



AGENDA
CITY OF LENOIR
CITY COUNCIL MEETING
905 WEST AVENUE
TUESDAY, MAY 16, 2023
6:00 P.M.



I. CALL TO ORDER

- A. Moment of Silence & Pledge of Allegiance
- B. Special Recognition: On behalf of City Council, Mayor Gibbons will present a proclamation to Police Chief Brent Phelps proclaiming the week of May 15 – 21 as “Peace Officers’ Memorial Week” and Monday, May 15 as “Peace Officers’ Memorial Day” throughout the City of Lenoir.

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

- A. Zoning Amendment #1-23: A public hearing will be held to receive public comments regarding Zoning Amendment#1-23 to the Code of Ordinances, Section 1, Appendix A, Article IV., Definitions, as related to “Retailing, Light” and “Retailing, Intensive” as submitted. Staff recommends adoption of the submitted Ordinance.
- B. Code Amendment #2-23: A public hearing will be held to receive public comments regarding Code Amendment #2-23 to the Code of Ordinances, Section 19-66, Modifications for Major Subdivisions as related to Minor Modifications and Major Modifications/Plat Amendments as submitted. Staff recommends adoption of the submitted Ordinance.

III. CONSENT AGENDA ITEMS

- A. Minutes: Approval of the minutes of the City Council Meeting of Tuesday, May 2, 2023 as submitted.
- B. Proclamation: Approval of a proclamation proclaiming the week of May 15 – 21 as “Peace Officers’ Memorial Week” and Monday, May 15 as “Peace Officers’ Memorial Day” throughout the City of Lenoir.
- C. Professional Services & Consulting Services Agreement; McGill Associates: Approval of the proposal for a Professional Services and Consulting Services Agreement with McGill Associates for the Water and Sewer Asset Inventory and Assessments, as presented.

IV. REQUESTS AND PETITIONS OF CITIZENS

V. REPORTS OF BOARDS AND COMMISSIONS

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

A. Items of Information

1. City Council will conduct a Budget Work Session on Thursday, May 18 at 6:00 p.m. at City Hall, Third Floor, former Council Chambers. If necessary, additional budget work sessions will be held on Tuesday, May 23 at 8:30 a.m. at the Committee of the Whole meeting and on Tuesday, May 30 at 6:00 p.m. All budget work sessions will be held at City Hall.
2. The Planning Board will meet on Monday, May 22 at 5:30 p.m. at the City/County Chambers.
3. City offices will be closed on Monday, May 29 in observance of Memorial Day.
4. The American Legion Post 29 will host a Memorial Day Service on Monday, May 29 beginning at 10:00 a.m. on the square in downtown Lenoir. The public is invited to attend.
5. The Foothills Regional Airport Authority will meet on Wednesday, May 31 at noon at the Airport Facility.
6. The Neon Bike Ride event will be held on Friday, June 2 beginning at 8:30 p.m. at the Lenoir Rotary Soccer Complex. Riders will have the opportunity to decorate their bikes from 8:00 p.m. – 8:30 p.m.
7. The annual Bicycle Festival will be held on Saturday, June 3 from 10:00 a.m. – 2:00 p.m. in downtown Lenoir.
8. A Cruise-In will be held on Saturday, June 3 from 3:00 p.m. – 9:00 p.m. in downtown Lenoir.

B. Items for Council Action

1. FY2023-24 Proposed Budget: City Manager Scott Hildebran will present the recommended FY2023-2024 Annual Budget for the City of Lenoir to City Council and further request that City Council call for a public hearing to be held on Tuesday, June 6, 2023 at 6:00 p.m. to consider approval of the recommended budget.

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

IX. REPORT AND RECOMMENDATIONS OF COUNCILMEMBERS

X. ADJOURNMENT

PROCLAMATION



In Recognition of
Peace Officers' Memorial Week

May 15 – 21, 2023

WHEREAS, the Congress and President of the United States have designated May 15 as Peace Officers' Memorial Day, and the week in which May 15 falls as National Police Week; and

WHEREAS, the members of the law enforcement agency of the Lenoir Police Department play an essential role in safeguarding the rights and freedoms of those inside the City of Lenoir; and

WHEREAS, it is important that all citizens know and understand the duties, responsibilities, hazards, and sacrifices of their law enforcement agency, and that members of our law enforcement agency recognize their duty to serve the people by safeguarding life and property, by protecting them against violence and disorder, and by protecting the innocent against deception and the weak against oppression; and

WHEREAS, the men and women of the law enforcement agency of the City of Lenoir Police Department unceasingly provide a vital public service;

NOW THEREFORE, BE IT RESOLVED, that I, Joseph L. Gibbons, Mayor of the City of Lenoir, and on behalf of the Lenoir City Council, do hereby proclaim and call upon all citizens of Lenoir and upon all patriotic, civic and educational organizations to observe the week of May 15 – May 21, 2023, as Police Week with appropriate ceremonies and observances in which all of our people may join in commemorating law enforcement officers, past and present, who, by their faithful and loyal devotion to their responsibilities, have rendered a dedicated service to their communities and, in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens;

FURTHERMORE, I proclaim and call upon all citizens of the City of Lenoir to recognize May 15, 2023, as Peace Officers' Memorial Day in honor of those law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community or have become disabled in the performance of duty. Let us recognize and pay respect to the survivors of our fallen heroes.

WITNESS, my hand and seal this the _____ day of _____, 2023.

SEAL

Joseph L. Gibbons, Mayor

ATTEST:

Shirley M. Cannon, City Clerk

CITY OF LENOIR**COUNCIL ACTION FORM: May 16, 2023****I. Agenda Item:**

Applicant John Moore is proposing a change to the definition of "Retailing, Light," seeking to add Lenoir Zoning Code related to retailing definitions and "pawn and trade shops." Currently, "pawn and trade shops" are defined under "Retailing, Intensive," which is only permitted in B-2, I-1, and I-2. Moore is proposing to add "pawn and trade shops" to the definition of "Retailing, Light," which is permitted in most nonresidential zoning districts.

II. Background Information:

Staff memo is attached.

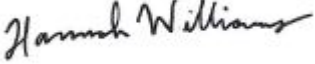
III. Staff and Planning Board Recommendation:

Planning staff and the Planning Board recommend that City Council approval of changes to the Lenoir Zoning Code.

IV. Reviewed by:

City Attorney: _____

Finance Director: _____

Planning Director:  _____

PLANNING DEPARTMENT MEMORANDUM

CITY OF LENOIR, 801 WEST AVENUE, LENOIR, NC 28645

TO: Scott Hildebran, City Manager
FROM: Hannah Williams, AICP, Planning Director
DATE: April 25, 2023
SUBJECT: Proposed Ordinance Amendment for Retailing
CC: Planning Board
TJ Rohr, City Attorney

John Moore of Brushy Mountain Builders has made an application to the Planning Board for a Zoning Ordinance Amendment. Moore is proposing to add “pawn and trade shops” to the definition of “Retailing, Light.” Currently, “pawn and trade shops” are defined under “Retailing, Intensive.” While light retail is permitted in almost all non-residential districts, intensive retail is only allowed in industrial districts and B-2 (General Business). The applicant is interested in developing a pawn shop business at a property he owns, which is zoned B-6 (Transitional Business). The B-6 district does not allow for intensive retail, but “Retailing, Light” is permitted.

The definition of Light Retailing includes many common retail uses, from shopping malls to liquor stores. Light retail includes any retail use that displays a majority of their products indoors, and does not typically have land use impacts on neighboring properties. Notably, many retail uses that usually sell similar items found in a pawn shop are included under Light Retail, such as hardware, gun, and jewelry sales. Intensive Retailing includes any retail use that, due to the nature of the products sold, primarily uses outdoor displays. This includes car and truck sales, boat sales, and heavy equipment sales. These are all retail uses that usually need an outdoor lot to display and store goods. Pawn and trade shops usually do not display goods outdoors. Classifying pawn and trade as light retail is a logical suggestion.

Planning staff and Planning Board recommend approval of adding pawn and trade to the Retailing, Light definition in the Lenoir Zoning Ordinance, and offers the following consistency statement:

The proposed zoning ordinance amendment is consistent with the Lenoir Comprehensive Plan because it results in sensible and straightforward zoning standards are easy to understand. This text amendment aligns the land-use impacts with the appropriate permitted use by placing pawn and trade shops, an indoor retail use, within the light retail definition. The proposed amendment is reasonable and in the public interest because it allows for the reuse of a currently vacant building along a major corridor.

**AN ORDINANCE OF THE CITY COUNCIL OF LENOIR, NORTH
CAROLINA, AMENDING APPENDIX A OF THE LENOIR CITY
CODE RELATED TO THE DEFINITION OF RETAIL,
PROVIDING FOR CODIFICATION, AND AN EFFECTIVE DATE.**

Whereas, Section 400 of the Lenoir Zoning Ordinance currently defines “Retailing, Light” for any retail use that displays a majority of their products indoors and due to the nature of the product for sale does not typically have land use impacts on neighboring properties and “Retailing, Intensive” for any retail use that, due to the nature of the products sold, primarily uses outdoor displays, which may or may not include long-term outdoor storage of merchandise; and

Whereas, Section 400 of the Lenoir Zoning Ordinance currently lists “pawn and trade shops” as a use under “Retailing, Intensive,” although pawn shops can effectively display a majority of products indoors and are similar in land use impacts to other uses listed under “Retailing, Light”; and

Whereas, retail uses with similar characteristics and impacts such as guns and ammunition sales, hardware stores, jewelry sale and repair, lawn and garden care supplies, radio and television sales, rent-to-own stores, second hand stores and swap shops are currently permitted within the “Retailing, Light” definition; and

Whereas, the performance standards and intensity of permitted uses would allow for the orderly and compatible development of pawn and trade shops in zoning districts where “Retailing, Light” is permitted, which are R-C (residential-commercial), O&I (Office and Institutional), B-2 (General Business), B-3 (Central Business), B-5 (Neighborhood Mixed Use), B-6 (Transitional Business), B-7 (Highway Business), I-1 (Light Industrial), and I-2 (Heavy Industrial); and

Whereas, a current owner of B-6 (Transitional Business) zoned property desires to open a pawn and trade shop under the development standards of the current zoning district, prompting staff to review the current ordinances and recommend approval of this proposed amendment; and

Whereas, the Lenoir Planning Board finds and declares that this ordinance and these amendments consistent with the City’s adopted Comprehensive Plan; and

Whereas, the Lenoir City Council hereby finds and declares that this ordinance and these amendments are in the best interest of the public health, safety, and welfare; and

NOW, THEREFORE, LET IT BE ENACTED BY THE CITY COUNCIL OF THE CITY OF LENOIR, NORTH CAROLINA, AS FOLLOWS:

SECTION 1. Appendix A, Article IV of the Code of Ordinances, City of Lenoir, North Carolina, “Definitions” is hereby amended to read as follows:

ARTICLE IV. – DEFINITIONS

Retailing, Light - Any retail use that displays a majority of their products indoors, does not store product outdoors, and due to the nature of the product for sale does not typically have land use impacts on neighboring properties. Light retail uses include but are not limited to: antennas, radio, TV, and dish sales and service, antique shops, apparel and accessory sales, appliance stores, art galleries, art and drafting supplies, audio/video sales, rental, and repair, automobile parts and accessories (no service), bakeries, bicycle sales/service, book and stationary stores, candy stores, convenience stores (no fuel pumps), crafts/hobby shops, delicatessens, department stores, drug stores, electronic products sales and service, fabric stores, film drop-off booths, florists, furniture and home goods stores, garden supply store, gift shops, glass and mirror store, grocery stores, guns and ammunition sales, hardware stores, jewelry sale and repair, lawn and garden care supplies, lighting stores, line and uniform supply stores, liquor (ABC) stores, music stores, musical instrument sales and service, novelty and souvenir shops, office equipment and supply stores, pawn and trade shops, pet shops, pharmacies, photography supply stores, plumbing and heating supplies, produce stands, radio and television sales, rent-to-own stores, second hand stores and swap shops, shoe sales and repair, shopping centers and malls, sporting goods stores, and supermarkets.

Retailing, Intensive - Any retail use that, due to the nature of the products sold, primarily uses outdoor displays, which may or may not include long-term outdoor storage of merchandise. Intensive retail uses include but are not limited to: Auction sales, automobile and truck sales (new or used), boat sales, farm machinery sales, farm supplies, heavy equipment sales and service, livestock sales, manufactured home sales, RV sales, monument sales, motorcycle sales, ~~pawn and trade shops~~, stone and clay products sales, and truck, farm equipment, and heavy equipment sales.

SECTION 2. CODIFICATION. The City Clerk shall cause the Code of Ordinances of Lenoir, North Carolina to be amended as provided by this ordinance and may renumber, re-letter, and rearrange the codified parts of this ordinance if necessary to facilitate the finding of the law.

SECTION 3. EFFECTIVE DATE. This ordinance takes effect upon adoption.

DONE, THE PUBLIC NOTICE, in a newspaper of general circulation in the City of Lenoir, North Carolina, by the City Clerk of the City of Lenoir, North Carolina, this _____ day of _____ and this _____ day of _____, 2023.

DONE, THE PUBLIC HEARING, AND ENACTED ON FINAL PASSAGE, by an affirmative vote of a majority of a quorum present of the City Council of the City of Lenoir, North Carolina, at a regular meeting, this _____ day of _____, 2023.

BY THE MAYOR/MAYOR PRO TEMPORE OF THE CITY OF LENOIR, NORTH CAROLINA:

Joseph L. Gibbons, Mayor

ATTEST, BY THE CLERK OF THE CITY COUNCIL OF THE CITY OF LENOIR, NORTH CAROLINA:

Shirley M. Cannon, City Clerk

APPROVED AS TO FORM:

Timothy J. Rohr, City Attorney

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CITY OF LENOIR**COUNCIL ACTION FORM: May 16, 2023****I. Agenda Item:**

Staff is proposing to add a modifications ordinance to the Subdivision Chapter of the Code of Ordinances.

II. Background Information:

This change would allow for some minor modifications to Major Subdivisions to be approved administratively by staff. Major modifications that would require Council action are also defined.

Staff memo is attached.

III. Staff and Planning Board Recommendation:

Planning staff and the Planning Board recommend that City Council approval of changes to the Lenoir Code of Ordinances.

IV. Reviewed by:

City Attorney: _____

Finance Director: _____

Planning Director: Hannah Williams

PLANNING DEPARTMENT MEMORANDUM

CITY OF LENOIR, 801 WEST AVENUE, LENOIR, NC 28645

TO: Scott Hildebran, City Manager
FROM: Hannah Williams, AICP, Planning Director
DATE: April 5, 2023
SUBJECT: Proposed Ordinance Amendment for Major Subdivisions
CC: Planning Board
TJ Rohr, City Attorney

The Planning Department is proposing a change to the subdivision ordinance relating to minor modifications. According to GS 160D-403(d), “a local government may define by ordinance minor modifications to development approvals that can be exempted or administratively approved.” This statutory language adds administrative modifications as an option for local governments. It authorizes minor adjustments to projects that are already approved by the City Council, so long as the local ordinance states what the minor modification allows. This administrative flexibility reduces the need for another full approval process to accommodate a limited change to the plans for a project.

Currently, minor modification standards are defined for Conditional Zoning Districts and Special Use Permits within the Lenoir Zoning Ordinance in Appendix A (see Sec. 820.6 and Sec. 900.5). Minor modification standards are not provided in Chapter 19, the Subdivision Ordinance. This means any change to an approved Major Subdivision, however minor or small, would need to go through the full approval process. Planning staff proposes to apply similar language used for Conditional Zoning and Special Use Permit minor and major modifications to Major Subdivisions, as detailed in the attached ordinance.

An example of a minor modification for a Major Subdivision could include a change to lot configuration, but could not include an increase to the total number of lots or change the minimum square footage for a lot. Please note, these development approvals also have major modifications defined, which shall follow the same approval process as initially. For example, any proposed change to the approved conditions would require an amendment to the Major Subdivision, and would not be considered an administrative minor modification.

**AN ORDINANCE OF THE CITY COUNCIL OF LENOIR,
NORTH CAROLINA, AMENDING CHAPTER 19
OF THE LENOIR CODE OF ORDINANCES RELATED TO
SUBDIVISIONS, PROVIDING FOR CODIFICATION, AND
AN EFFECTIVE DATE.**

Whereas, the NC General Statutes that give local governments authority to regulate land use and development, specifically to establish procedures to allow for administrative review of proposed minor amendments for development approvals in NCGS 160D-403; and

Whereas, the Lenoir Planning Board finds and declares that this amendment is consistent with the City's adopted Comprehensive Plan which calls for straightforward regulation and is linked to Lenoir's local authority to regulate subdivision; and

Whereas, the Lenoir City Council hereby finds and declares that this amendment is in the best interest of the public health, safety, and welfare since it will streamline approval of minor changes to development; and

**NOW, THEREFORE, LET IT BE ENACTED BY THE CITY COUNCIL OF THE CITY
OF LENOIR, NORTH CAROLINA, AS FOLLOWS:**

SECTION 1. Chapter 19 of the Code of Ordinances, City of Lenoir, North Carolina, "Subdivisions" is hereby amended to read as follows:

Sec. 19-66. ~~Reserved.~~ Modifications for Major Subdivisions

- (1) *Minor Modifications.* Subsequent development applications may incorporate minor changes from the development defined by the major subdivision approval, without the need to amend the major subdivision, where the Planning Director determines that the changes:
 - a. Continue to comply with this Ordinance or any other local development regulation; and
 - b. Are necessary to comply with conditions of approval; or

- c. Are necessary to comply with a development regulation or accommodate a physical site constraint that was not known at the preliminary site design phase and would not significantly alter the development's general function, form, intensity, character, demand on public facilities, impact on adjacent properties, or other characteristic from that indicated by the conditions of approval.

(2) *Major Modifications/Plat Amendments.* Any requests for changes or modifications to the development outlined in the major subdivision that do not meet the standards for minor modifications above shall constitute a major change requiring an amendment to the major subdivision. Amendments for major modifications shall follow the same process for approval as the original preliminary plat. In any case, the following changes from the major subdivision approval shall always constitute a major change:

- a. A change in a condition of approval;
- b. A change in uses permitted or the density of overall development.
- c. An increase greater than ten percent in the amount of land devoted to non-residential uses.

SECTION 2. CODIFICATION. The City Clerk shall cause the Code of Ordinances of Lenoir, North Carolina to be amended as provided by this ordinance and may renumber, re-letter, and rearrange the codified parts of this ordinance if necessary to facilitate the finding of the law.

SECTION 3. EFFECTIVE DATE. This ordinance takes effect upon adoption.

DONE, THE PUBLIC NOTICE, in a newspaper of general circulation in the City of Lenoir, North Carolina, by the City Clerk of the City of Lenoir, North Carolina, this _____ day of _____ and this _____ day of _____, 2023.

DONE, THE PUBLIC HEARING, AND ENACTED ON FINAL PASSAGE, by an affirmative vote of a majority of a quorum present of the City Council of the City of Lenoir, North Carolina, at a regular meeting, this _____ day of _____, 2023.

BY THE MAYOR/MAYOR PRO TEMPORE OF THE CITY OF LENOIR, NORTH CAROLINA:

Joseph L. Gibbons, Mayor

ATTEST, BY THE CLERK OF THE CITY COUNCIL OF THE CITY OF LENOIR, NORTH CAROLINA:

Shirley M. Cannon, City Clerk

APPROVED AS TO FORM:

Timothy J. Rohr, City Attorney

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**LENOIR CITY COUNCIL
TUESDAY, MAY 2, 2023
6:00 P.M.**

PRESENT: Mayor Joe Gibbons presiding. Councilmembers present were Mayor Pro-Tem Crissy Thomas, Jonathan Beal, Ike Perkins, David Stevens, City Manager Scott Hildebran, City Clerk Shirley Cannon and City Attorney Timothy J. Rohr.

ABSENT: Councilmembers Kent Greer, Todd Perdue and Ralph Prestwood.

I. CALL TO ORDER

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

10TH ANNUAL GRAVITY

- GAMES:** B. Mayor Gibbons reported that 40 teams participated in the 10th annual Gravity Games held on Saturday, April 29 in downtown Lenoir. He stated it was a great event and thanked City Staff for all their hard work and assistance during the event. Mayor Gibbons also thanked several sponsors including Google, Appalachian State University, UNC Health Care and Science Fair among others.

**SPECIAL RECOGNITION;
POLICE DEPARTMENT:**

- C. On behalf of City Council, Mayor Gibbons read and presented a proclamation to Police Chief Brent Phelps proclaiming the month of May as “Motorcycle Safety and Awareness Month” throughout the City of Lenoir.

Chief Phelps shared North Carolina has the largest motorcyclist population in the nation and pointed out he wants to raise awareness for public safety so people will come here to ride and enjoy our area. He thanked City Council for the recognition and support.

Mayor Gibbons thanked the Police Department for all they do in keeping the citizens of Lenoir safe.

**SPECIAL RECOGNITION:
INTERNATIONAL FIREFIGHTERS DAY:**

- B. On behalf of City Council, Mayor Gibbons read and presented a proclamation to Deputy Fire Chief Kenny Nelson proclaiming Thursday, May 4 as “International Firefighters Day” throughout the City of Lenoir.

Chief Nelson remarked that firefighting is an important job and he was thankful he has the opportunity to serve in Lenoir. He shared he always wanted to be a firefighter and thanked City Council for all they do for the Fire Department and for all of their support.

**SPECIAL RECOGNITION;
CELEBRATE DRINKING WATER**

- WEEK:** C. On behalf of City Council, Mayor Gibbons read and presented a proclamation to Public Utilities Operations Manager Jeff Church and Water Treatment Plant Superintendent Kevin Matheson proclaiming the week of May 7 through May 13 as “Celebrate Drinking Water Week” throughout the City of Lenoir.

Mr. Church stated he has been with the City for nine months and commended Superintendent Matheson for being so knowledgeable of the City’s utility system. He further thanked all the staff of Public Utilities Staff for all of their hard work in maintaining the utility system.

Superintendent Matheson expressed his appreciation to City Council for their support and stated he and staff were doing the best job they could do in providing potable drinking water for the citizens of Lenoir.

**SPECIAL RECOGNITION;
NATIONAL PUBLIC WORKS**

- WEEK:** D. On behalf of City Council, Mayor Gibbons read and presented a proclamation to Public Works Operations Manager Jon Hogan and Superintendent Beth McMahan proclaiming the week of May 21 through May 27 as “National Public Works Week” throughout the City of Lenoir.

Mr. Hogan shared the theme of the 63rd National Public Works Week is Connecting the World through Public Works. He referred to the great relationships you build in public service and pointed out it takes special people to work in these types of positions. Mr. Hogan thanked City Council for their support and recognition and further thanked all the staff of the City’s Public Works Department.

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

III. CONSENT AGENDA ITEMS

- A. Minutes: Approval of the minutes of the City Council Meeting of Tuesday, April 18, 2023 as submitted.
- B. Minutes: Approval of the minutes of the Committee of the Whole meeting of Thursday, April 20, 2023 as submitted.
- C. Proclamation; Approval of a proclamation proclaiming the month of May as “Motorcycle Safety and Awareness Month” throughout the City of Lenoir. (A copy of the proclamation is hereby incorporated into these minutes for reference. Refer to page 112.)
- D. Proclamation; Approval of a proclamation proclaiming Thursday, May 4 as “International Firefighter’ Day” throughout the City of Lenoir. (A copy of the proclamation is hereby incorporated into these minutes as reference. Refer to page 113.)
- E. Proclamation; Approval of a proclamation proclaiming the week of May 21 through May 27 as “Celebrate Drinking Water Week” throughout the City of Lenoir. (A copy of the proclamation is hereby incorporated into these minutes as reference. Refer to page 114.)

- F. Proclamation: Approval of a proclamation proclaiming the week of May 21 through May 27 as “National Public Works Week” throughout the City of Lenoir. (A copy of the proclamation is hereby incorporated into these minutes as reference. Refer to page 115.)
- G. Sewer Access Agreement; Piedmont Natural Gas, Inc.: Approval of a Sewer Access Agreement between Piedmont Natural Gas, Inc. and the City of Lenoir as submitted. The effective date of the agreement is May 2, 2023. (A copy of the agreement is hereby incorporated into these minutes by reference. Refer to pages 116-119.)

Upon a motion by Councilmember Stevens, City Council voted 4 to 0 to approve the items listed on the Consent Agenda (A-G) as described above and as recommended by City Manager Hildebran.

IV. REQUESTS AND PETITIONS OF CITIZENS

V. REPORTS OF BOARDS AND COMMISSIONS

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

A. Items of Information

NATIONAL DAY OF

PRAYER:

1. A ceremony will be held at the stage area of the downtown square on Thursday, May 4 from noon until 12:30 p.m. in observance of the National Day of Prayer.

CRUISE-IN:

2. A Cruise-In will be held on Saturday, May 6 from 3:00 p.m. – 9:00 p.m. in downtown Lenoir.

CITY/COUNTY SERVICES

COMMITTEE:

3. The City/County Services Committee will meet on Monday, May 8 at noon.

COMMUNITY ENGAGEMENT

MEETING:

4. The City of Lenoir and DRL Group are hosting round two of the Community Engagement Meetings on Thursday, May 11 from 6:00 p.m. – 8:00 p.m. at the Harper Room located at 1016 Harper Avenue.

BUDGET WORK

SESSION:

5. A Budget Work Session will be held on Thursday, May 18 at 6:00 p.m. at City Hall, 801 West Avenue, Third Floor Conference Room.

B. Items for Council Action

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF COUNCILMEMBERS

IX. REPORT AND RECOMMENDATIONS OF THE MAYOR

**BOARD APPOINTMENT;
PLANNING BOARD:**

- A. Mayor Gibbons recommended that Dontrell Parson be appointed to serve a term on the Lenoir Planning Board which expires June 2025. This appointment was announced at the April 18 City Council meeting.

Upon a motion by Mayor Pro-Tem Thomas, City Council voted 4 to 0 to appoint Dontrell Parson to serve a term on the Lenoir Planning Board as recommended by Mayor Gibbons.

X. ADJOURNMENT

- A. There being no further business, the meeting was adjourned at 6:25 p.m.

Shirley M. Cannon, City Clerk

Joseph L. Gibbons, Mayor



PROCLAMATION

Motorcycle Safety & Awareness Month

May 2023



WHEREAS, the growth in popularity of motorcycle riding and touring, combined with the many scenic destinations in our state and the year-long riding season, have led to North Carolina having one of the largest populations of motorcycle enthusiasts in the nation; and

WHEREAS, more and more residents of the City of Lenoir are taking up this mode of transportation to commute to and from their places of employment; and

WHEREAS, many motorcyclists undergo specialized training by attending professionally taught motorcycle operator training courses with emphasis on skills, traffic laws, and proper safety equipment; and

WHEREAS, it is the responsibility of all motorists to be aware of motorcyclists and extend to them the same courtesy as any other vehicles on our roadways.

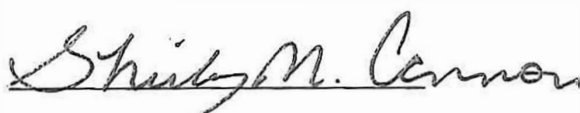
NOW, THEREFORE, BE IT RESOLVED, that I, Joseph L. Gibbons, Mayor of the City of Lenoir, and on behalf of the Lenoir City Council, do hereby proclaim the month of May as "Motorcycle Safety and Awareness Month" throughout the City of Lenoir.

WITNESS, my hand and seal this the 2nd day of May, 2023.

SEAL


 Joseph L. Gibbons, Mayor

ATTEST:


 Shirley M. Cannon, City Clerk



CITY MANAGER
SCOTT E. HILDEBRAN

CITY OF LENOIR
NORTH CAROLINA

MAYOR
JOSEPH L. GIBBONS

CITY COUNCIL
J. T. BEAL
F. K. GREER
T. H. PERDUE
J. I. PERKINS
R. S. PRESTWOOD
D. F. STEVENS
C. D. THOMAS

PROCLAMATION
IN HONOR OF
INTERNATIONAL FIREFIGHTERS' DAY

WHEREAS, International Firefighters' Day is observed each year on May 4th to honor and remember past firefighters who have lost their lives while serving their communities, to express gratitude to those that have served in this line of work and to show support and appreciation for those who presently serve; and

WHEREAS, regardless of the language a firefighter speaks, or the country in which he or she works and resides, all firefighters fight against the same enemy - fire; and

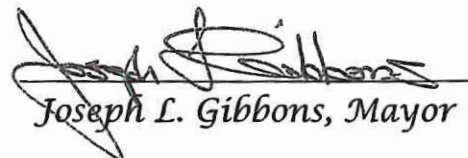
WHEREAS, firefighters follow a long line of tradition and honor that inspires them to help colleagues, neighbors and strangers alike; and

WHEREAS, the demands of firefighting are accompanied by both personal and physical tolls that all firefighters knowingly accept while risking their lives to protect the lives of others.

NOW, THEREFORE, be it resolved that by the virtue of the authority vested in me as Mayor of City of Lenoir, North Carolina, and on behalf of the Lenoir City Council, I do hereby proclaim Thursday, May 4th, 2023, as "**International Firefighters' Day**" throughout the City of Lenoir and encourage all citizens to show support and appreciation to our City, County, and State firefighters who protect our lives and property so diligently throughout the year and by remembering past firefighters who dedicated their lives to preserve our safety.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Lenoir to be affixed this the 2nd day of May, 2023.

SEAL


Joseph L. Gibbons, Mayor

ATTEST:


Shirley M. Cannon, City Clerk





CITY MANAGER
SCOTT E. HILDEBRAN

CITY OF LENOIR
NORTH CAROLINA

MAYOR
JOSEPH L. GIBBONS

CITY COUNCIL
J. T. BEAL
F. KENT GREER
T. H. PERDUE
J. I. PERKINS
R. S. PRESTWOOD
D. F. STEVENS
C. D. THOMAS

PROCLAMATION
IN CELEBRATION OF
DRINKING WATER WEEK

WHEREAS, water is our most valuable natural resource; and

WHEREAS, only tap water delivers public health protection, fire protection, support for our economy and the quality of life we enjoy; and

WHEREAS, any measure of a successful society - low mortality rates, economic growth and diversity, productivity, and public safety are in some way related to access to safe water; and

WHEREAS, we are all stewards of the water infrastructure upon which future generations depend; and

WHEREAS, each citizen of the City of Lenoir is called upon to help protect our source waters from pollution, to practice water conservation, and to get involved in local water issues by getting to know their water;

NOW, THEREFORE, be it resolved that by virtue of the authority vested in me as Mayor of the City of Lenoir, North Carolina, and on behalf of the Lenoir City Council, I do hereby proclaim the week of May 7 – 13, 2023, as *"Celebrate Drinking Water Week"* throughout the City of Lenoir.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Lenoir to be affixed this the 2nd day of May, 2023.

SEAL


Joseph L. Gibbons, Mayor

ATTEST:


Shirley M. Cannon, City Clerk





CITY MANAGER
SCOTT E. HILDEBRAN

CITY OF LENOIR
NORTH CAROLINA

MAYOR
JOSEPH L. GIBBONS

CITY COUNCIL
J. T. BEAL
F. K. GREER
T. H. PERDUE
J. I. PERKINS
R. S. PRESTWOOD
D. F. STEVENS
C. D. THOMAS

**PROCLAMATION
IN HONOR OF
NATIONAL PUBLIC WORKS WEEK**

WHEREAS, Public Works Professionals focus on infrastructure, facilities and services that are of vital importance to sustainable and resilient communities and to the public health, high quality of life and well-being of the people of the City of Lenoir and,

WHEREAS, these infrastructure, facilities and services could not be provided without the dedicated efforts of public works professionals, who are engineers, managers and employees at all levels of government and the private sector, who are responsible for rebuilding, improving and protecting our nation's transportation, water supply, water treatment and solid waste systems, public buildings, and other structures and facilities essential for our citizens; and

WHEREAS, it is in the public interest for the citizens, civic leaders and children in the City of Lenoir to gain knowledge of and to maintain a progressive interest and understanding of the importance of public works and public works programs in their respective communities; and

WHEREAS, the year 2023 marks the 63rd annual National Public Works Week sponsored by the American Public Works Association,

NOW, THEREFORE, I, Joseph L. Gibbons, Mayor, and on behalf of the Lenoir City Council, do hereby designate the week of May 21 - 27, 2023, as "**National Public Works Week**" and urge all citizen to join with representatives of governmental agencies and the American Public Works Association in activities and ceremonies designed to pay tribute to our Public works professionals, engineers and administrators and to recognize the substantial contributions they have made to our national health and welfare.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Lenoir to be affixed this the 2nd day of May, 2023.

SEAL


Joseph L. Gibbons, Mayor

ATTEST:


Shirley M. Cannon, City Clerk



SEWER ACCESS AGREEMENT

This Sewer Access Agreement ("Agreement") is made and effective this 2nd day of May 2023 (the "Effective Date") by and between Piedmont Natural Gas Company, Inc. ("Piedmont"), and the City of Lenoir ("City"). Piedmont and City are each a "Party" and collectively, the "Parties".

WHEREAS, The City is the owner of certain sanitary sewer facilities located in Caldwell County ("Sewer System"); and

WHEREAS, Piedmont seeks consent to access the Sewer System to perform closed circuit video inspection and location survey activities, on the Sewer System and its natural gas facilities (the "Work") to mitigate risk and damage to natural gas distribution systems and sewer facilities; and

WHEREAS, The Parties have mutually agreed to enter into this Agreement in order to memorialize the specific terms of the access to the Sewer System by Piedmont.

NOW, THEREFORE, in consideration of the execution of this Agreement, and other valuable and good consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1) The City hereby grants to Piedmont, and Piedmont accepts from the City, a non-transferable, non-exclusive, right to access the Sewer System (including any City property upon which the Sewer System is located) solely to perform the Work by Piedmont and its employees, agents, and contractors (each a "Piedmont Party" and collectively, the "Piedmont Parties") and for no other purpose, subject to the Piedmont Parties' compliance with the terms and conditions set forth herein. The rights granted hereunder are solely for performance of the Work by Piedmont. No Piedmont Party shall access the Sewer System for any other purpose nor shall any Piedmont Party allow any other person or parties into the Sewer System without prior written consent from the City.

- a) Piedmont agrees that its rights to access the Sewer System shall at all times be subordinated to the City's right to use the Sewer System.
- b) No Piedmont Party shall (i) construct, alter, modify, relocate or remove any improvement in or on the Sewer System without the City's prior consent; (ii) disturb or interfere with the City's operations or use of the Sewer System, except as standard Work practices may reasonably require; (iii) damage any part of the Sewer System or any personal property owned or held by the City or its employees, agents or contractors; (iv) create or permit any liens to attach to the Sewer System; or (v) create or cause any sewer blockages, backups, spills, or accidental discharges.
- c) Any and all costs and expenses for all Work shall be the sole responsibility of Piedmont. The City shall have no liability for any costs or expenses or any other costs

and expenses of any Piedmont Party under this Agreement.

- d) Piedmont shall, at Piedmont's sole cost and expense, promptly restore or cause to be restored any portion of the Sewer System or City property damaged by any Piedmont Party. Repairs to the Sewer System shall be made in accordance with the City's design and construction standards and specifications effective at the time of the Work. Restoration shall be to approximately the same condition that the Sewer System or property was in immediately prior to the Work. Nothing herein shall prevent Piedmont from using contractors or subcontractors to fulfill its repair obligations contemplated in this Section l(d) or elsewhere in the Agreement. If requested by Piedmont, City shall promptly provide a list of contractors which it uses to perform the applicable repair or restoration tasks.
 - e) For clarity, the Work will be performed with the goal of identifying damage to Piedmont's natural gas facilities and any damage to the Sewer System directly caused by the boring of natural gas lines. Piedmont shall make a reasonable effort to report to the City any open and obvious problems observed within the Sewer System; provided, however, Piedmont shall be under no obligation to identify or report to the City any damages to the Sewer System which are not of a nature that could be reasonably related to the Work or to natural gas line boring and shall not be liable or responsible for failing to discover or report any such issues.
- 2) The initial term of this Agreement shall be for five (5) years from the Effective Date. Thereafter, this Agreement will automatically renew for successive one (1) year terms. Either party may terminate this Agreement without cause at any time, upon at least sixty (60) days written notice.
 - 3) During the term, Piedmont shall maintain adequate comprehensive general liability insurance coverage, either through a policy or policies of insurance or a program of self-insurance, and any other insurance required by law.
 - 4) All Work undertaken in or on the Sewer System by any Piedmont Party shall be performed in a workman like manner and in accordance with applicable laws. Piedmont shall be responsible for obtaining all necessary permits and approvals applying to such Work.
 - 5) Piedmont shall keep all content, results, and products of the Work and any other information regarding the City's operations obtained or observed while accessing the Sewer System confidential and will not disclose the same to any third parties, without the prior written consent of the City, except such information may be disclosed (i) to the officers, directors, employees, contractors and agents of Piedmont who need to know such information for the purpose of performing or evaluating the Work or (ii) as required by law.
 - 6) Piedmont shall indemnify and hold the City harmless from any and all liabilities, damages, losses, claims, expenses, suits, costs or demands (collectively, "Claims"), that the City may sustain or incur to the extent caused by the actions or omissions of the Piedmont Parties, except to the

extent such Claims arise out of the negligence or willful misconduct of City or its employees, agents or contractors. Notwithstanding anything to the contrary herein, neither Party shall be liable to the other Party for any incidental, indirect, special, punitive or consequential damages (including without limitation any damages relating to lost profits or loss of use) ("Consequential Damages") arising in connection with this Agreement unless such Consequential Damages are due to such Party's gross negligence, misrepresentation; fraud; willful, wanton, or reckless act or omission; or any other intentional conduct of the Party. The terms of this Section shall survive termination or expiration of this Agreement.

7) No waiver or delay in enforcement of any breach of any term, covenant or condition of this Agreement shall be construed as a waiver of any preceding or succeeding breach of any other term, covenant or condition of this Agreement. Should any provision of this Agreement be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall be modified by the parties to be compliant with the law and, as modified, enforced. All other terms and conditions of this Agreement shall remain in full force and effect and shall be construed in accordance with the modified provision, as if such illegal, invalid or unenforceable provision had not been contained herein.

8) Except in cases of merger or sale of assets, the rights granted herein are not assignable by Piedmont without prior written consent of City, such consent not to be unreasonably withheld, conditioned, or delayed. City agrees that Piedmont may use subcontractors for any portion of the Work as necessary and determined in Piedmont's sole discretion. The rights granted hereby are binding upon the Parties and their respective successors and assigns and confer no rights to the public or any other person or entity not a party to this Agreement. Any addition or modification to this Agreement must be made in writing and signed by both Parties.

9) This Agreement, and all rights and obligations of the Parties relating to this Agreement, shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to the conflicts of law principles.

10) This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof. This Agreement may be executed with electronic signatures and in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Transmission of images of signed signature pages by e-mail or other electronic means shall be effective as if originals.

11) For clarity, nothing in this Agreement shall govern the Parties' respective rights, obligations, remedies, defenses or liabilities with respect to any issues or matters which may be identified as a result of the Work, but which do not actually arise from the Work performed under this Agreement. Neither party waives any rights of any kind whatsoever with respect to any issue or matter which does not arise from the Work performed under this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed

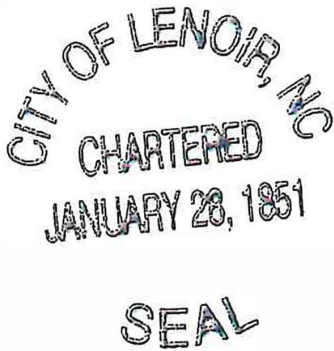
and delivered for and in their names by their duly authorized officers or representatives all as of the day and year first above written above.

Piedmont Natural Gas Company, Inc.

By: _____

Print Name: _____

Title: _____



City of Lenoir, North Carolina

By: [Signature]

Print Name: Scott Hildebrand

Title: City Manager

5/2/2023

CITY OF LENOIR
COUNCIL ACTION FORM

- I. Agenda Item:** Consideration to approve a Proposal for Professional Services and a Consulting Services Agreement with McGill Associates for Water and Sewer Asset Inventory and Assessments.

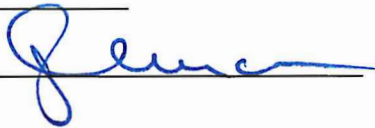
Background Information: The Division of Water Infrastructure approved the City's Asset Inventory and Assessment (AIA) grant application as eligible to receive grant funding from the American Recovery Plan Act and the State Reserve Program in March 2023. The funding amount is a total of \$400,000; i.e., \$200,000 for a Water AIA and \$200,000 for a Sewer AIA. City staff issued a Request for Qualifications for engineering firms to conduct the AIA project for the City. Staff recommends McGill Associates, the firm most advantageous to the City for this project, to perform this work.

- II. Staff Recommendation:** Staff recommends City Council the Proposal for Professional Services and the Consulting Services Agreement with McGill Associates for the Water and Sewer Asset Inventory and Assessments, as presented.

- III. Reviewed by:**

City Attorney: _____

Finance Director: _____

Public Works/Public Utilities Director:  _____

May 9, 2023

Mr. Scott Hildebran, City Manager
 City of Lenoir
 Post Office Box 958
 Lenoir, North Carolina 28645

RE: Proposal for Professional Services
 Asset Inventory and Assessments (AIAs)
 City of Lenoir, North Carolina

Dear Mr. Hildebran:

McGill is pleased to provide the City of Lenoir with this proposal for professional services related to Water AIA Grant No. AIA-D-ARP-0223 and Sewer AIA Grant No. AIA-W-ARP-0024. The Asset Inventory and Assessment (AIA) Project will build upon the accomplishments of initial AIA grants received in 2016. Key outcomes of the Water AIA work included identifying areas of diminished water transmission capacity, reduced pumping rates, future upgrades required to support effective management of pressure zones, and expanding the Water CIP to address identified infrastructure deficiencies. Key outcomes of Sewer AIA work included identifying areas with excessive inflow/infiltration (I/I), assessments of critical infrastructure contributing to excessive I/I, and expanding the Sewer CIP to address identified infrastructure deficiencies.

The City is now in need of preparing a detailed inventory and assessment of the water and sewer systems. The major tasks and deliverables include:

1. Asset inventory of water and sewer systems, including pipes, manholes, and other horizontal assets, as well as an inventory of vertical assets including the Water Treatment Plant, booster pump stations, tanks, sewer pump stations, and the two Wastewater Treatment Plants.
2. Assessment of the condition of inventoried assets and criticality scoring matrix of assets.
3. Identification of Water System improvements and costs.
4. Updates to the Water Capital Improvements Plan (CIP).
5. Preparation of a complete Water Asset Management Plan for the water system

SCOPE OF SERVICES:

We anticipate providing the following **Scope of Services** for the project. Budgets for individual tasks are indicated below for grant record keeping purposes.

Water AIA

- | | |
|--|----------|
| • Preliminary work and site visits | \$30,000 |
| • Water system and WTP asset inventory | \$80,000 |
| • Water asset assessment and scoring | \$50,000 |
| • Water Capital Improvement Plan (CIP) | \$10,000 |
| • Water Asset Management Plan (AMP) | \$30,000 |

Sewer AIA

- | | |
|---|----------|
| • Preliminary work and site visits | \$30,000 |
| • Sewer system and WWTP asset inventory | \$80,000 |
| • Sewer asset assessment and scoring | \$50,000 |
| • Sewer Capital Improvement Plan (CIP) | \$10,000 |
| • Sewer Asset Management Plan (AMP) | \$30,000 |

BASIS OF COMPENSATION:

Based on the above understanding and scope of services, we proposed to provide our services for the following lump sum fees:

- | | |
|--|-----------------------------|
| 1. Water Asset and Inventory Assessment | \$200,000 (lump sum) |
| 2. Sewer Asset and Inventory Assessment | \$200,000 (lump sum) |

This proposal assumes the following:

- AIA work does not include mapping or locating services.
- Necessary project information will be provided by City staff in a timely manner.
- City staff will examine all reports, estimates, and documents presented and render decisions and comments within a reasonable time to not delay the services.
- Additional services requested beyond the scope of services are available on an hourly basis in accordance with our Basic Fee Schedule.
- Invoices will be sent monthly as work progresses.

ACCEPTANCE

If you find this proposal acceptable, please sign and return this proposal along with the attached Consulting Services Agreement as your authorization to proceed. We look forward to working with you and your staff on this important project.

If you have any questions regarding this proposal, please do not hesitate to contact us at 828-328-2024.

Sincerely,
McGILL ASSOCIATES, PA

AUTHORIZATION:
CITY OF LENOIR

DOUGLAS CHAPMAN, PE
Vice President – Regional Office Manager
Date: _____

SCOTT HILDEBRAN
City Manager
Date: _____

Enclosures: Basic Fee Schedule
Consulting Services Agreement

"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act."

Finance Director

Date

CONSULTING SERVICES AGREEMENT

This contract entered into this 16th day of May, 2023 by and between the City of Lenoir hereinafter called the Client, and McGill Associates, P.A.;

Witneseth that:

Whereas, the Client desires to engage McGill Associates to provide consulting services; and,

Whereas, the Client finds that the attached Scope of Services and terms of this agreement are acceptable; and,

Whereas, McGill Associates desires to provided said services and agrees to do so for the compensation and upon the terms and conditions as hereinafter set forth,

Now, therefore, the parties hereto do mutually agree as follows:

1. Scope of Services: McGill Associates shall provide the services attached hereto in the Exhibit "Scope of Services" to this Agreement, hereinafter called services. Additional services will be invoiced in accordance with the attached rate and fee schedule.

2. Standard of Care: McGill Associates will perform its services using that degree of skill and diligence normally employed by professional engineers or consultants performing the same services at the time these services are rendered.

3. Authorization to Proceed: Execution of this Consulting Services Agreement will be considered authorization for McGill Associates to proceed unless otherwise provided for in this Agreement.

4. Changes in Scope: The Client may request changes in the Scope of Services provided in this Agreement. If such changes affect McGill Associates cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this Agreement.

5. Compensation: The Client shall pay the compensation to McGill Associates set forth in the Exhibit "Basis for Compensation" attached hereto. Unless otherwise provided in the Basis for Compensation, McGill Associates shall submit invoices to the Client monthly for work accomplished under this agreement and the Client agrees to make payment to McGill Associates within thirty (30) days of receipt of the invoices. Client further agrees to pay interest on all accounts invoiced and not paid or objected to for a valid cause in writing within said thirty (30) days at a rate of 1-1/2 percent per month (18 percent per annum), until paid. Client agrees to pay McGill Associates' cost of collection of the amounts due and unpaid after sixty (60) days, including but not limited to, court costs and attorney's fees. McGill Associates shall not be bound by any provision such as contained in a purchase order or wherein McGill Associates waives any rights to a mechanic's lien or any provision conditioning McGill Associates' right to receive payment for its work upon payment to the Client by any third party. These general conditions are notice, where required, that McGill Associates shall file a lien whenever necessary to collect past due amounts. The Client agrees that failure to make payment in full within thirty (30) days of receipt of the invoice shall constitute a release of McGill Associates from any and all claims of negligence which Client may have. It is also mutually agreed that should the Client fail to make prompt payments as described herein, McGill Associates reserves the right to immediately stop all work under this agreement until disputed amounts are resolved.

6. Personnel: McGill Associates represents that it has, or will secure at their own expense, all personnel required to perform the services under this agreement and that such personnel will be fully qualified and adequately supervised to perform such services. It is mutually understood that should the scope of services require outside subcontracted services, McGill Associates may do so at their discretion.

7. Opinions or Estimates of Cost: Any costs estimates provided by McGill Associates shall be considered opinions of probable costs. These along with project economic evaluations provided by McGill Associates will be on a basis of experience and judgment, but, since McGill Associates has no control over market conditions or bidding procedures, McGill Associates cannot warrant that bids, ultimate construction cost, or project economics will not vary from these opinions.

8. Termination: This Agreement may be terminated for convenience by either the Client or McGill Associates with 15 days written notice or if either party fails substantially to perform through no fault of the other and does not commence correction of such non performance within 5 days of written

notice and diligently complete the correction thereafter. On termination, McGill Associates will be paid for all authorized work performed up to the termination date plus reasonable project closeout costs.

9. Limitation of Liability: McGill Associates liability for Client's damages will, in aggregate, not exceed \$50,000. This provision takes precedence over any conflicting provision of this Agreement or any documents incorporated into it or referenced by it. This limitation of liability will apply whether McGill Associates liability arises under breach of contract or warranty; tort, including negligence; strict liability; statutory liability; or any other cause of action, and shall include McGill Associates' directors, officers, employees and subcontractors. At additional cost, Client may obtain a higher limit prior to commencement of services.

10. Assignability: This agreement shall not be assigned or otherwise transferred by either McGill Associates or the Client without the prior written consent of the other.

11. Severability: The provisions of this Consulting Services Agreement shall be deemed severable, and the invalidity or enforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this consulting services agreement is deemed unenforceable for any reason whatsoever, such provision shall be appropriately limited, and given effect to the extent that it may be enforceable.

12. Ownership of Documents: All documents, calculations, drawings, maps and other items generated during the performance of services shall be considered intellectual property and remain the property of McGill Associates. Client agrees that the deliverables are intended for the exclusive use and benefit of, and may be relied upon for this project only by the Client and will not be used otherwise. Client agrees that any prospective lender, buyer, seller or third party who wishes to rely on any deliverable must first sign McGill Associates' Secondary Client Agreement.

13. Excusable Delay: If performance of service is affected by causes beyond McGill Associates control, project schedule and compensation shall be equitably adjusted.

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

15. Choice of Law: This Agreement shall be governed by the internal laws of the State of North Carolina.

16. Entire Agreement: 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.

17. Attachments to this document:

1. Proposal including Scope of Services and Basis of Compensation
2. Fee Schedule

Client: City of Lenoir
Authorized Signature:

McGill Associates, P.A.

Name: Scott Hildebran
Title: City Manager
Address: Post Office Box 958
Lenoir, North Carolina 28645

Name: Douglas Chapman, PE
Title: Vice President – Regional Office Manager
Address: 1240 19th Street Lane, NW
Hickory, North Carolina 28601