

**LENOIR CITY COUNCIL
TUESDAY, MARCH 7, 2023
6:00 P.M.**

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

ABSENT: Councilmember David Stevens.

I. CALL TO ORDER

A. The meeting was opened by a moment of silence and the pledge of allegiance as led by Mayor Gibbons.

**WELCOME; PHILLIP HARPER PARKS
& RECREATION DIRECTOR:**

B. Mayor Gibbons welcomed Phillip Harper, the City's new Parks & Recreation Director who is replacing Kenny Story who retired on February 28 following 35+ years of dedicated service. Mayor Gibbons stated Mr. Harper is originally from Lenoir and graduated from Hibernian High School. Mayor Gibbons said Mr. Harper has worked in recreation across the state for several years and pointed out that everyone is looking forward to working with him.

2023 YEAR OF THE TRAILS:

BURKE COUNTY: C. Mayor Gibbons presented a flyer listing information about the 2023 Year of the Trails in Burke County and thanked Bryant Lindsay for sharing this event with Council. Mayor Gibbons reported an event is scheduled for Saturday, March 11 from noon – 5:00 p.m. at the COMMA in Morganton and hosted by Debra Holt Noel of North Carolina Weekend. Ms. Noel will review the topic of the Year of the Trails and how it is celebrated as trails and trail-related activities are highlighted around the state.

Mayor Gibbons also reported the City of Lenoir and Caldwell County would be working along with Burke and Caldwell counties in celebrating this great event.

Mr. Lindsay thanked City Council for the recognition.

**ANNUAL REPORT;
POLICE DEPARTMENT:**

C. Brent Phelps, Chief of Police, presented a summary of the Department's 2022 Annual Report to City Council. The full report is online at www.cityoflenoir.com/police. He stated Staff began using the National Incident

Based Reporting System (NIBERS) in 2019, which was the first full year they submitted data into the program. He explained the pandemic occurred in 2020-21 resulting in everything bottoming out for the Department so Staff chose to compare data from 2019 and 2022 as a baseline when compiling the report. Chief Phelps reported there were no homicides in 2022. He shared there was a 2% reduction in calls for service and domestics were also down. In addition, Chief Phelps reported overdoses increased by 216% from 2019 and opioid induced overdoses increased by 330%. Opioid related services were \$750,000 and he emphasized this issue is a problem all across the country.

Next, Chief Phelps stated officers used Narcan 73 times resulting in 71 lives being saved. He shared all Lenoir officers are certified in administering Narcan and they carry it on their person and in their patrol car in case they get exposed to opioids during an interaction with the public. Chief Phelps reported they are receiving allotments of Narcan from the North Carolina Harm Coalition, but noted it is getting harder to obtain due to an increase in the number of Police Departments that are using it. He mentioned the Department has an allotment of Narcan, but stated they may have to purchase it in the future.

Chief Phelps reported there were 38,000 calls for service, 10,000 house checks and 1,100 follow up checks. A total of 178 nuisance offenses occurred resulting in the City abating 27 properties and owners abating 103 properties. Chief Phelps stated the Department is required to report traffic stops and enforcement by race. He shared there were 50 uses of force last year and almost 27,000 law enforcement interactions with the public. However, he shared that Staff estimates this number to be low due to all of the outside activities the officers participate in such as providing security at Hibriten High School sporting events and downtown festivals to name a few.

Chief Phelps reported the Department used forfeiture funds to purchase new 9-millimeter weapons for all the officers in order to be consistent. The department also purchased three hybrid vehicles, which are currently being up-fitted for their use. He stated they were more expensive to purchase, but that other agencies were using them and having success. In addition, Chief Phelps said two lieutenants and one captain retired recently, and stated he is working on succession by preparing Staff as much as possible in order for them to step up whenever a vacancy occurs. Chief Phelps further reported he serves on the Chief's Advisory Committee at the North Carolina League of Municipalities (NCLM) and he will continue to stay involved. He mentioned Staff also performs investigative work with Health Protective Services.

On behalf of City Council, Mayor Gibbons thanked Chief Phelps for the good report and for all that the officers do every day for the City of Lenoir and its citizens.

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

III. CONSENT AGENDA ITEMS

- A. Minutes: Approval of the minutes of the City Council meeting of Tuesday, February 21, 2023 as submitted.
- B. Written Order Approving Preliminary Plat: City Council consideration of a Written Order confirming their decision regarding the Preliminary Plat for Hillhaven Place per the Lenoir Code of Ordinances §§19-61 through 19-65. (A copy of the recorded Written Order is hereby incorporated into these minutes by reference. Refer to pages 74-77.)

- C. Freese and Nichols, Inc. Professional Services Agreement, Amendment No. 1: Staff recommends approval of Amendment No. 1 to the Professional Services Agreement with Freese and Nichols for the completion of a Utilities Facilities Condition Assessment as proposed for an additional service fee in the amount of \$49,700.00. (A copy of Amendment No. 1 is hereby incorporated into these minutes by reference. Refer to pages 78-82.)
- D. Lease Agreement; Bernhardt Industries: Staff recommends approval of a Resolution Authorizing Lease of City Property for a term of One Year to Bernhardt Transportation, LLC as submitted. (A copy of the executed lease agreement is hereby incorporated into these minutes by reference. Refer to (pages 83-94)
- E. Closed Session Minutes: Approval of the closed session minutes of the City Council meeting of Tuesday, February 21, 2023 as reviewed by the City Attorney, City Council, and City Manager.

Upon a motion by Mayor Pro-Tem Thomas, City Council voted 6 to 0 to approve the items on the Consent Agenda as described above and as recommended by City Manager Hildebran.

IV. REQUESTS AND PETITIONS OF CITIZENS

V. REPORTS OF BOARDS AND COMMISSIONS

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

A. Rick Oxford, Plan Administrator, Western Piedmont Council of Governments, held the first of two public meetings to receive public comments regarding the proposed FY2023 Action Plan of the City of Lenoir and the Unifour HOME Consortium as part of the five- year Consolidated Plan. This plan, as required by the U.S. Department of Housing and Urban Development (DHUD), outlines goals and action plans of the City of Lenoir and the Unifour HOME Consortium and its use of Community Development Block Grant (CDBG) and HOME funds for fiscal year 2023, beginning July 1, 2023 and ending June 30, 2024 and HOME-ARP funds for fiscal year 2021, beginning July 1, 2021 and ending June 30, 2030. The City of Lenoir serves as the Lead Entity for the Unifour Consortium.

Mr. Oxford stated they are required by DHUD to hold two public meetings and informed Council he received notification of funding cuts for the upcoming fiscal year. He reported the City of Lenoir would receive \$142,691 in CDBG funds and \$1,200,690 in HOME funds. This funding becomes available on July 1, 2023.

Mr. Oxford reported the City is currently utilizing CDBG funding for renovations at The Campus (former Lenoir High School) Complex, which includes the gymnasium, auditorium and Mack Cook Stadium.

Mr. Oxford also reviewed funding for the HOME program and reported the program assists low-income buyers with up to 20% of the purchase price and caps at \$30,000. He stated this is a zero interest loan with zero payments and one-half of the amount is forgiven after 10 years.

Mr. Oxford shared that interest and housing rates are up and noted that significant

funding is currently available for qualified buyers. Mr. Oxford clarified the funding for the HOME program is for the four county area.

This funding assists first time homebuyers and is based on 2022 income limits as listed below:

1 person household	\$37,750
2 person household	\$43,150
3 person household	\$48,550
4 person household	\$53,900

In addition, Mr. Oxford stated the maximum purchase price of existing homes is \$198,000 and new homes is \$251,000. He shared homes are hard to find if an individual is below the income limits.

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

Mr. Oxford further explained developers could apply for a low interest loan for multi-family housing projects through the North Carolina Financing Agency. The maximum amount of a loan is \$300,000 and he pointed out it is a competitive process. The developers design the project, finalize their funding and submit a letter of commitment for the project. If a project is funded, the developer may receive tax credits. He mentioned they have previously funded the Kattz Corner apartment project, Veridian, and Arbor Glen in Lenoir.

PROPOSED SUBSTANTIAL AMENDMENT;

HOME-ARP FUNDS: B. Rick Oxford, Plan Administrator, Western Piedmont Council of Governments (WPCOG), held a public meeting to receive public input and comments concerning the proposed Substantial Amendment to the FY2021 Action Plan of the City of Lenoir and the Unifour HOME Consortium as part of the five-year Consolidated plan, for the purpose of allocating \$4,182,773 in HOME- ARP funds. This plan, as required by the U.S. Department of Housing and Urban Development (DHUD), outlines goals and action plans of the City of Lenoir and the Unifour HOME Consortium and its use of Community Block Grant (CDBG), HOME and HOME-ARP funds for fiscal 2021, beginning July 1, 2021 and ending June 30, 2030.

Mr. Oxford explained the HOME-ARP Allocation Plan as reviewed by Ben Willis, WPCOG, at the City Council's budget retreat on February 24. These supplemental ARP funds through the HOME Investment Partnership Program (HOME) are to be designated to support communities throughout our country with addressing homelessness. The City of Lenoir has to submit a substantial amendment to its action plan and submit to HUD as to how it plans to address this issue.

Mr. Oxford reported staff has done consultations with City and County managers, work force development, police, non-profit organizations, public housing, homeless shelters, emergency services and medical staff among others. After reviewing all data and looking at what other areas have done, the WPCOG proposes to hire four Community Service Navigators along with a manager to compile all the data in assessing homeless people's needs along with directing them to available services in their communities.

City Manager Hildebran reiterated these individuals would be employed by the WPCOG and stated funding would be distributed over a period of years.

Mr. Oxford stated it would be a process but with Council's approval, he would submit the information to HUD by March 31, 2023.

Following a brief discussion and upon a motion by Councilmember Perkins, City Council voted 6 to 0 to approve the Proposed Substantial Amendment to the FY2021 Action Plan of the City of Lenoir and the Unifour HOME Consortium as part of the five-year Consolidated plan, for the purpose of allocating \$4,182,773 in HOME-ARP funds as presented by Rick Oxford, WPCOG.

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

A. Items of Information

ABC BOARD: 1. The ABC Board will meet on Thursday, March 9 at 2:00 p.m.

LENOIR BUSINESS ADVISORY BOARD:

2. The Lenoir Business Advisory Board will meet on Thursday, March 9 at 6:00 p.m. at City Hall, Third Floor.

CITY/COUNTY SERVICES

COMMITTEE: 3. The City/County Services Committee will meet on Monday, March 13 at noon.

NC MAIN STREET

CONFERENCE: 4. The North Carolina Main Street Conference will begin on Tuesday, March 14 through Thursday, March 16 at the Statesville Civic Center.

PARKS & RECREATION ADVISORY BOARD:

5. The Parks & Recreation Advisory Board will meet on Monday, March 20 at 6:00 p.m. at Mulberry Recreation Center.

GOOGLE & BETABOX

LEARNING: 6. Google is teaming up with Betabox Learning, a leading provider of mobile STEM labs, to launch a STEM tour of North Carolina school districts. The kick off will be Saturday, March 11, 2023 at the Martin Luther King, Jr. Center (MLK) from 11:00 a.m. to 3:00 p.m.

LEPRECHAUN LEAP

5k/10k RACE: 7. The annual Leprechaun Leap 5k/10k will be held at the Soccer Complex on Saturday, March 18.

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE

MAYOR BOARD APPOINTMENT; BOARD OF ADJUSTMENTS:

A. Mayor Gibbons recommended that Curtis Baker be appointed to serve a term on the Board of Adjustments, which will expire June 2026. This board appointment was

announced at the February 21, 2023 meeting.

Mayor Gibbons stated Mr. Baker currently serves on the Planning Board and their members also serve on the Board of Adjustments.

Upon a motion by Mayor Pro-Tem Thomas, City Council voted 6 to 0 to appoint Curtis Baker to serve a term on the Board of Adjustments, which will expire June 2026.

**NEWLY FORMED ECONOMIC ADVISORY
COMMITTEE:**

B. Mayor Gibbons explained the Caldwell County Economic Development Commission and the Sales Tax Reinvestment Committee no longer exists. He reported a newly formed Economic Advisory Committee (EAC) has been formed which is comprised of City and County managers.

Mayor Gibbons recommended that City Council appoint City Manager Scott Hildebran to serve on this new committee.

Upon a motion by Councilmember Perdue, Council voted 6 to 0 to appoint City Manager S Scott Hildebran to serve on the Economic Advisory Committee (EAC) as presented and as recommended by Mayor Gibbons.

IX. REPORT AND RECOMMENDATIONS OF COUNCILMEMBERS

X. ADJOURNMENT

A. There being no further business, the meeting adjourned at 7:03 p.m.

Shirley M. Cannon, City Clerk

Joseph L. Gibbons, Mayor

BK 2078 PG 1100 - 1103 (4)

This document presented and filed:
03/09/2023 01:41:21 PM

Fee \$26.00

Caldwell County North Carolina
Wayne L. Rash, Register of DeedsCity of Lenoir**ORDER APPROVING PRELIMINARY PLAT**

CASE:	MAJOR SUBDIVISION 1-22
APPLICANTS:	GUY LONG, PIEDMONT COMPANIES INC. WILL CLAYTON, CLAYTON ENGINEERING
OWNERS:	PB REALTY, LLC AND BROYHILL TIMBER RESOURCES, INC.
SITE LOCATION:	HILLHAVEN PLACE, EAST OF US-321 (HICKORY BLVD) AND NORTH OF MCLEAN DRIVE, LENOIR, NC 28645 (NCPIN 2759340506 AND (1.52 AC OF) 2759433724)

The Lenoir City Council opened a hearing on January 3, 2023, and continued it to February 21, 2023, to consider the above application for a preliminary plat for a major subdivision as required by under the Lenoir Code of Ordinances, §§ 19-61 through 19-65.

Council having heard all of testimony, reviewed the documents and any other evidence, and listened to the arguments of the parties, makes the following FINDINGS OF FACT regarding the standards set out in Lenoir Code of Ordinance § 19-65:

1. As to lot design and layout, the proposed lots meet all of the dimensional standards for single-family lots in the R-15 zoning district. While the existing street is dead-end and dead-end streets are generally discouraged, the street already exists and the surrounding topography limits options for connections. The proposed layout gives special consideration to the topography and existing conditions, consistent with the intent of the district and the subdivision ordinance.

2. As to suitability of land, a small sliver of the rear boundary on Lots 17- 22 contains floodplain and floodway, but it will be outside of the building envelope of the lots. The steepest slopes and rock formations are all located on the perimeter of the site, on the largest lots. Lots 18 through 21 are among the steepest but also the largest, which allows for additional flexibility for the grading of a homesite. As a condition of approval, the final site plan/grading plan will be reviewed during permitting, in order to identify any potential issues with emergency response.

3. As to orderly development, the proposed subdivision leverages an existing city-maintained road that already exists as a dead end, creating additional lots for single-family homes with very little additional infrastructure for the City to maintain. To allow for connection to any future development to the south, a "stub out" will be extended to the adjacent southerly parcel, consistent with the intent of this standard. Overall, this proposal is a logical further subdivision of land that existing infrastructure serves and is anticipated to be the final phase of lot creation on Hillhaven Place.

4. As to coordination and continuation of streets, there are currently no streets that abut the proposed subdivision, so any extension of abutting streets does not apply to this request. As a condition of approval, the fork portion of roadway located south of the median will be dedicated all the way up to the adjacent parcel to the south to allow for a future connection. The natural features of the area limit the potential for any other additional connections or continuation of streets.

5. As to topography, a majority of the lots will require minimal grading. Lots 18 through 21 are among the steepest and will need grading to create a buildable area. However, these four lots are more than three times the required lot size, leaving more natural space for gradual grading.

6. As to access management, the proposed lots west of Hillhaven Place are reverse frontage lots and adjoin U.S. Highway 321 at their rear. The subdivision is laid out for Hillhaven access to the lots rather than 321. The topography along the western edge of the parent tract adjacent to 321 is very steep; in places it is a sheer rock wall where blasting occurred to construct the northbound lanes of 321. Driveway connections will not be permitted on 321 and in most places they are not feasible anyway, ensuring compliance with this standard.

7. As to pedestrian connectivity, Hillhaven Place will have local traffic only, as the road ends at Lot 17 and does not connect outside the neighborhood. The same topography that limits roadway connections also limits ability to connect the larger pedestrian network. The topography also creates challenges to building ADA-compliant sidewalks on Hillhaven. Since conditions on this road ensure low traffic volume and speeds with minimal pedestrian risk, a sidewalk payment instead of construction is to occur. As the greenway network is built out connecting to the golf course and throughout the proposed Overmountain Forest development, opportunities to eliminate gaps that may enhance future Hillhaven Place residents' access will be explored and can be funded through the sidewalk fund at that time.

8. As to adequate public facilities, the road, water, and sewer are all capable of serving the proposed lots. A cul-de-sac or alternative turnaround will be developed to better serve public vehicles that need adequate space to turn around, such as sanitation or fire trucks. The only concern about adequate facilities relates to the capacity of the existing fire hydrants to serve homes larger than 1,870 sq. ft. Since

this limitation is related to the development of the lots themselves and not to the creation of lots, there are multiple ways to address this issue following approval of the preliminary plat. Upgrades to the water system are one option, but limitations on the size of structures or installation of sprinklers also would address this concern without the need for improving existing infrastructure. This is a condition that exists elsewhere in the City — tanker trucks are also used in these scenarios to ensure the water necessary to fight structure fires is available when needed.

Based on the application, the evidence presented, and the foregoing findings of fact, the Lenoir City Council **CONCLUDES AS LAW** by a unanimous vote of 6-0 that subject to certain conditions set forth below, the applicants meet each of the standards set out in Lenoir Code of Ordinance § 19-65 and are entitled to approval of the preliminary plat associated with Major Subdivision 1-22.

THEREFORE, the preliminary plat is **APPROVED** subject to the following conditions:

1. The developer is to pay into the sidewalk fund in place of sidewalk construction. This payment is to be calculated for the footage of Hillhaven Place by the price of concrete for a 5' sidewalk at the time of payment. The developer is to make this sidewalk fund payment before approval of the final plat.

2. A stormwater permit for a low density development is required prior to approval of the final plat. Notes on the face of the final plat that include limitations on built-upon area are required.

3. The North Carolina Department of Transportation must review and approve the existing connection of U.S. Highway 321 and Hillhaven Place due to the addition of residential density. Any improvements DOT requires to the connection must be completed prior to approval of the final plat.

4. A cul-de-sac or other alternative turnaround satisfactory to the city must be installed at the end of Hillhaven. Prior to starting construction on the turnaround, the developer must provide to Lenoir Public Works civil plans demonstrating compliance with the standards in Chapter 18 (Streets and Sidewalks) of the Lenoir Code of Ordinances for its review and approval.

5. The developer must extend a 40'-wide public right-of-way to the southern property line where the city-maintained fork off Hillhaven Place currently extends serving 120 Hillhaven Place. The developer must construct a stub-out to the property line within this right-of-way in order to facilitate future extension or connection of the public right-of-way to serve any future subdivision.

6. While current water and sewer infrastructure is sufficient to handle 22 additional homes in this location, the existing fire hydrants are not sufficient to service structures larger than 1,870 sq. ft. The developer may upgrade the water service to increase capacity of hydrants, or all subdivision deeds must contain recorded restrictions that limit overall square footage of individual houses to 1,870sq. ft. or require houses larger than 1,870 sq. ft. to have sprinklers or similar fire suppression systems.

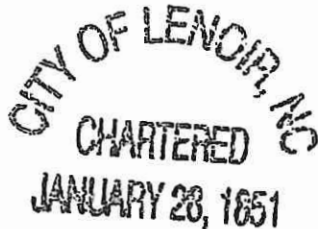
7. As to lots 18-21, the developer must submit and get approval from the city of a grading plan prior to the issuance of any building permits. Placement of homes on steep lots may negatively impact the City's ability to effectively fight house fires on these properties. The city strongly encourages, but does not require, residential sprinklers or similar fire suppression systems for development on these lots.

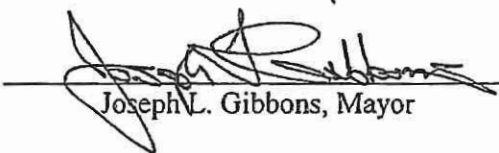
Rendered in public hearing on February 21, 2023. Approved as to written form on March 7th, 2023.

IN WITNESS WHEREOF, the Lenoir City Council issues this decision in its name, together with all conditions, as binding on the applicants and owners and their successors in interest. This decision is effective upon distribution to the parties and filing with the city clerk. Furthermore, this decision runs with the land and the city will record it in suitable form at the Caldwell County Register of Deeds immediately upon effect. It is subject to review by the superior court under the provisions of N.C. Gen. Stat. § 160D-1402.

This the 7th day of March, 2023.

SEAL




Joseph L. Gibbons, Mayor

SEAL

ATTEST:


Shirley M. Cannon, City Clerk



PROFESSIONAL SERVICES AGREEMENT

AMENDMENT #1

City of Lenoir

FNI Project:

LNR22487

510-B Greer Circle

Client Contract:

PSA

Lenoir, NC 28645

Date:

2/14/2023

Project Name: Facilities Condition Assessment

Description of Services: See Attachment SC

Deliverables: See Attachment SC

Schedule: See attached Schedule

Compensation Type: Lump Sum Fee

Current Contract Amount: \$140,000.00

Amount of this Amendment: \$49,700.00

Revised Total Amount Authorized: \$189,700.00

The services described above shall proceed as amended upon execution of this Amendment. All other provisions, terms, and conditions of the Professional Services Agreement which are not expressly amended shall remain in full force and effect.

CITY OF LENOIR

FRESE AND NICHOLS, INC.

By: [Signature]By: [Signature]Name: Vimal NairName: Vimal Nair, PETitle: City ManagerTitle: Principal/Vice PresidentDate: 3/8/2023Date: 2/14/2023

ATTACHMENT SC

SCOPE OF SERVICES AND RESPONSIBILITIES OF CLIENT – Amendment #1**PROJECT UNDERSTANDING**

This is an amendment to add additional facilities to the original facilities condition project. Freese and Nichols (FNI) has identified an additional fifteen (15) facilities to be studied (see the attachment “City of Lenoir – Facility Asset Management List”, highlighted in green). Similar to the original scope, a Freese and Nichols, Inc. (FNI) team of architects and engineers will visit each facility to document its current system’s physical condition. FNI will work with the City administration at each facility and analyze the recommendations for physical improvements over ten years. FNI will document existing conditions, prioritize improvements, and prepare an Excel spreadsheet to track conditions at each facility.

ARTICLE I

BASIC SERVICES: FNI shall render the following professional services in connection with the development of the Project:

Phase I- Project Management

- 1.1 Project administration: FNI will provide overall project administration, including contracting, monthly One Page Reports, and monthly invoicing.
- 1.2 Project meetings: FNI will participate in up to two (2) additional virtual project meetings with the City and the meetings specifically identified herein. The meetings shall be virtual conference calls, not in person in the City.
- 1.3 QC/QA: FNI will conduct internal Quality Control/Quality Assurance of documents before each submittal.

Phase II – Criteria, Ranking, and Template Development.

- 2.1 Prior to the project Kickoff, CLIENT will provide FNI with relevant project data for the additional 15 buildings including, but not limited to, floor and site plans of existing facilities; City maps, existing master plans, previous studies, O&M data, roof warranties, all digitally transmitted to FNI for review. Documents to be presorted by the facility. FNI will perform a cursory review of the information prior to the Kick-off.
- 2.2 FNI will utilize the existing Excel template created by FNI and agreed to by Lenoir.

Phase III – Discovery and Spreadsheet Development.

- 3.1 Base floor plans: FNI will utilize the floor plans of the facilities provided by the City to develop diagrammatic floor plans for each facility for use in the facilities’ assessments. FNI will utilize existing PDF plans when possible and has allocated up to 20 hours of effort to recreate floor plans as needed. The floor plans will indicate room layouts and current room names. Furnishings and equipment will be excluded.
- 3.2 Facility Assessments: Over five (5) days FNI will perform site visits and condition assessments of each of the fifteen facilities. The assessments will be visual in nature and will include the facilities’ architectural, mechanical, and plumbing systems. The conditions of the building interiors and envelope including the roof will be addressed. Exterior improvements such as parking areas and walkways are included. Landscaping is excluded. Conditions will be documented utilizing the Excel template spreadsheet and photography. Electrical, security, information technology systems are excluded from the scope. Assessments of the City’s utility infrastructure such as water, sanitary, storm, gas, and electric systems serving the facilities are excluded. Energy analysis, current and future electrical demand verification/projection are excluded. Verification of compliance with current building codes and ordinances is excluded. Compliance of the facilities with Americans with Disabilities Act is excluded.

3.3 Data Entry/Assessment and Analysis: Following the Facilities Assessments further data entry will be performed, adding floor plans, photos, existing warranties, mechanical and plumbing equipment, and cost information (links) into the Excel spreadsheet. Opening a link in the Excel spreadsheet will bring you to a file or folder with the relevant information. A preliminary condition analysis and ranking will be performed taken from the site observations.

3.6 Data Entry/Assessment and Analysis: Following the spreadsheet review meeting, FNI will input and adjust spreadsheet as needed to finalize.

3.7 Final virtual presentation: FNI will conduct a final presentation of the finish product and will provide instruction on developing reports and recommended ongoing spreadsheet maintenance to be performed by CLIENT.

Deliverables

All submittals for reviews will be electronic and in Microsoft Excel.

Submittals will include:

Draft Populated Excel Spreadsheet

Final Populated Excel Spreadsheet

Exclusions and Assumptions

1. Architectural renderings or models of facilities are excluded.
2. Producing existing facilities' floor or site plans is limited up to 20 hours of effort. It is assumed that the City will provide digital PDF floor and site plans for most of the facilities for FNI's use.
3. It is assumed that documents will be provided to FNI in digital PDF format. Digital scanning services are excluded.
4. Providing assessments of additional facilities that are not included as part of the fifteen facilities listed below will be considered an additional service. The list of facilities included is attached.
5. Extensive field verification of existing conditions is excluded.
6. Master planning and programming services are excluded.
7. The City will have staff available at each facility to provide access to all spaces and respond to questions.
8. Utility infrastructure, Structural, Data, IT, Civil, Electrical, Control Systems and Landscaping, assessments are excluded.
9. Code and ADA reviews are excluded.
10. Hazardous materials testing and environmental services are excluded.
11. Camera test to determine existing condition of sanitary sewer lines is excluded.
12. Design and construction documentation are excluded.
13. Making revisions to previously approved documents will be considered an additional service.
14. Assessment of City utilities (power, water, sewer, gas, and data) to support facilities is excluded.
15. Public meetings are excluded.

ARTICLE II

SPECIAL SERVICES: Not Applicable

ARTICLE III

ADDITIONAL SERVICES: Any services performed by FNI that are not included in the Basic Services or Special Services described above are Additional Services. These could include:

1. Utilizing Microsoft Access in-lieu of Excel is an additional service. This proposal is based on using an Excel spreadsheet which differs from FNI's past Water infrastructure project.
2. Detailed OPCC construction cost project estimates are an additional service.
3. Detailed assessment of equipment is an additional service. Assessments will be visual in nature.

ARTICLE IV

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services as per the attached schedule.

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in CLIENT or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined in this Agreement.

ARTICLE V

RESPONSIBILITIES OF CLIENT: CLIENT shall perform the following in a timely manner so as not to delay the services of FNI:

- A. Designate in writing a person to act as CLIENT's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret, and define CLIENT's policies and decisions with respect to FNI's services for the Project.
- B. Provide all criteria and full information as to CLIENT's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which CLIENT will require to be included in the drawings and specifications.
- C. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- D. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this Agreement.
- E. Examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as CLIENT deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay, or cause rework in, the services of FNI.

- F. 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.
- G. CLIENT shall make or arrange to have made all subsurface investigations, including but not limited to borings, test pits, soil resistivity surveys, and other subsurface explorations. CLIENT shall also make or arrange to have made the interpretations of data and reports resulting from such investigations. All costs associated with such investigations shall be paid by CLIENT.
- H. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as CLIENT may require or FNI may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as CLIENT may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as CLIENT may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
- I. Give prompt written notice to FNI whenever CLIENT observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services, or any defect or nonconformance of the work of any Contractor.
- J. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article III of this Agreement, or other services as required.
- K. Bear all costs incident to compliance with the requirements of this Article V.

ARTICLE VI

DESIGNATED REPRESENTATIVES: FNI and CLIENT designate the following representatives:

Client's Designated Representative –

Client's Accounting Representative –

FNI's Designated Representative – Charles Archer
 1017 Main Campus Drive, Suite 1200
 Raleigh, NC 27606
 919-582-5861
 CHARLES.ARCHER@freese.com

FNI's Accounting Representative – Sharon James
 801 Cherry Street, Suite 2800
 Fort Worth, TX 76102
 817-735-7298
 sdj@freese.com

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

STATE OF NORTH CAROLINA

COUNTY OF CALDWELL

LEASE AGREEMENT

This Lease Agreement, made and entered into this 2nd day of March, 2023, by and between CITY OF LENOIR, a North Carolina municipal corporation of Caldwell County, North Carolina, (hereinafter called "Lessor"), and BERNHARDT TRANSPORTATION, LLC, a North Carolina limited liability company, with its principal office located in Lenoir, Caldwell County, North Carolina, (hereinafter called "Lessee");

WITNESSETH:

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

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

2. Term of Lease.

A. The original term of this Lease shall be for One (1) year and the commencement date shall be January 1, 2024. If requested, the parties shall execute a short form Memorandum of Lease in recordable form containing such matters as the parties may agree upon including, however, as a minimum, the commencement date and the expiration date (which date shall be One (1) year from said commencement date).

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

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

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

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

3. Rentals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

days after the institution or appointment;

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

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

e) Vacates or abandons the Premises;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

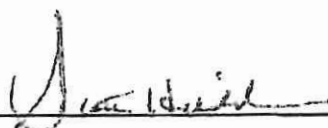
Lessor: City of Lenoir
Attn: Scott Hildebran, Manager
Shildebran@CLLENOIR.NC.US
Post Office Box 958
Lenoir, North Carolina 28645

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

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

LESSOR:

CITY OF LENOIR (SEAL)
a North Carolina municipal corporation

By: 

Scott Hildebran
Manager

LESSEE:

BERNHARDT FURNITURE COMPANY (SEAL)

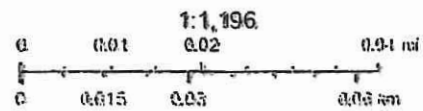
By: Km. McDougall
V.P.

Caldwell County

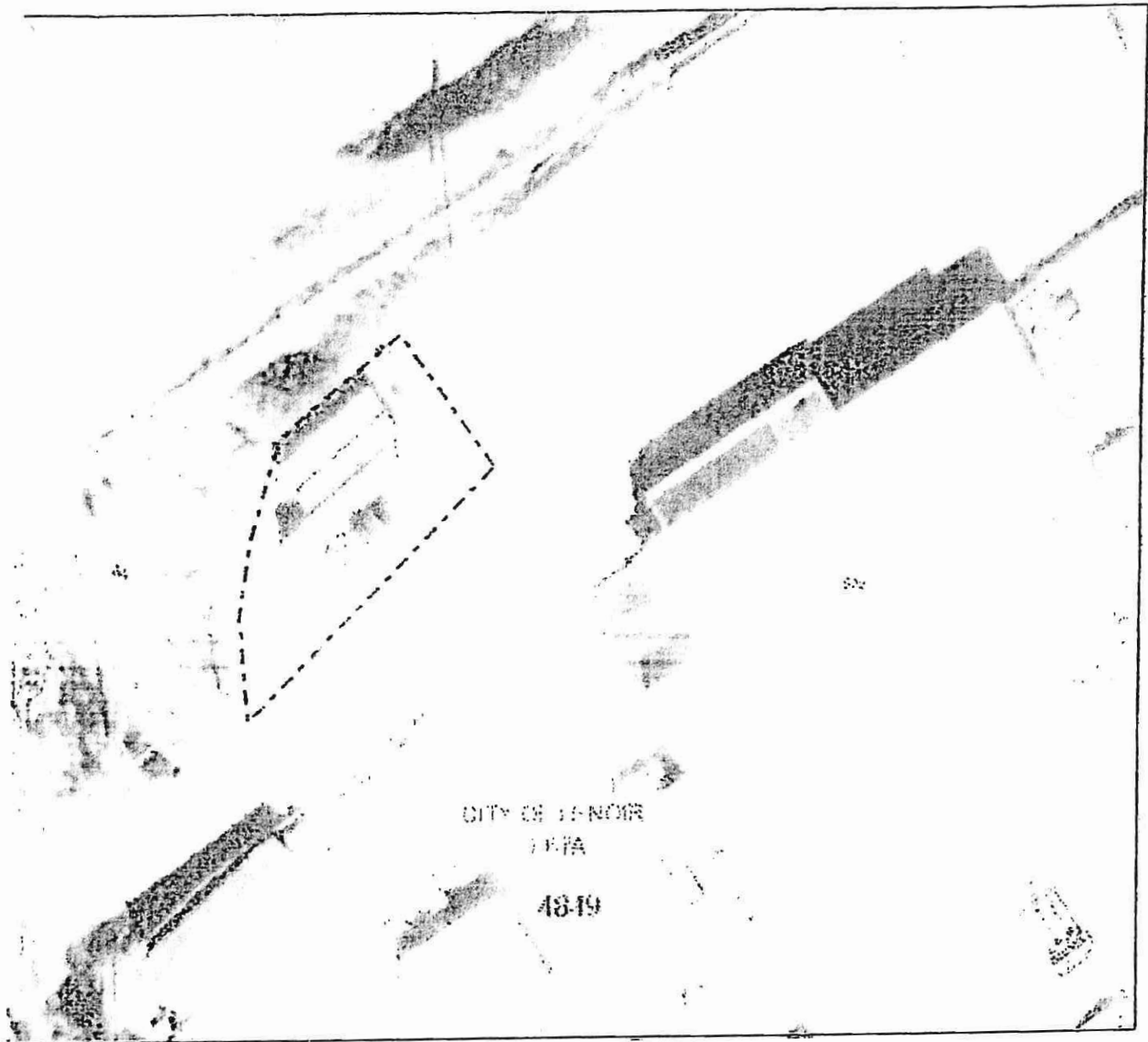


This map is NOT of land survey quality and is NOT suitable for such use.

Exhibit A - Overall Plan



Caldwell County



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

Exhibit B - Parking & Storage Area

