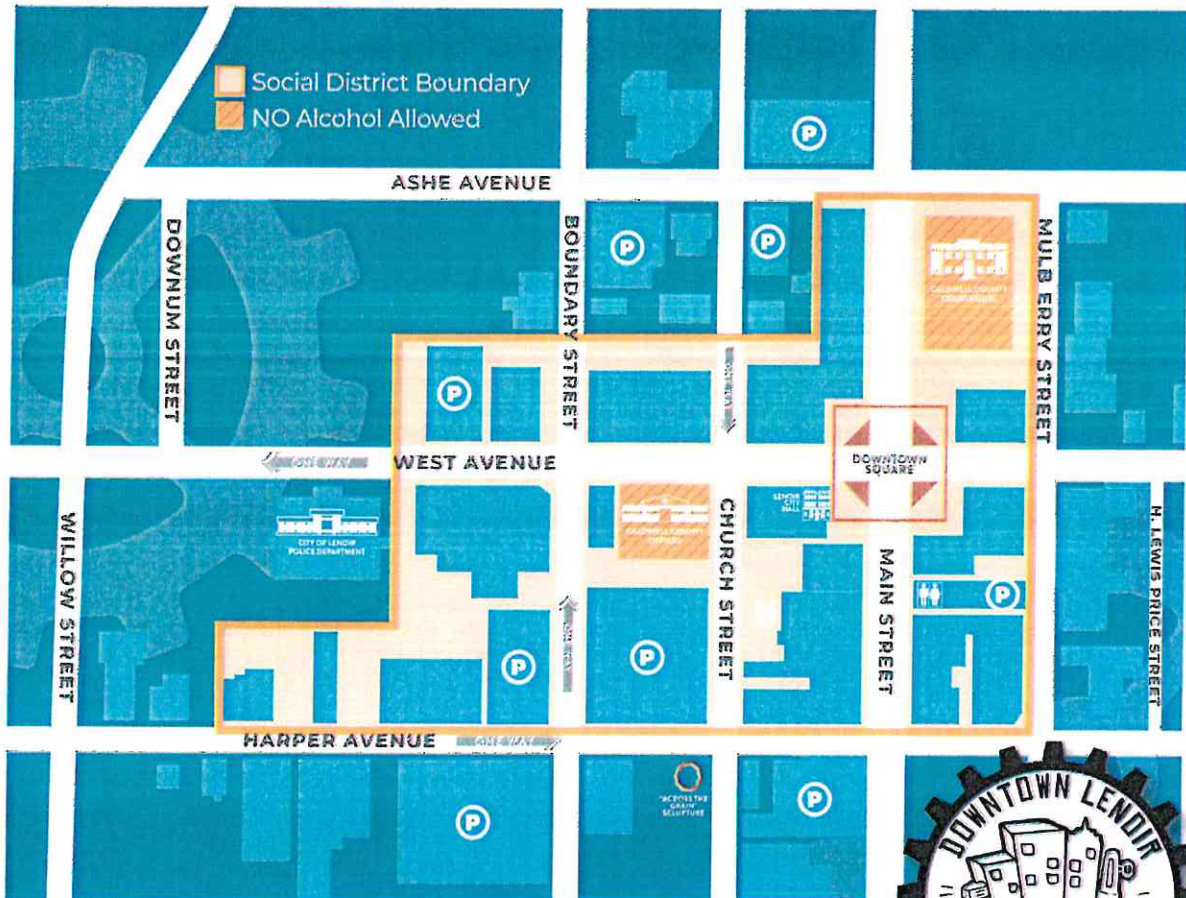


QUICK FACTS

A "Social District" is essentially an exception to NC's open container law. When a local government designates a defined geographic area as "social district," alcoholic beverages purchased from businesses with valid ABC permits in the district can be carried and consumed throughout the district, in accordance with local and state law.¹

DOWNTOWN LENOIR SOCIAL DISTRICT

BOUNDARY MAP



SOCIAL DISTRICT HOURS:

Wednesday - Saturday from 12pm-10pm*

*These days/hours may be extended for special events

¹ Session Law 2021-150, NCGS XXXXXXXX, City of Lenoir Code of Ordinances Ch.13 SecXXXX

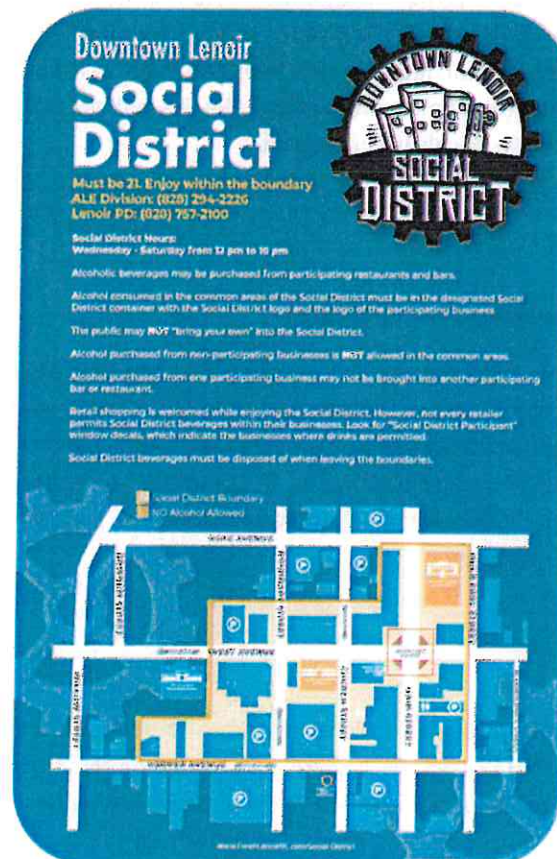
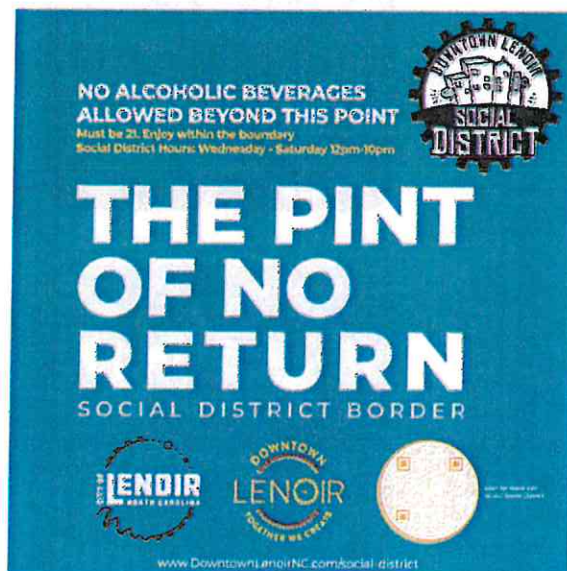
DISTRICT LOGOS AND SIGNAGE:

All signage and promotional materials will be branded using the same logo and design themes, in order to present a cohesive district and program to the public. The following logo will appear on all signs, decals, and promotions:



BOUNDARY SIGNS

Signs will be installed in key locations within the district and along the boundaries – the signs will be sized and located to be visible to pedestrians while remaining unobtrusive to driver's visibility and the overall attractiveness of the district. QR codes will be used when appropriate to give patrons an easy way to access additional information on the City's website.



WINDOW SIGNS:

The following three Social District window decals will be provided to business by the Downtown Lenoir Main Street department.

Participating Businesses (without alcohol sales): Any location within or contiguous to the Social District can "opt in" to the program by registering with the City of Lenoir Main Street office, located on the 3rd floor of City Hall. This decal **MUST** be displayed for patrons to enter with alcohol, and businesses displaying this decal must follow the rules of the Social District.



Non-Participating Businesses

Businesses who do not wish to participate by allowing for alcohol beverages within their establishments do not have to do anything at all. If a business is having trouble keeping patrons with alcohol out, or would like to match the branding of the district but limit participation, the City will provide these window decals upon request.



Businesses Selling Alcohol

A Permit from the City of Lenoir Planning Department is required for businesses who have ABC permits and want to participate by selling beverages into the District. Specific rules apply to these businesses, a copy of the maintenance and operations plan and window decal will be provided upon permitting.



Note: Individual businesses may also need additional signage to ensure compliance with the rules of the Social District. For example, signs stating "No Outside Alcohol" at the entrances of businesses who sell alcohol, or signs on rear exits of participating businesses stating "No Alcohol Beyond This Point" may help staff better enforce the district rules. Businesses with questions should consult with the Downtown Lenoir Main Street office and the Lenoir Police Department on how to best manage their specific locations.

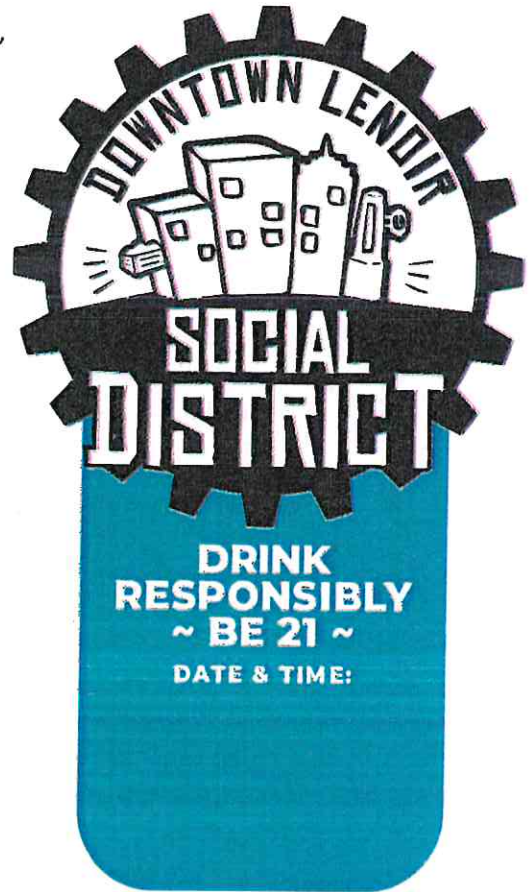
GENERAL RULES

- Alcoholic beverages may only be consumed in the Social District Wednesday – Saturday from 12:00 PM to 10:00 PM.
- No outside alcohol is permitted within the district. All alcoholic beverages must be purchased from establishments located within or contiguous to the district and must be consumed within the District.
- Any alcoholic beverages consumed in the social district must be consumed from the required social district container. A person cannot pour their wine, beer or liquor into a solo cup or any type of container other than the one meeting all the requirements for social district and sold by a participating ABC permitted business.
- Upon leaving an establishment where an alcoholic beverage is purchased, the beverage must be consumed or discarded before entering a different business that serves alcohol.
- All alcohol in open containers must be disposed of before exiting the District or entering a vehicle.
- The sale and delivery of alcohol in a social district is subject to the same limitations for sales and deliveries of alcohol in North Carolina:
 - No more than two malt beverage or wine drinks at one time to a single patron
 - No more than one mixed beverage or spiritous liquor drink at one time to a single patron

BEVERAGE CONTAINERS & RULES OF USE:

Permittees are responsible for supplying their own "social district" containers that conform to the following parameters:

- Containers can hold no more than 16 oz.
- Glass containers are prohibited.
- The permittee's trade name or logo must be prominently displayed on the container²
- The Social District Beverage Logo must be displayed, at a minimum height of 3.7 inches, on every container, which includes a time/date stamp and the statement, "Drink Responsibly – Be 21" in 12-point font.



² When a permittee has multiple business locations, the logo must be unique to the location within the Downtown Lenoir Social District.

MANAGING THE DISTRICT: STAFF RESPONSIBILITIES

The Downtown Lenoir Social District will be jointly managed by the Downtown Lenoir Main Street, City of Lenoir Police Department, the Planning and Community Development Department, and the Public Works and Utilities Department.

MERCHANT EDUCATIONAL PROGRAM:

The DLMS would conduct an informational webinar that would also be recorded for the merchants outlining requirements. The Chief of Police or a designated Officer will be present. Merchants can opt into the program if they choose to. For participating merchants (without ABC permits), the Main Street office will coordinate the registration of businesses and provide required signage and copies of district rules. A list of participating merchants will be maintained by the Main Street office, and will be forwarded to the Police Department at least annually, or as changes occur.

PERMITTING:

The Planning Department handles SOCIAL DISTRICT permitting of businesses with ABC permits. An application form is available both online and at City Hall. Applicants will be asked to provide information related to their ABC permit, as well as to sign an agreement indicating their commitment/intent to follow the established rules. They will receive a copy of the operations and maintenance plan and a digital download link for graphics. A copy of the approved permit is then forwarded to the Main Street department and the Police Department. Permits will require renewal once a year, with updated agreements to reflect any rule changes.

MARKETING AND PROMOTION:

Marketing and promotion of the Social District will be provided by the Downtown Lenoir Main Street in collaboration with ABC permitted establishments adjacent to the Social District. For the initial implementation phase, Public Works will assist the Downtown Lenoir Main Street in installing permanent signage.

SANITATION AND MAINTENANCE:

The City's Public Works and Utilities Department will provide sanitation services within the district including trash removal and litter pick up. Trash/recycling receptacles will be located at the boundaries of the Social District to encourage patrons to properly dispose of their used cups and unconsumed alcohol, as well as throughout the Social District as presently available throughout the downtown.

SECURITY & ENFORCEMENT:

Security and enforcement in the Social District will be provided by the City of Lenoir Police Department. City of Lenoir Police Department will enforce the requirements of the District. The City of Lenoir reserves the right to prohibit a holder from participating in the district due to violations of the Social District management plan. Permittees found to be in violation of the Social District ordinance may be subject to fines, suspension or revocation of state ABC permits and/or City of Lenoir Social District permits. Any appeals will go before the Chief of Police and City Manager for final ruling.

INSURANCE:

Participating businesses are responsible for their individual insurance coverage. The City of Lenoir is insured for its management and operation of the Social District.



**City of Lenoir
Financial Summary
As of 9/30/2022**



General Fund					
	2022-2023 Budget	9/30/2022	% of Budget	Change from Previous Year	9/30/2021
Total Revenue	\$ 20,320,130.00	\$ 16,245,602.91	80%	\$ 351,805.11	\$ 15,893,797.80
Expenditures	\$ 20,320,130.00	\$ 5,227,254.68	26%	\$ 629,655.56	\$ 4,597,599.12
Over/Under	\$ -	\$ 11,018,348.23		\$ (277,850.45)	\$ 11,296,198.68
Downtown District					
	2022-2023 Budget	9/30/2022	% of Budget	Change from Previous Year	9/30/2021
Revenues	\$ 288,220.00	\$ 18,299.68	6%	\$ (1,084.53)	\$ 19,384.21
Expenditures	\$ 288,220.00	\$ 146,811.54	51%	\$ 109,189.72	\$ 37,621.82
Over/Under	\$ -	\$ (128,511.86)		\$ (110,274.25)	\$ (18,237.61)
Water/Sewer Fund					
	2022-2023 Budget	9/30/2022	% of Budget	Change from Previous Year	9/30/2021
Revenues	\$ 10,232,980.00	\$ 2,765,127.94	27%	\$ 160,640.11	\$ 2,604,487.83
Expenditures	\$ 10,232,980.00	\$ 1,765,348.57	17%	\$ 49,778.55	\$ 1,715,570.02
Over/Under	\$ -	\$ 999,779.37		\$ 110,861.56	\$ 888,917.81

Horticulture Specialist

General Statement of Duties

This position oversees the landscape operations and performs technical horticulture duties throughout the City of Lenoir's public properties.

Distinguishing Features of the Class

The purpose of this position is to maintain the horticulture and landscape operations throughout City of Lenoir properties. Successful performance contributes to the overall attractive appearance of city grounds and facilities. The position reports to the Public Works Operations Manager who assigns work in terms of general instructions and spot-checks completed work for compliance with procedures, accuracy, and the nature and propriety of the results. This position has direct supervision over Main Street Laborer (1) and other maintenance staff as assigned.

Duties and Responsibilities

- Design, install and maintain landscapes and seasonal plantings.
- Develop and maintain chemical program for weed control and pest management.
- Create and follow an established fertilization program.
- Install and maintain irrigation systems as needed.
- Prepare orders for spring, summer and fall annuals and hanging baskets.
- Prune shrubs, trees and perennials seasonally as required.
- Apply mulch, rock and other ground covers for beneficial and aesthetic purposes.
- Assist in the preparation for special events.
- Develop and maintain a working relationship with program coordinators, civic groups and other city property managers.
- Train and supervise staff in proper horticulture practices.
- Perform other related duties as assigned.

Knowledge, Skills and Abilities

- Knowledge of horticulture, landscape care and best maintenance practices.
- Knowledge of the landscape design and installation.
- Knowledge of herbicide/pesticide application.
- Knowledge of city and department policies and procedures.
- Skill in leadership and supervision.
- Skill in the operation of lawn mowers, weed-eater, leaf blowers, tiller and other tools.
- Skill in oral and written communication.
- Knowledge of and ability to interpret guidelines include North Carolina Department of Agriculture pesticide regulations, athletic and sports association guidelines, relevant state and federal laws, city ordinances, and city and department and procedures.

- Ability to communicate with co-workers, other city employees, and the public for the purpose of giving or exchanging information, providing services, and resolving problems.

Physical Requirements

- Must be able to perform the following for extended periods of time: climbing, bending, stooping, shoveling, walking, crouching, reaching, standing, pulling, pushing, fingering, talking, hearing and repetitive motions.
- Must be able to stand on uneven terrain, lift 50 pounds or more, walk with a 32+ pound sprayer strapped to ones back, stand on very steep slopes weed-eating
- Must be able to uses tools or equipment requiring a high degree of dexterity, and must distinguish between shades of color.
- Ability to read, write and perform mathematical calculations at a level commonly associated with the completion of high school or equivalent.
- Must possess the visual acuity to produce and review written reports and records, operate a computer terminal, analyze data to determine the accuracy, neatness and thoroughness of work assigned.
- Must be able to work in all weather conditions. Individual must have the ability to work in extreme conditions either very hot or very cold and windy weather depending on the time of year and task to be accomplished.
- Must be relatively physically fit to preform required job functions.
- Must have the ability to be exposed to noise, dust, dirt, machinery with moving parts, and may be required to use protective devices.
- Experience sufficient to understand thoroughly the work of subordinate positions to be able to answer questions and resolve problems, usually associated with one to three years experience or service.

Minimum Education and Experience

- Candidates should have a minimum of three years experience in the field and have considerable knowledge of current horticultural practices including turf and chemical applications.
- Candidate must possess a high school diploma or equivalent and preferably possess an associate's degree in Horticulture, Landscape Design or similar field or five years of experience in the Horticulture/ Landscape field.

Special Requirement

- Possession of or ability to readily obtain a valid driver's license issued by the State of North Carolina for the type of vehicle or equipment operated.
- Must possess or have the ability to obtain a North Carolina Pesticide Applicator's license with Ornamentals and Turf subclass certification within 6 months of hire.

Disclaimer

This classification specification has been designed to indicate the general nature and level of work performed by employees within this classification. It is not designed to

contain or be interpreted as a comprehensive inventory of all duties, responsibilities, and qualifications required of employees to perform the job. The City of Lenoir reserves the right to assign or otherwise modify the duties assigned to this classification.

Salary Grade 22

Salary Range 36,508.61 to 51,112.06

FLSA Status: Non- Exempt

Oct. 2022

RESOLUTION

WHEREAS, the City of Lenoir, North Carolina, City Council desires to dispose of certain surplus property of the City of Lenoir to be awarded to Senior Detective overseeing Property and Evidence Sherry Lynn Beavers upon her retirement from the Lenoir Police Department and Declaring her badge and service weapon as Surplus Property

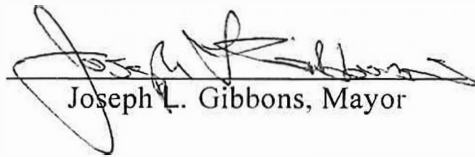
NOW, THEREFORE BE IT RESOLVED,

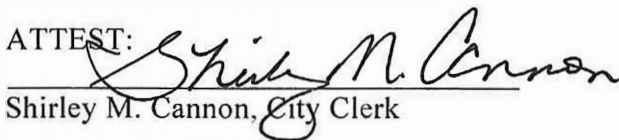
- 1) the Mayor and City Council of the City of Lenoir acknowledges Senior Detective overseeing Property and Evidence Sherry Lynn Beavers loyal and dedicated service to the citizens of Lenoir, and
- 2) the Mayor and City Council declare the following police weapon and police badge of Senior Detective Sherry Lynn Beavers, upon retirement, as surplus and no longer have any additional use to the City of Lenoir {Sig Sauer Model P220R .45 caliber (Serial # 3 7 B 0 5 2 6 1 2)}
- 3) the Mayor and City Council authorize the City Manager to proceed with the procedures as outlined in N.C.G.S. §20-187.2 regarding the service side arms of retiring members of City law enforcement agencies.

NOW, THEREFORE BE IT FURTHER RESOLVED that, I, Joseph L. Gibbons, Mayor of the City of Lenoir, and on behalf of the Lenoir City Council and all the citizens, do hereby wish the very best for Senior Detective Sherry Lynn Beavers in her retirement and commend her for the outstanding example she has set as a dedicated public servant.

Adopted this the day of October, 2022

SEAL


Joseph L. Gibbons, Mayor

ATTEST: 
Shirley M. Cannon, City Clerk