

**COMMITTEE OF THE WHOLE
TUESDAY, May 28, 2024**

8:30 A.M.

Present: Mayor Joe Gibbons, Mayor Pro-Tem David Stevens, Jonathan Beal, Todd Perdue, Ike Perkins, Ralph Prestwood, and Kimmie Rogers.

Staff Present: City Manager Scott Hildebran, City Clerk Shirley Cannon, Finance Director Donna Bean, Public Services Public Works Director Jon Hogan, Public Services Public Utilities Director Jeff Church, Downtown Economic Development & Main Street Director, Brenda Floyd, Planning Director Hannah Williams, Parks & Recreation Director Phil Harper, Fire Chief Norman Staines, Chief of Police Brent Phelps, Director of Special Projects & Grants Jared Wright, Communications Director Joshua Harris, Planning Technician, Matt Duchan, Human Resources Manager, Crystal Smith, Purchasing and Risk Manager, David Coffey, Senior IT Specialist, Ben Liddy, and Intern Kate Starr.

Absent: Councilmember Crissy Thomas.

I. Mayor Pro-Tem David Stevens welcomed everyone and called the meeting to order.

II. CITIZEN COMMENTS

A. There were no citizen comments presented at this time.

III. COMMITTEE ITEMS

A. Public Services Public Works: Public Services Public Works Director Jon Hogan presented the following report:

1. Stormwater Infrastructure Emergency Repairs at (3) Locations; Shotcrete Contractors, Inc.: Staff recommends approval to contract with Shotcrete Contractions, Inc. to make the needed critical repairs to the following locations as quoted:
 - #1. Bride Headwall – Meadowlane Drive Bridge
 - #2. Stormwater Retention Vault – 443 Harper Avenue SW

* Quote for items 1 & 2 is \$19,400.00

Director Hogan pointed out the stormwater repairs on Creekway Drive are necessary because the bottom is gone from the pipe. In addition, he reported that two pipes have rusted out on Overlook Drive.

- #3. 931 Overlook Drive Culvert with Liner
- *Quote for item #3 is \$71,300.00

IV. Community Development

- A. Lenoir Business Advisory Board: The Lenoir Business Advisory Board met on Thursday, May 11. Brenda Floyd, Economic Development & Main Street Director presented the following report. Director Floyd stated there are two board appointments that will be filled in June. Staff is also in the process of revising the I Heart Main Street dinner. Director Floyd further reported the Neon Bike Ride will be held on Friday, May 31 beginning at 8:30 p.m. at the Lenoir Rotary Soccer Complex.
- B. Planning Board: The Planning Board did not meet in May. Matt Duchan, Planner & GIS Coordinator presented the following item for discussion:
 1. Sidewalk Café Permit Application; Fercott Fermentables: Staff finds the proposed application approvable with conditions. The following conditions are recommended:
 - A. All alcoholic beverages sold and consumed in the Fercott Sidewalk Café shall be in Social District containers, according to the Social District Management and Maintenance Plan.
 - B. A 5 ft. clear pedestrian path between the sidewalk adjacent to Main Street.
 - C. The sidewalk café shall only operate during social District hours, as outlined by the Social District ordinance (Sec. 13-92, Lenoir Code of Ordinances.)
 - D. Any fixtures aside from the table and chairs shall be subject to the Planning Director's review.

This item will be placed on the June 4, 2024 Consent Agenda for consideration of approval by Council.

- C. Parks and Recreation Advisory Board: The Parks & Recreation Advisory Board met on Monday, May 20. Phil Harper, Parks & Recreation Director presented a report of the meeting along with an update of several activities and projects as follows:
 - a) Automatic Gate Installation; J.E Broyhill Park & Broyhill Walking Park: Staff recommends awarding USA Fence the contract for the materials and installation of new automatic gate systems at J.E. Broyhill Park and Broyhill Walking Park for \$14,591 x 2 locations for a total amount of \$29,182.00. Staff further recommends changing the current Park Hours to Standard Seasonal Park Hours as below:

Standard Seasonal Park Hours
 April – September 6:00 a.m. – 8:30 p.m.
 October – March 6:00 a.m. – 7:00 p.m.

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

Director Harper stated the department continues to have vandalism issues regarding the restrooms at the Broyhill Walking Park and emphasized the gates are needed. Councilmember Beal suggested adding an additional fifteen minutes in order to allow park guests time to exit the park. Police Chief Phelps responded it would work better for the Police Department to have set times established for opening and closing both parks.

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the location of its existing Public Services Department's communication equipment.

A copy of the lease agreement is hereby attached to these minutes as reference.

Motion

Upon a motion by Councilmember Beal, City Council voted 6 to 0 to adopt the Lease Agreement between the City of Lenoir and Hibriten Mountain, LLC for a ten-year period effective July 1, 2024 and shall continue in effect for a period of ten years ending on June 30, 2034 as described above and as presented.

3. Updated Safety & Health Policy for City of Lenoir: David Coffey, Purchasing & Risk Manager stated the policy has not been updated since the 1990's and includes a listing of the Department Directors, Supervisors, plus a list of doctor's employees may select from.

(A copy of the Safety & Health Policy is on file in the Purchasing & Risk Manager's office.)

Motion

Following a brief discussion and upon a motion by Councilmember Perkins, City Council voted 6 to 0 to adopt the updated Safety & Health Policy for the City of Lenoir as presented by Purchasing & Risk Manager David Coffey.

- F. Update: Director of Special Projects and Grants: Director of Special Projects and Grants Jared Wright presented the following report:

- 1) **PARTF Splash Pad** – The Construction Contract for the PARTF Splash Pad has been routed for execution and the next steps will include getting a project schedule from the contractor and scheduling a pre-construction meeting.
- 2) **PARTF Remaining elements** – Staff has reviewed required recreational elements and facility improvements and will solicit pricing from suppliers for a (concrete corn hole & ping pong) along with developing bid package(s) for improvements to the locker rooms/restrooms, whirlpool, and picnic shelter.
- 3) **MLK Improvements** – Staff packaged all improvements into a single bid package to avoid coordination issues with multiple subcontractors potentially being on-site at the same time; met with one (1) bidder on-site last week, will meet with additional bidders this week; Intent is to receive bids for entire scope of work to minimize number of contracts (this effort will help with coordination of activities and scheduling.)
- 4) **MRC Rooftop drainage and façade** – Request for Proposals developed, will send to additional contractors for quotes (1 already received.)
- 5) **Greenway Dog Park proposal** – develop POPC for improvements based on sketch (by others), determine public cost share (if the project is feasible.)
- 6) **Campus CMar RFQ** – Request for Qualifications has been drafted, need to determine posting, submission, review, and award dates (RFQ package ready to go.)
- 7) **ARC funding application** – for OVT pavilion and connector. A pre-submittal workshop will be held on June 4 with final applications due on July 31.
- 8) **College Avenue parcels** – continue coordination with legal counsel and heirs for all required signatures (2 parcels.)

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- 1) On Saturday, June 1st, the department will have crews at a Touch-a-Truck event at the Caldwell County Library and another public event at Chick-Fil-A.
- 2) On Saturday, June 1st, the department will be participating in a Smoke Detector Canvas in several communities within the City. These detectors are part of a grant program with the NC Department of Insurance (NCDOL.)
- 3) Staff will be assisting with the Keith Owens Junior Fire Academy this summer. Staff will help provide instruction on both the one day camp and during the weeklong camp.
- 4) Staff expresses a thank you to UNC Caldwell for an appreciation lunch they provided for all public safety agencies.

VII. OTHER

- A. June Calendar: The calendar for the month of June was provided in the packet as information listing committee meetings and upcoming events.

VIII. ADJOURN

- A. There being no further business, the meeting was adjourned at 9:30 a.m.

Attachments

Sidewalk Café Permit

USA Fence (Bid Tab)

Harambee Design (submitted by artist)

Amendments (Annual Budget Ordinance)

Lease Agreement – Hibriten Mountain/City of Lenoir



SIDEWALK CAFE PERMIT APPLICATION

CITY HALL • 801 WEST AVENUE NW • PO BOX 958 • LENOIR, NC 28645

The City of Lenoir allows sidewalk cafes within the downtown Municipal Service District when a permit is approved by City Council, in accordance with Sec. 13-3 of the Lenoir City Code. For questions about this application form or the rules pertaining to sidewalk cafes in the City of Lenoir, please contact the Planning Dept. at 828.610.8442. PERMITS ARE GOOD FOR A PERIOD OF 1 YEAR AND MUST BE RENEWED ANNUALLY.

Submittal Checklist:

- ☐ Application Form
- ☐ Site Plan (including dimensions):
 - Must show all tables, chairs, walkway areas, and entrances/exits to the restaurant.
 - Must show location and materials of temporary barrier to be erected around the cafe.
 - Must show 5 ft. clear pedestrian path on sidewalk adjacent to cafe area.
- ☐ Documentation of Public Liability Insurance
 - Must carry \$1,000,000.00 insuring against personal injury, wrongful death and property damage, including the City as a party insured and insuring the City against any liability resulting from the uses permitted pursuant to Section 13-3 of the Lenoir City Code.
- ☐ Copies of All Permits and Licenses
 - County Health Department and any other applicable regulatory agencies
 - Current ABC/ALE permits if the sidewalk cafe intends to serve alcoholic beverages on the public sidewalk. NOTE: revised permits may be required to include the expanded areas.

Permit Information:

Property Address: 107 Main St NW NC PIN: 2749870271

Zoning District: B-3 Located within Municipal Service District? Yes ☒ No ☐

Business Name: Fercott Fermentables

Will ABC permit include sidewalk cafe area? Yes ☐ No ☒ *Not needed w/ Social District rules in place*

Number of seats in Restaurant: 34 Number of seats* proposed for sidewalk cafe: 2-3

*Note: seating in sidewalk café can not exceed 50% of the seating within the restaurant.)

Contact Information:

Jennifer Indicott
Name of Restaurant Operator

107 Main St NW
Street Address

Lenoir NC 28645
City State Zip

Phone Number: 828-394-9069

Fax Number: N/A

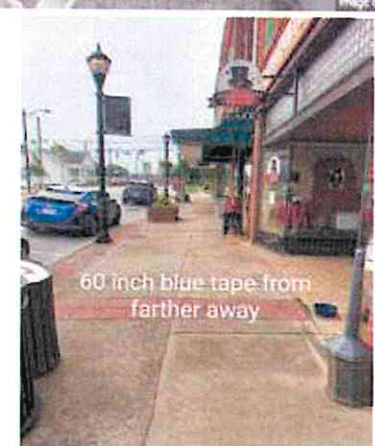
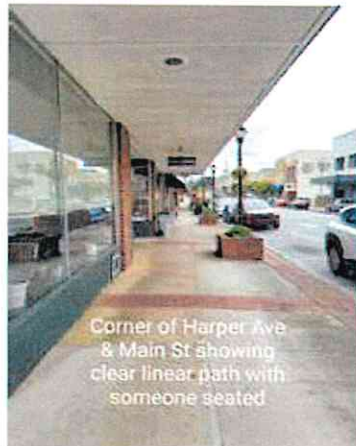
Email: fercottfermentables@gmail.com

Owner's Signature:

Jennifer Indicott

By signing, I certify that the information presented in this application is true to the best of my knowledge and I consent to enter into a hold-harmless agreement with the City and comply with all provisions of the City ordinances in the establishment and operation of the sidewalk café described in this application.

OFFICIAL USE ONLY: City Council approved on _____ Permit No. _____





Fercott Fermentables LLC
Fercott Fermentables
107 Main Street NW
Lenoir, NC 28645

ISSUED: 04/24/2023
COUNTY: Caldwell
TYPE: LLC Member Managed

PERMIT NUMBER	ORIGINALLY ISSUED	DESCRIPTION
00256206AJ	01/19/2018	Malt Beverage On Premises
00256206AL	01/19/2018	Unfortified Wine On Premises
00256206MB	01/19/2018	Mixed Beverages Bar

Permit(s) listed in **BLUE** must be registered by **April 30th** every year.

Permit(s) listed in **RED** expire on **04/30/2024** and must be renewed each year.



FILE NUMBER:

00256206AJ-999

William H. Bauer, Jr.

WILLIAM HENRY BAUER, JR.
 Chairman

Pursuant to G.S. 18B-903, these permit(s) are valid only for the business listed at this address, are not transferable, and will automatically expire with an ownership change. See authorization(s) on the back.

NC Department of Health and Human Services
Division of Public Health
Environmental Health Section

☒ Permit ☐ Transitional Permit

Date: 03/26/2024

Name of Establishment: Fercott Fermentables Permittee: Fercott Fermentables LLC
Location Address: 107 Main St NW Manager/Person in Charge: Jennifer Indicott
City: Lenoir State: NC Zip: 28645 County: Caldwell
Billing Name: Fercott Fermentables LLC Status Code: I - New Permit/Opening Sheet
Billing Address: 107 Main St NW Establishment ID: 1014010094
City: Lenoir State: NC Zip: 28645 Map #: _____ Parcel ID: _____
Email Address: fercottfermentables@gmail.com Lat: _____ Long: _____
Phone: (828) 394-9069 Fax: _____ Emergency Phone Number: _____

Permission is granted to operate a 1 - Restaurant as defined in G.S. 130A-247(I) and 130A-248, Regulation of Food and Lodging Facilities. See permit requirements in Rules. This permit is not transferable and may be revoked for failure to comply with all requirements.

Wastewater Systems: ☒ Municipal/Community ☐ On-Site Capacity: 49 Category #: 0 1 ☒
Water Supply: ☒ Municipal/Community ☐ On-Site 3 4

Pushcart/Mobile Food Unit operating in conjunction with: _____

Restaurant or Commissary Name and ID number: _____

Conditions/Remarks:

No changes to menu without contacting CCEHS.

Facility not approved for specialized processing without local regulatory authority review to determine if a variance, HACCP plan, or both are required.

All equipment used shall comply with chapter 4 of the current NC Food Code Manual.

All wastewater generated by the facility shall be conveyed to an approved sanitary sewer system or onsite wastewater filtration system.

☐ Attachments

Transitional Permit Conditions

This permit shall expire on _____ and is not renewable. All non-compliant items listed herein and on attached pages (if applicable) must be completed within ☐ 90 / ☐ 180 days days. This establishment must close if all noncompliant items are not corrected by the expiration date.

Received By: Jennifer Indicott Title: _____ Date: 03/26/2024
Manager/Person in Charge

Signed By: [Signature] REHS#: 2867 - Little, Logan Date: 03/26/2024
Division of Public Health

Purpose: General Statute 130A-248(b) states "No establishment shall commence or continue operation without a permit or transitional permit issued by the Department. The permit or transitional permit shall be issued to the owner or operator of the establishment and shall not be transferable. If the establishment is leased, the permit or transitional permit shall be issued to the lessee and shall not be transferable. If the location of an establishment changes, a new permit shall be obtained for the establishment. A permit shall be issued only when the establishment satisfies all of the requirements of the rules. The Commission shall adopt rules establishing the requirements that must be met before a transitional permit may be issued, and the period for which a transitional permit may be issued. The Department may also impose conditions on the issuance of a permit or transitional permit in accordance with rules adopted by the Commission. A permit or transitional permit shall be immediately revoked in accordance with G.S. 130A-23(d) for failure of the establishment to maintain a minimum grade of C. A permit or transitional permit may otherwise be suspended or revoked in accordance with G.S. 130A-23." Preparation: Local environmental health specialists shall issue a permit every time a change in permit status is indicated. Prepare an original and one copy for: 1. Original to be left with the owner or operator. 2. Copy for the local health department. Disposition: Please refer to Records Retention and Disposition Schedule 8.B.6., for County/District Health Departments which is published by the North Carolina Division of Archives & History. Additional forms may be ordered from: Environmental Health Section, 1632 Mail Service Center, Raleigh, NC 27699-1632, (Courier 52-01-00)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/25/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Baker & Company Insurance Inc 121 W Plymouth St Bremen, IN 46506	CONTACT NAME: Robyn Goehring PHONE (A/C, No, Ext): 574-546-2685 FAX (A/C, No): 574-546-3527 E-MAIL ADDRESS: robyn@bakerandcompanyinsurance.com INSURER(S) AFFORDING COVERAGE NAIC # INSURER A: Liberty Mutual INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
INSURED Fercott Fermentables 107 Main St Nw Lenoir, NC 28645	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL (MSD)	SUBR (WVD)	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER	X		BKS63437918	07/07/2023	07/07/2024	EACH OCCURRENCE \$ 1000000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300000 MED EXP (Any one person) \$ 15000 PERSONAL & ADV INJURY \$ 1000000 GENERAL AGGREGATE \$ 2000000 PRODUCTS - COM/PROP AGG \$ 2000000
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION S						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N		N/A			☐ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Listed as Additional Insured

CERTIFICATE HOLDER

CANCELLATION

City of Lenoir 801 W Avenue NW Lenoir, NC 28645	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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PROPOSAL / PRICE QUOTE

May 23, 2024 ♦ Page 1 of 2

City of Lenoir – Broyhill Walking Park Gate
945 Lakewood Cir SW
Lenoir, NC 28645

Attn: Duke Moore
dmoore@ci.lenoir.nc.us
828-757-2169

OUR SCOPE OF WORK ON THE ABOVE PROJECT IS AS FOLLOWS:

COMMERCIAL ALUMINUM

Install New:

- 1 4' x 20' Black Commercial Aluminum Cantilever Gate style Bellehaven
- 1 Cantilever Gate Operator with free exit, photo eyes, programmable timer and wireless keypad
- 2 4" Black Commercial Aluminum Gate Posts
- 3 4" Bollards – Concrete Filled

TOTAL PRICE OF MATERIAL AND LABOR, INSTALLED: \$14,591.00

VINYL COATED CHAIN LINK

Install New:

- 1 4' x 20' #8ga finish Black vinyl coated chain link cantilever gate
- 1 Cantilever Gate Operator with free exit, photo eyes, programmable timer and wireless keypad
- 2 4" Vinyl Coated Gate Posts
- 3 4" Bollards – Concrete Filled

TOTAL PRICE OF MATERIAL AND LABOR, INSTALLED: \$11,681.00

NOTE

If there is any variance between quantities and specifications shown by us and those in your request, please notify us immediately. Unless noted, assumed to be installed in dirt - Core Drilling will result in additional charges/change order. Quote covers listed footages only.

Respectfully Submitted,
Brittany Andrews
Estimator

Acceptance Signature: _____ Date: _____

Printed Name & Title: _____

**** Due to the current fluctuation of steel prices, this quote may Be withdrawn by USA Fence
If Not Accepted Within 10 Days ****



PO Box 11099 • 919 8th Ave NE Suite A • Hickory, NC 28601
Phone: (828) 999-2606 • www.usafence.biz



From: [Phillip Harper](#)
To: [Cannon, Shirley](#)
Subject: Final draft for mural
Date: Friday, May 24, 2024 2:18:36 PM



Sent from my iPhone

2023-2024 FISCAL YEAR			
BUDGET AMENDMENT			
MAY 28, 2024			
Request for amendments to be made to the annual budget ordinance for the fiscal year ending June 30, 2024 as follows:			
ITEM 1: ADJUSTMENT TO ALLOCATE ADDITIONAL REVENUES.			
ACCOUNT #	DEPARTMENT	INCREASE	DECREASE
3123	AD VALOREM TAXES	393,000.00	
3411	LIENS AGAINST PROPERTY	60,000.00	
3831	INTEREST EARNED	75,000.00	
	TOTAL INCREASE/DECREASES	528,000.00	
NET EFFECT ON GENERAL FUND BUDGET		528,000.00	
NET EFFECT ON THE GENERAL FUND BALANCE		-	
ITEM 2: ADJUSTMENTS TO THE GENERAL FUND TO ALLOCATE ADDITIONAL REVENUE.			
ACCOUNT #	DEPARTMENT	INCREASE	DECREASE
4110	LEGISLATIVE	25,000.00	
4120	ADMINISTRATIVE	108,500.00	
4130	FINANCE	37,000.00	
4250	VEHICLE SERVICES	20,000.00	
4260	BUILDING MAINT.	20,000.00	
4270	ENGINEERING	28,500.00	
4312	POLICE PATROL	50,000.00	
4511	STREET MAINTENANCE	101,300.00	
4512	STREET TRAFFIC CONTROL	25,000.00	
4710	SANITATION	50,000.00	
6121	AQUATIC	15,000.00	
6130	PARKS	47,700.00	
	TOTAL INCREASE/DECREASES	528,000.00	-
NET EFFECT ON GENERAL FUND BUDGET		528,000.00	-
NET EFFECT ON THE GENERAL FUND BALANCE		-	-
ITEM 3: ADJUSTMENTS TO THE WATER AND SEWER FUND WITH A ZERO NET EFFECT ON FUND BALANCE.			
ACCOUNT #	DEPARTMENT	INCREASE	DECREASE
WATER FUND			
7130	RHODHISS PLANT		125,000.00
7131	WATER DIST.		125,000.00
7132	WATER RESOURCES		15,000.00
7133	WATER ADMIN	40,000.00	
7140	WASTEWATER COLLECTION	-	25,000.00
7141	WASTEWATER PRETREATMENT		
7142	GUNPOWDER		25,000.00
7143	LOWER CREEK	275,000.00	
	TOTAL INCREASE/DECREASES	315,000.00	315,000.00
NET EFFECT ON WATER AND SEWER FUND BUDGET		-	
NET EFFECT ON ENTERPRISE FUND BALANCE		-	-

NORTH CAROLINA)
)
CALDWELL COUNTY) LEASE

THIS LEASE, made and entered into on the date of the last to sign below, is by and between:

HIBRITEN MOUNTAIN, LLC, a North Carolina limited liability company,
Mailing address: Attn: James B. Hogan
118 N. Sterling Street
Morganton, North Carolina 28655
Phone: (828) 437-3335; Email: james@starneslawfirm.com
("Landlord")

and
CITY OF LENOIR,
A North Carolina municipal corporation;
With a mailing address of:
Attn: Mr. Jeff Church
City of Lenoir
Public Works, Telemetry and Water Department
Post Office Box 958
Lenoir, North Carolina 28645
Email: jeff.church@CILEnoir.nc.us ("Tenant");
both parties of Caldwell County, North Carolina;

For and in consideration of the rents to be paid and the covenants and agreements hereinafter expressed, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon the terms and conditions hereinafter cited, that certain property located in Caldwell County, North Carolina more particularly described below, (the "Leased Premises"), together with the use of the Hibriten Mountain Road to access the Leased Premises.

WITNESSETH:

1. Landlord owns the property known as Hibriten Mountain, pursuant to that certain deed recorded in deed book 1783 at page 1428 of the Caldwell County Registry.
2. Leased Premises: Tenant has been leasing a small spot on top of Hibriten Mountain (hereafter "the Leased Premises") from Landlord, and Landlord's predecessor in title, for a number of years, for its communications equipment, and desires to continue the lease into the future pursuant to this Lease. This lease is intended solely for the continuation of Tenant's leasing of the location of its existing equipment. In the event Tenant wishes to place new equipment on the mountain which takes up or occupies a different footprint than that used on the date this lease is executed, then a new lease may be required at Landlord's discretion.
3. Term: This Lease shall begin on July 1, 2024, and shall continue in effect for a period of Ten (10) years ending on June 30, 2034, (the "Initial Term").

4. Rental: During the Initial Term, the Rent will be:

7/1/2024 – 6/30/2025:	\$710.00/mo.
7/1/2025 – 6/30/2026:	\$731.30/mo.
7/1/2026 – 6/30/2027:	\$753.24/mo.
7/1/2027 – 6/30/2028:	\$775.84/mo.
7/1/2028 – 6/30/2029:	\$799.11/mo.
7/1/2029 – 6/30/2030:	\$823.08/mo.
7/1/2030 – 6/30/2031:	\$847.78/mo.
7/1/2031 – 6/30/2032:	\$873.21/mo.
7/1/2032 – 6/30/2033:	\$899.41/mo.
7/1/2033 – 6/30/2034:	\$926.39/mo.

The rental to be paid by Tenant for said premises shall be deemed divided among the City's Departments, as follows:

Public Works Dept.:	31%
Telemetry Dept.:	31%
Water Dept.:	38%

All rent shall be payable in advance of the 10th day of each month being rented. Should any monthly installment of rent remain overdue for twenty (20) days, at any time during such default Landlord may terminate this lease and demand and receive possession of said premises. Rent should be sent to: Attn: John C. Hogan, 10601 River Forest Drive, Raleigh, N.C. 27614-8969.

5. Access: Landlord grants to Tenant access over the existing roadbed of the private portion of the Hibriten Mountain Road to the Leased Premises for the purpose of constructing, operating, maintaining and modifying Tenant's facilities and associated equipment at any time subsequent to the signing of this Lease. Landlord shall have no duty to repair or maintain the road. Access is subject, however, to Tenant complying with the Forest Service regulations for use of Forest Service roads. Tenant shall share equally with other tenants on the site in the cost of maintaining the access road.
6. Permitted Use; Equipment; Underground Lines: Tenant shall be entitled to occupy and use the Leased Premises and the access routes described herein for purposes related to the construction, installation, operation, maintenance, repair and replacement from time to time of telecommunications facilities, towers, antennae, electronic equipment boxes and cabinets and/or equipment or devices which Tenant deems necessary or desirable for cell phone, one-way and two-way wireless, wireline and cable communications purposes (collectively, the "Equipment"). Without limiting the generality of the foregoing, Tenant shall be entitled to construct, reconstruct, replace, rebuild, inspect, maintain and use only underground telephone, telecommunications and electrical conduit and lines to serve the Equipment (the "Underground Lines"). Any such conduit and lines previously installed but not underground may be maintained, but not expanded without Landlord's express written consent. All utilities shall be placed parallel to and within ten (10) feet of the margins of access roads and rights of way.

7. Tenant shall be responsible for repair and maintenance of its Equipment and Underground Lines and shall pay all utility expenses attributed to its operation on the Leased Premises during the term of the Lease.
8. This Lease is not assignable and the Leased Premises may be used only by Tenant.
9. Interference: Tenant shall not use, nor shall tenant permit others to use any portion of the Leased Premises in any way which interferes with the operations of other tenants located on the Landlord's Property. Tenant shall comply with all applicable FCC laws and regulations related to *RF* emissions. Tenant shall be responsible for taking such steps as may be necessary to prevent any interference or spurious radiation affecting radio, telephone or electric facilities of Landlord or other tenants existing on the Landlord's Property (Hibriten Mountain) on the date of this Lease. Landlord agrees to require the same level of non-interference of any subsequent tenant on Hibriten Mountain.
10. Indemnities: Landlord and tenant shall each indemnify and save harmless the other, as follows:
 - a) Tenant indemnifies Landlord for damages proximately caused by the negligence or wrongful conduct of Tenant and Tenant's agents and employees.
 - b) Landlord indemnifies Tenant for damages proximately caused by the negligence or wrongful conduct of Landlord or the Landlord's agents and employees.
 - c) The indemnity provisions in this Paragraph covers personal injury and property damage and shall bind the agents, servants and employees of Landlord and Tenant (as the case may be). The indemnity obligations in this Paragraph shall survive the expiration or earlier termination of this Lease.
11. Default: If Tenant shall continue in default in the payment of any rental or other sum of money becoming due hereunder for a period of ten (10) days after written notice of such default has been received by Tenant, or if either party hereto shall default in the performance of any other terms, conditions or covenants contained in this Lease to be observed or performed by it and the party in default does not remedy such default within thirty (30) days after receipt of written notice thereof or, if such default cannot be remedied in such period, does not within thirty (30) days commence such act or acts as shall be necessary to remedy the default and shall not diligently complete such act or acts (to effect a cure of the default), then in any such event the party failing to so perform shall be deemed to be in default under the Lease and the other party shall have the right, at its option, to terminate and cancel this Lease (although any indemnities provided herein shall expressly survive such termination) and/or exercise any and all other remedies and seek all damages available at law or in equity. Additionally, if Landlord is in default hereunder, in addition to all rights and remedies afforded tenant by law and equity, Tenant may take such steps as reasonably necessary (and expend such funds as reasonably necessary) to cure such default and recoup from Landlord or Landlord's successors and assigns the funds expended by deducting same from rents payable by Tenant hereunder. All of the remedies provided herein

shall be cumulative and not exclusive. Forbearance by a party to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed a waiver of such default or an election of remedies.

12. End of Term: Tenant shall, upon the expiration or earlier termination of the term of this Lease, vacate and deliver the Leased Premises to Landlord in as good condition and repair as existed at the beginning of this Lease, reasonable wear and tear, fire and other unavoidable casualty excepted. Notwithstanding the foregoing to the contrary, Tenant shall be entitled, in tenant's sole discretion, to remove all or any portion of the Equipment from the Leased Premises or to leave all or any portion of the Equipment on the Leased Premises upon the expiration or earlier termination of the term of this Lease. With respect to any portions (or all, as the case may be) of the Equipment that Tenant elects to leave on the Leased Premises (as evidenced by written notice from tenant to Landlord), such Equipment shall become the property of the Landlord upon the expiration or earlier termination of the term of this Lease.
13. Quiet Enjoyment: Landlord covenants and agrees that Tenant shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the term of this Lease without hindrance or molestation by or from anyone claiming by, through or under Landlord. Tenant understands that Landlord has leased other portions of the top of the mountain to other tenants.
14. Address of Landlord and Tenant Notices:
 - a) Notices required to be given to Landlord under this Lease, shall be mailed or delivered via Courier Service to:
 Attn: James B. Hogan
 Hibriten Mountain, LLC
 118 N. Sterling St.
 Morganton, N.C. 28655
 (828) 437-3335; Email: james@starneslawfirm.com
 or to such other person, firm or corporation and/or at such other place as shall be designated by Landlord by written notice to Tenant from time to time.
 - b) Notices required to be given to Tenant under this Lease, shall be mailed or delivered via Courier Service to:
 Attn: Mr. Jeff Church
 City of Lenoir
 Public Works, Telemetry and Water Department
 Post Office Box 958
 Lenoir, North Carolina 28645
 - c) Wherever in this Lease it shall be required or permitted that any notice, request, report, communication or demand be given, served or transmitted by either party to this Lease to or on the other, such notice or demand shall be in writing and shall be personally delivered or forwarded by registered or certified mail, return receipt requested, or by nationally recognized courier service providing written

confirmation of delivery, to the applicable address(es) of the parties specified in this Paragraph (or to such other address(es) designated by such party by written notice to the other from time to time). Notice shall be deemed to have been given or served on the delivery date indicated by the United States Postal Service or courier service on the return receipt or on the date such delivery is refused or marked "undeliverable" unless Tenant or Landlord (as the case may be) is served personally, in which event the date of personal delivery shall be deemed the effective date of notice.

- d) Email notice is sufficient where the intended recipient of the email acknowledges receipt.
15. Liens: Landlord hereby warrants that no mortgages or deeds of trust are outstanding against the Leased Premises at the time this Lease is executed. Should Tenant cause any liens to arise, Tenant shall discharge all liens with interest and penalties, which arise against the Leased Premises as a result of operations by Tenant.
16. Complete Agreement: This Lease contains the complete agreement of the parties with reference to the demising of the Leased Premises.
17. Amendment: No modification of any provision hereof and no cancellation or surrender hereof shall be valid unless in writing and signed and agreed to by both parties.
18. Binding Effect: The stipulations, agreements and covenants herein contained shall be binding upon the parties hereto and their respective heirs, successors and assigns.
19. Should a dispute arise hereunder, and litigation ensue as a result, the prevailing party shall be entitled to recover his reasonable attorneys' fees and court costs from the non-prevailing party.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year of the last to sign below.

LANDLORD:
Hibriten Mountain, LLC

By: _____ (SEAL)
James B. Hogan, Manager Date

TENANT:
City of Lenoir

By: [Signature] City Manager 5/29/2024 (SEAL)
Signature Title Date

