



AGENDA
CITY OF LENOIR
CITY COUNCIL MEETING
905 WEST AVENUE
TUESDAY, SEPTEMBER 3, 2024
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 Cindy Day proclaiming the week of September 15 through 22 as "Constitution Week" throughout the City of Lenoir.
- C. Special Recognition: Ethan Mclean, Firefighter II, and Miguel Zambrano, Police Corporal will be recognized by the American Legion Post 29 as the Dysart-Kendall American Legion Post 29 Firefighter of the Year and the Dysart-Kendall American Legion Post 29 Police Officer of the Year.

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

III. CONSENT AGENDA ITEMS

- A. Minutes: Approval of the City Council minutes of Tuesday, August 20, 2024 as submitted.
- B. Construction Manager at Risk; CMaR Agreement: Staff recommends execution of the agreement, AIA Document A133-2019, with J.M. Cope, Inc. for completion of CMaR services for the Campus Improvements Project, for a contract price of \$43,000.00 as submitted. J. M. Cope, Inc.'s scope of work is described in the attached agreement and further outlined in the attached "Exhibit D" document in the agenda packet.
- C. Naming of Shared Driveway off of LeRoy Lane: Staff recommends the naming of Coyote Creek Place, for a shared driveway off of LeRoy Lane as it is a driveway that will serve up to two dwellings, and currently is without appropriate signage to allow for E-911 addressing and access to the properties.
- D. Authorization Resolution; Lead Service Line Identification and Replacement Grant Application: Staff recommends City Council approve the Authorization Resolution to authorize the City Manager and Finance Director to execute and file the Lead Service Line Identification and Replacement Grant application for the Fall 2024 funding round with the state of North Carolina on behalf of the applicant.
- E. Proclamation; Constitution Week: Approval of a proclamation proclaiming the week of September 15 through 22 as "Constitution Week" throughout the City of Lenoir.

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. The annual Sculpture Festival will be held on Saturday, September 7 from 9:00 a.m. – 4:00 p.m. at the J.E. Broyhill Park.
2. A Cruise-In will be held on Saturday, September 7 beginning at 3:00 p.m. in downtown Lenoir.
3. The City/County Services Committee will meet on Monday, September 9 at noon.
4. The Economic Development Advisory Board will meet on Tuesday, September 10 at 8:15 a.m. at the J. E. Broyhill Civic Center.
5. The ABC Board will meet on Wednesday, September 11 at 1:30 p.m.
6. The Lenoir Business Advisory Board will meet on Thursday, September 12 at 6:00 p.m. at City Hall, Third Floor.
7. The North Carolina Department of Transportation (NCDOT)'s Fall Litter Sweep begins on Saturday, September 14 and ends on Saturday, September 28. The public is encouraged to participate.
8. The Parks and Recreation Advisory Board will meet on Monday, September 16 at 6:00 p.m. at the Martin Luther King, Jr. (MLK) Center.

B. Items for Council Action

1. **Withdrawn;** Rezoning - Ellison Place: City Council tabled a rezoning for property located on Ellison Place until the September 3 City Council meeting. However, David Reule, Applicant/ Developer has withdrawn his application.

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

IX. REPORT AND RECOMMENDATIONS OF COUNCIL MEMBERS

X. ADJOURNMENT



CITY MANAGER
SCOTT E. HILDEBRAN

CITY OF LENOIR
NORTH CAROLINA

MAYOR
JOSEPH L. GIBBONS

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

**PROCLAMATION IN HONOR OF
CONSTITUTION WEEK**

WHEREAS, The Constitution of the United States of America, the guardian of our liberties, embodies the principles of limited government in a Republic dedicated to rule by law; and

WHEREAS, September 17, 2024 marks the two hundred thirty-sixth anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

WHEREAS, It is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary, and to the patriotic celebrations which will commemorate the occasion; and

WHEREAS, Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating the week of September 17 through September 22 as Constitution Week.

NOW, THEREFORE, I, Joseph L. Gibbons, Mayor of the City of Lenoir, North Carolina, and on behalf of the Lenoir City Council and all the citizens, do hereby proclaim the week of September 15 through September 22, 2024 as "**Constitution Week**" in the City of Lenoir and urge all citizens to study the Constitution and reflect on the privilege of being an American with all of the rights and responsibilities this privilege affords.

This the 3rd Day of September, 2024.

SEAL

Joseph L. Gibbons, Mayor



CITY OF LENOIR
COUNCIL ACTION FORM

- I. Agenda Item:** We are requesting approval for a presentation at September 3, 2024 Council Meeting for the annual Dysart-Kendall American Legion Post 29 Firefighter of the Year Award, this year recognizing Firefighter Ethan McLean.
- II. Background Information:** The Dysart-Kendall American Legion Post 29 Representative wish to recognize both Police Officer of the Year and Firefighter of the Year at the same City Council meeting if possible.
- III. Staff Recommendation:** Please let us know if an alternative date is chosen, so we can promptly notify those affected. Thank you.
- IV. Reviewed By:**

City Attorney: _____

City Manager: _____

Fire Chief:  _____



Lenoir Fire Department

602 Harper Avenue, N.W.
Lenoir, North Carolina 28645



Fire Chief
Norman S. Staines
(828) 757-2191
(828) 394-1206 Fax
norman.staines@ci.lenoir.nc.us

Deputy Fire Chief
Kenneth D. Nelson
(828) 757-2192
(828) 394-1206 Fax
knelson@ci.lenoir.nc.us

Ethan McLean has been selected by Lenoir Fire Department to receive the award of Dysart-Kendall American Legion Post 29 Firefighter of the Year. Ethan has been with Lenoir Fire Department since September 2022.

Ethan's fire service career began at a Junior Cadet at the Keith Owens Fire Academy. Ethan attended the first two academies offered at Gamewell Fire Department. Upon completing the academy, Ethan's journey into the fire service began.

Ethan became a Junior Firefighter at Gamewell Fire Department while attending the Caldwell Early College. Ethan graduated from the Caldwell Early College with his high school diploma and Associate in Science degree.

While in the fire service, Ethan has completed his Emergency Medical Technician, Firefighter II, Driver / Operator – Pumps as well as Technical Rescuer certifications in Vehicle, Trench, Machinery and Agricultural. He recently completed the OSFM Technical Rope School: Single Rescuer Movements course.

While at Lenoir Ethan has continued to give back to his start in the fire service and his community. Ethan continues to volunteer at Gamewell Fire Department. In addition, Ethan now helps teach at the Keith Owens Fire Academy. This year he spent each day off from Lenoir, during the camp week, to help introduce the fire service to middle school age children in Caldwell County. He is an example to current academy attendees that a fire service career can start with a weeklong program while in middle school.



Lenoir Police Department



Council Action Form

I. Agenda Item:

We are requesting approval for a presentation at the September 3, 2024 Council Meeting for the annual Dysart-Kendall American Legion Post 29 Police Officer of the Year Award, this year recognizing Corporal Miguel Zambrano.

See attached nomination write-up that was submitted to Post Commander Irv Eurto.

II. Background Information:

The Dysart-Kendall American Legion Post 29 Representatives wish to recognize both Police Officer of the Year and Firefighter of the Year at the same city council meeting if possible.

III. Staff Recommendation:

Please let us know if an alternate date is chosen, so we can promptly notify those affected. Thank you.

IV. Reviewed by:

City Attorney: _____ Date: _____

City Manager: _____ Date: _____

Police Chief: *Butt* _____ Date: 8/28/2024



Lenoir Police Department

1035 West Avenue NW
Lenoir, North Carolina 28645
(828) 757-2100



Aug 14, 2024

REFERENCE: AMERICAN LEGION POST 29 OFFICER OF THE YEAR

NOMINEE: MIGUEL ZAMBRANO

MILITARY SERVICE:

Branch of Service: United States Marines

Enlistment: Dec. 2016

Highest Rank: Corporal

Currently Serving in National Guard

Specialty: Tactical Switching Operator/Telecommunication Systems

Medals/Decorations Awarded: National Defense Service Medal, Sharpshooter Rifle Qualification Badge

LAW ENFORCEMENT CAREER:

B.L.E.T Completed in May 2018 at Western Piedmont Community College

Detention Officer from Dec. 2018 to Jun. 2019 at Caldwell County Sheriff's Office

Lenoir Police Officer from Jun. 2019 to current; promoted to Corporal in Jul. 2023

AWARDS / MEDALS:

City of Lenoir Golden Ticket Customer Service Award for assisting to repair a citizen's wheelchair (Jun 2024)

EDUCATION & CERTIFICATES:

Associate of Arts Degree from CCC&TI (July 2016)

NCJA Field Training Officer Certificate from CCC&TI (Sep. 2022)

Law Enf. Intermediate Certificate from NC Criminal Justice Education & Training Stds. Commission (Dec. 2023)

OTHER ACCOMPLISHMENTS:

Special Response Team Member (Tactical Operator – May 2023); current SRT Member

Honor Guard Team Member (Jun. 2024)

SERVICABLE MENTIONS:

City of Lenoir Bilingual Translator Role

Lenoir Police Ready Response Team

**LENOIR CITY COUNCIL
TUESDAY, AUGUST 20, 2024
6:00 P.M.**

PRESENT: Mayor Joe Gibbons presiding. Councilmembers present were Jonathan Beal, Todd Perdue, Ralph Prestwood, Kimmie Rogers, David Stevens, Crissy Thomas, City Manager Scott Hildebran, City Clerk Shirley Cannon and City Attorney Timothy Rohr.

CITY STAFF: In attendance was Finance Director Donna Bean, Fire Chief Norman Staines, Deputy Fire Chief Kenny Nelson, Police Chief Brent Phelps, Police Major Andy Wilson, Planning Director Hannah Williams, Planner & GIS Matt Duchan, Economic Development & Main Street Director Brenda Floyd, Parks & Recreation Director Phil Harper, Public Services & Public Works Director Jon Hogan, Public Services & Public Utilities Director Jeff Church, and Communication and Public Information Director, Joshua Harris.

ABSENT: Councilmember Ike Perkins.

I. CALL TO ORDER

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

CONDOLENCES:

- B. On behalf of City Council, Mayor Gibbons asked everyone to keep the family of Charles Troutman in their thoughts and prayers as Mr. Troutman passed away on August 16. Mr. Troutman retired from Blue Ridge Energies following 39 years of service and was a member of the Rotary Club and the Boy Scouts organization. Mayor Gibbons said Mr. Troutman served the community well.

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

CONDITIONAL REZONING

ORDINANCE; ELLISON PLACE:

- A. A public hearing was held to consider a Conditional Rezoning Ordinance for property located on Ellison Place (east of US-321/Blowing Rock Boulevard), NCPIN Numbers 2859211695, 285021427, 285212266 and 2850212174 be rezoned from B-6 Transitional Business to Conditional Zoning as requested by property owner Virginia M. Mullis for four (4) vacant properties to accommodate eleven (11) single-family lots subject to the following four (4) conditions and based on the Consistency Statement below:
1. Except as expressly provided otherwise by this ordinance, the Property shall be governed by the land development regulations of the B-6 Transitional Business zoning district.
 2. All uses permitted within the B-6 zoning district are allowed in conditional zoning.
 3. Special Standards for Single-Family Development:
 - a. Each lot will be a minimum of 6,000 square feet.
 - b. Houses shall be oriented to front along and accessed by Ellison Place.
 - c. Landscape Buffer: The mature tree line and natural buffer along the rear of the lots must be retained for single family development. If the natural buffer is removed or

damaged, a fifteen (15) foot wide planted buffer strip shall be established and maintained in accordance with Section 712 of the Lenoir Zoning Ordinance.

d. A subdivision plat showing all new utilities, road layout, easement and setbacks referencing this ordinance must be approved and recorded prior to any permitting.

4. Access:

a. A private shared driveway extending beyond the end of current city maintenance of Ellison Place shall be permitted for access to Lots 1, 2 and 3 as indicated in the Concept Plan. A shared driveway agreement detailing the private maintenance responsibility shall be drafted and recorded with the Register of Deeds and noted on the final subdivision plat. The shared driveway must provide access and allow to all service vehicles, including utility emergency and sanitation vehicles. The shared driveway agreement must hold the City harmless for any driveway damage caused by City service vehicles.

b. The maintenance of Ellison Place shall be adequate for the ingress and egress of emergency vehicles.

Consistency Statement:

The proposed Conditional Zoning Ordinance is consistent with the adopted Comprehensive Plan because it enables this area to protect the distinctive residential character of Lenoir's neighborhoods from the encroachment of inappropriate non-residential development. Provided that no businesses have opened in this transitional business zoning district, it would be more pertinent to provide housing in an area otherwise not providing a service to the public.

Mayor Gibbons opened the public hearing to receive public comments regarding the Conditional Zoning Ordinance request.

Hannah Williams, Planning Director reviewed a slide presentation of the proposed rezoning outlining the comparison of the B-6 Transitional Business and Conditional Zoning. Director Williams shared that Ellison Place NE has four (4) existing lots on the western side of Ellison Place and the average acreage totals 1.84 an acre. These 4 lots are zoned as B-6 Transitional Business and Staff's recommendation is to reduce the minimum lot size to 6,000 square feet with driveway options.

Director Williams stated the current B-6 Transitional Business would allow for seven (7) 10,000 square-foot lots with a 10-foot setback for the front, side and rear of the property. The uses for a B-6 zone include townhomes, single family homes, low density apartments, a restaurant (no drivethru), office, light retail, business services and specialty studio.

The proposed Conditional Zoning would allow for eleven (11) 6,000 square-foot lots with no change in the setbacks or uses as listed above. The Conditional Zoning Ordinance includes the following:

- Base Zoning is B-6
- Special standards for single-family development include the following:
 - a) Minimum lot size: 6,000 square feet
 - b) Private shared driveway
 - Maintenance agreement with service access required
 - Hold harmless City vehicles
 - c) Landscape buffers along rear lot line (US-321)
 - Front orientation along Ellison Place

Director Williams reported the City's Technical Review Committee (TAC) met and made the following recommendations:

- a) New water line within ROW of Ellison Place
- b) Ensure private road/driveway maintenance has:
 - Adequate turnaround space for service/emergency vehicles
 - holds city harmless in case of damage to private property

In addition, Director Williams pointed out this is a zoning request and not a subdivision. She stated the conditional zoning would guide a major subdivision process and create lot lines. Also, the preliminary plat would be reviewed by the Planning Board and City Council.

Thad Mullis, 119 Ellison Place, addressed City Council and read a list of his concerns. He also distributed a copy to each Councilmember. Mr. Mullis shared background information regarding when he purchased his property and commented he takes care of any stormwater issues at his residence.

Mr. Mullis stated the land has remained unsold for a number of years due to zoning restrictions.

Mr. Mullis stated there is only one ingress and egress at Ellison Place and referred to the potential traffic congestion plus gave statistics on the number of accidents that have occurred at the Smith Crossroads intersection and at the entrance into the Walmart shopping center over the past two (2) years. Additionally, Mr. Mullis stated seven (7) homes would be doable but not eleven (11). He stated if eleven homes were built, a second ingress and egress is needed.

Mr. Mullis further stressed a traffic study is needed or possibly a stop light installed as well as reducing the speed limit to 35 mph. He reiterated his density concerns.

Director Williams reported that 2 parking spaces would be allotted for each home. She also shared that, for single-family detached housing, the trip rate estimate would be 9.43 and/or equal to 28 trips per day for three (3) units based upon trip generation rates compiled by the Institute of Transportation Engineers in September 2021.

Debbie Hawn, 415 Blue Ridge Drive, addressed City Council and stated her family is not against houses or businesses being built, but their major concern is the number of proposed homes for these four (4) lots. Ms. Hawn stated her father, Jim Greene lives on Ellison Place and is 95 years of age. She shared the road is narrow with a ditch on one side. Ms. Hawn noted if two (2) parking spaces are allotted for each driveway, Council should factor in teenage drivers as well. Ms. Hawn respectfully asked City Council to table this proposal or keep the zoning as B-6.

Karen Cannon, 512 Golfview Court addressed City Council and stated she lives in Lenoir and is a pharmacist. Mrs. Cannon mentioned Jim Greene is also her father and shared her daughter and son-in-law have a medical practice in Lenoir. Mrs. Cannon cited safety concerns when pulling out into traffic on US Hwy 321 from Ellison Place. She further shared she has spoken with Matt Duchan and Ms. Williams about the size of the homes, but they didn't have that information at the time.

Mrs. Cannon referred to the proposed turn around at the top of Ellison Place and reiterated the road is only 22-feet wide. She pointed out if curb and gutter along with a sidewalk were installed, there would not be enough room for school buses or emergency personnel to travel up the road.

She emphasized the road is just not big enough. In addition, Mrs. Cannon cited water runoff as a major concern as there is a sinkhole already there and approval of this permit could possibly create more. Mrs. Cannon distributed photos to City Council showing the effects of the stormwater on the property.

Director Williams responded the City of Lenoir contracts with the Western Piedmont Council of Governments (WPCOG) in Hickory to take care of any stormwater issues for the city.

Mrs. Cannon further stated the area is dark having only one (1) street light and additional street lights are needed. She remarked the residents are being encroached upon and no one is answering their questions.

Mr. Thad Mullis clarified the road is 22-feet wide at the entrance, but it increases to 30-feet at the top of the road. He mentioned the neighbors previously put in a speed bump and briefly discussed the stormwater issue.

Mr. Steve Blanchard, 811 Seehorn Street addressed City Council and expressed concern about the density of the proposed eleven (11) homes.

Joe Barrett, 729 Seehorn Street addressed City Council and asked about the size of the proposed houses.

Mr. David Reule, applicant discussed the size of the proposed houses and also stated he doesn't agree with the number of cars the residents are referring to. He remarked the cars would not overwhelm the street.

In addition, Mr. Reule clarified each resident would take care of their own stormwater issues and pointed out he proposed a turn-around in order not to have the expense of installing a cul-de-sac. He stated there would be a Home Owners Association (HOA) established that would invoice the homeowners for the maintenance agreement.

There being no further public participation, Mayor Gibbons closed the public hearing and asked Council for action.

Following additional discussion and upon a motion by Councilmember Perdue, City Council voted 6 to 0 to table the Conditional Zoning Ordinance for Ellison Place until Tuesday, September 3 in order to allow the developer and Planning Director Williams the opportunity to submit additional information for the project as requested by Council.

**SPECIAL USE PERMIT;
117 MAPLE DRIVE NW:**

- B. A quasi-judicial public hearing was held to consider the requested Special Use District (SUP) as submitted by Josh Clark, Outcast Community Church, to permit a church in the (R-12) Single-Family zoning district on property located at 117 Maple Drive NW, NCPIN#2749450612 based on the findings of page 6 of the submitted Staff Report and subject to the following three (3) conditions:
1. The applicant must maintain and improve upon landscaping where necessary on the site. A zoning permit will be required.
 2. Any new lighting for the church use shall be fully cut-off and shielded so as to eliminate and minimize light spill-over onto adjacent residential properties.

3. The applicant must obtain zoning and sign permits from the Lenoir Planning Department within two years of the issuance of the SUP.

Attorney Rohr reminded City Council they are acting more as judges when considering a Special Use Permit request. He stated Council cannot have any pre-conceived opinion about the case, discuss it with anyone, or visit the proposed site. Attorney Rohr said if they have, Council should disclose it at this time.

Hannah Williams, Planning Director was sworn in by the City Clerk.

Director Williams explained there is a small church located on the property along with an existing driveway. She reviewed each condition listed above and reported the Planning Board also recommended approval with the proposed conditions.

Director Williams also submitted the Staff Report as evidence to be included in the minutes of the meeting.

Karen Fulbright, 1516 Poplar Street was sworn in by the City Clerk.

Ms. Fulbright stated she lives across the street from the school and asked if any other things were planned for the property.

Director Williams stated HASO Holdings, LLC, (Jay Harrill) in Boone own the property and the applicant Josh Clark is requesting to allow a church to operate in the auditorium and two classrooms at West Lenoir Elementary School located at 117 Maple Drive.

There being no further public participation, Mayor Gibbons closed the public hearing and asked Council for action.

Upon a motion by Councilmember Beal, City Council voted 6 to 0 to approve the Special Use Request along with the three (3) conditions as described above and as recommended by City Staff and the Planning Board.

III. CONSENT AGENDA ITEMS

- A. Minutes: Approval of the minutes of the City Council meeting of Tuesday, August 6, 2024 as submitted.
- B. Resolution; Sealed Air Corporation - Pump House (Hudson): Staff recommends City Council adopt a resolution authorizing the sale of the fire pump premises located at 2001 International Boulevard, Hudson, NC and as described in Deed Book Volume 724, Page 296 at the Caldwell County Register of Deeds to Sealed Air Corporation. The offer is for \$1,000 and was subject to the upset bid process. The City did not receive any upset bids. (A copy of the Resolution is attached to these minutes as information.)
- C. Engineering Services Contract; Harper Avenue Sewer Line Replacement: Staff recommends City Council approval to enter into an Engineering Services Contract with McGill Associates for the Harper Avenue Sewer Line Replacement Project as submitted. (A copy of the Engineering Services Contract is attached to these minutes as information.)
- D. Bid Award; Mulberry Recreation Center Gymnasium Floor Replacement Project: Staff recommends awarding the construction contract for the Mulberry Recreation Center

- Gymnasium Floor Replacement Project to The Sports Flooring Group for a contract price of \$139,432.35. Please note that this contract price is inclusive of alternate bid item No. 1 (upgrading to Grade 2 maple). The Sports Flooring Group is appropriately licensed and specializes in this type of work, included a detailed scope of work in the submitted proposal, and is the lowest, responsive, responsible bidder in consideration of the selected alternate bid item(s). (A copy of the bid tab is attached to these minutes as information.)
- E. Resolution of Support; NC Division of Parks & Recreation - Great Trails State Grant Program: Staff recommends City Council adopt a Resolution of Support for the grant funding application to the North Carolina Division of Parks and Recreation- Great Trails State Grant Program, with the requested funding amount of \$497,994.00 as submitted.

The City of Lenoir pledges a local match of \$248,997.00 (1/3 of the project cost), should the City be awarded funding. (A copy of the Resolution of Support is attached to these minutes as information.)

Upon a motion by Councilmember Thomas, City Council voted 6 to 0 to adopt items A through E on the Consent Agenda as described above and as recommended by City Staff.

IV. REQUESTS AND PETITIONS OF CITIZENS

V. REPORTS OF BOARDS AND COMMISSIONS

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

Items of Information

PLANNING

- BOARD:** 1. The Planning Board will meet on Monday, August 26 at 5:30 p.m. at the City/County Meeting room.

COMMITTEE OF THE WHOLE:

2. The Committee of the Whole will meet on Tuesday, August 27 at 8:30 a.m. at City Hall, Third Floor Conference Room.

FOOTHILLS REGIONAL AIRPORT AUTHORITY:

3. The Foothills Regional Airport Authority will meet on Wednesday, August 28 at noon at the airport facility.

HOLIDAY

- CLOSING:** 4. City offices will be closed on Monday, September 2 in observance of Labor Day.

B. Items for Council Action

MINIMUM HOUSING

ORDINANCE; 542 WHEELER ST.:

1. Staff request that City Council adopt a Minimum Housing Ordinance directing Staff to abate the property located at 542 Wheeler Street, NCPIN#2749571542, Parcel ID #06-17-3-57 by demolishing the structure.

A copy of the recorded Minimum Housing Ordinance is attached to these minutes as reference.

City Manager Hildebran pointed out that staff included photos of the property in the agenda packet along with other supporting documents.

Upon a motion by Councilmember Beal, City Council voted 6 to 0 to adopt the Minimum Housing Ordinance as presented and as recommended by City Staff.

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

IX. REPORT AND RECOMMENDATIONS OF COUNCILMEMBERS

X. ADJOURNMENT

A. There being no further business, the meeting was adjourned at 7:35 p.m.

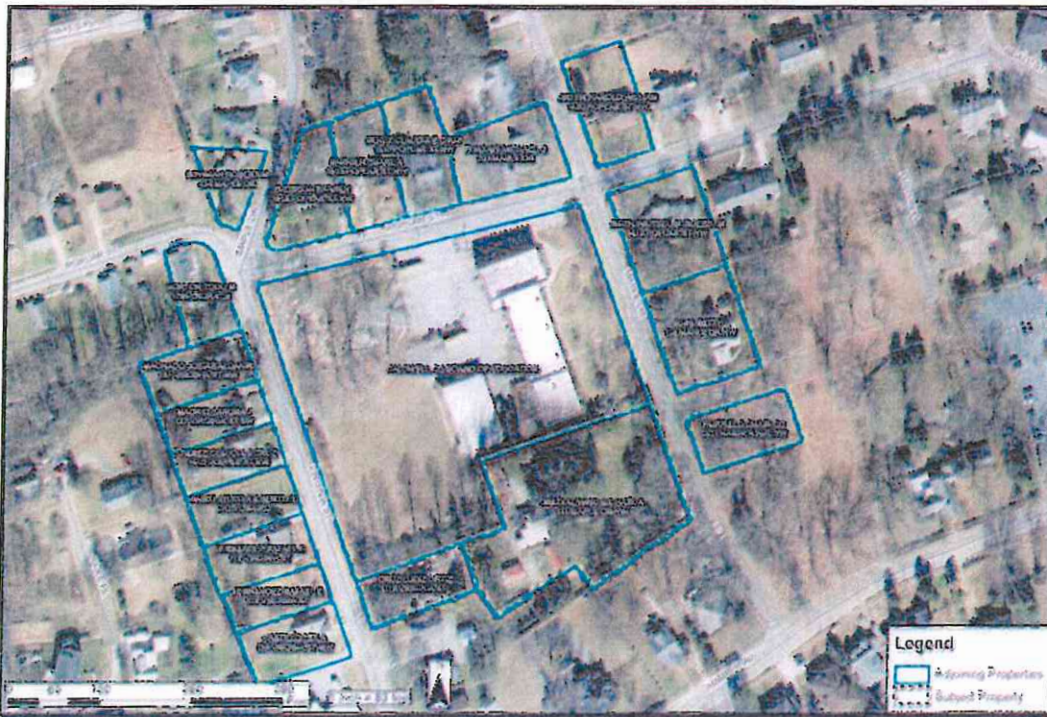
Shirley M. Cannon, City Clerk

Joseph L. Gibbons, Mayor



Staff Report Special Use Permit CASE NUMBER SUP #2/24

LOCATION MAP/AERIAL PHOTOGRAPH



Parcel addresses and owner information shown for all properties required to receive notice of these proceedings.

SUMMARY

Owner

HASO Holdings LLC (Jay Harrill)

Applicant

Outcast Community Church
(Josh Clark)

Location

117 Maple Dr NW

NC PIN

2749450612

Project Planner

Hannah Williams, AICP, CZO
Matt Duchan

Updated August 7, 2024

Applicant's Request:

The applicant is requesting a Special Use Permit for a church to locate in the former West Lenoir Elementary school.

Staff Recommendation:

Approval of the request.

Planning Board Recommendation:

Approval of the request.

Public Comment:

A neighbor in attendance vocalized opposition to the proposal.

Planning Board Meeting: Scheduled for July 22, 2024. Notices were mailed to adjacent property owners on July 12, 2024.

City Council (Public Hearing): Scheduled for August 20, 2024. Notices were mailed to adjacent property owners on August 9, 2024. Notice of the meeting was published in the News-Topic on August 8 and 15, 2024. Notice has been posted on the property at least ten days in advance of the public hearing.

*****This request is considered quasi-judicial. You should not discuss this case with decision makers outside of the scheduled public meeting*****

This is an aerial photograph of a residential area, overlaid with a zoning map. The map shows several parcels of land, some of which are outlined with a dashed line to indicate a 'Subject Property'. The zoning labels visible on the map include R-9, R-12, O-1, and B-2. A scale bar at the bottom left indicates distances from 0 to 300 feet. A north arrow is located near the bottom center. A legend at the bottom right identifies the dashed line as the 'Subject Property'.

Legend

Subject Property

BACKGROUND AND ANALYSIS

Intent of Special Use Permits

Special uses are recognized in the zoning ordinance as uses which may be compatible with an area depending on the specific details of the project, its surroundings, and the level of services available to the site, but are not permitted "by right" in the zoning district. The special use permit process gives the City sufficient flexibility to determine whether a specific land use on a given site will be compatible with the environment and the Comprehensive Plan. Through the approval of a Special Use Permit, the Planning Board and City Council may set conditions or use limitations, thereby establishing a realm of acceptability for the particular use that will be neither arbitrary nor capricious, and will promote the spirit and character of the surrounding neighborhood. The process requires the Planning Board to review and make a recommendation to the City Council on the request. The City Council must then decide whether or not to issue a Special Use Permit following a quasi-judicial hearing.

Intent of the Zoning District

Article V of the Lenoir Zoning Code states:

R - 12 Residential (Single-family) District is intended to establish and preserve land within the city for medium density single-family residences and compatible land uses. Regulations are designed to allow predominately single-family residences at medium densities, with duplex, townhome, low-rise apartments, and planned residential developments allowed at compatible densities as special uses. Any uses which would adversely affect or interfere with the residential character and development of these areas are excluded.

Subject and Surrounding Properties

The subject property is 4.01 acres and is zoned R-12. This single parcel includes the main West Lenoir Elementary School building with classrooms, as well as the auditorium on the north side of the building and the standalone gym on the south side of the property. There is a large parking lot as well as a small playground area on the west side of the parcel.

West Lenoir Elementary ceased operations at the close of the 2021-2022 school year. It was sold to HASO Holdings LLC in 2023. No other use or development has occurred on the site since the school closed.

The surrounding area largely features residential zoning. All parcels to the north and east including the subject property are zoned R-12 for single-family residential. Properties west of the subject parcel are zoned R-9 for multi-family residential but the majority of dwellings in this area are single-family. However, there is a long stretch of Lenoir Housing Authority properties along Poplar Street towards Creekway Drive. South of the property is a mix of B-2 and O-I zoning, which is customary for a main thoroughfare such as Harper Avenue.

Proposed Use

The applicant intends to turn the auditorium and two classrooms in the elementary school into a church with Sunday School. The remainder of the building will go unused. The gym and remaining classrooms will be untouched as part of this project. The applicant does not intend to make any changes to parking and will maintain existing fencing and landscaping on the property. The Lenoir Zoning Ordinance requires 3 spaces per 1000 square feet of gross floor area. The space the church will use is about 4,000 square feet, so it requires 12 spaces. The site contains 47 off-street parking spaces, which is more than enough of the required amount.

Church hours will be Sunday mornings. No major changes will be made to the property nor the buildings.

BACKGROUND AND ANALYSIS (CONT'D.)

Consistency with the Comprehensive Plan

All decisions of the Planning Board and City Council should be based on consistency of the proposal with the comprehensive plan and any other officially adopted plan that is applicable. The comprehensive plan lays out policy goals regarding adaptive reuse. In the 2007 Comprehensive Planning Process, one of the citizens' biggest concerns was vacant and underused properties. Turning a vacant school into a church facility that could serve many families in the local community would address those citizens' concerns and help to further develop the area.

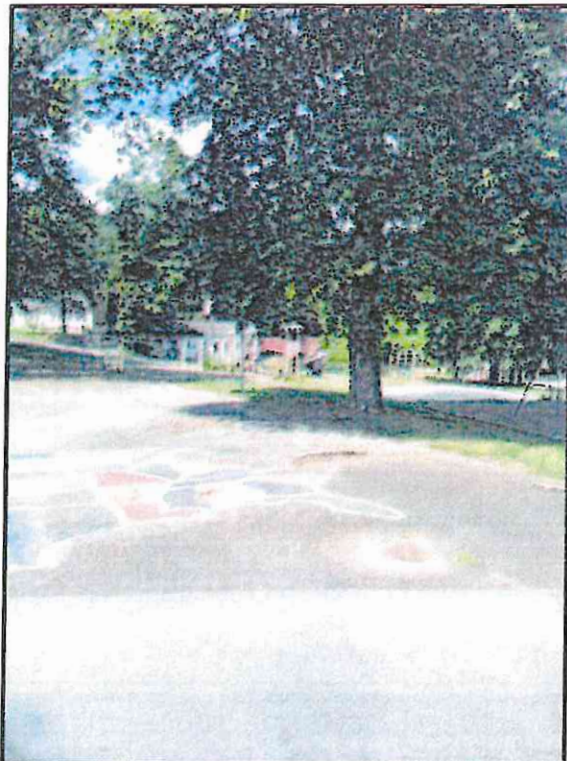
SITE PHOTOS



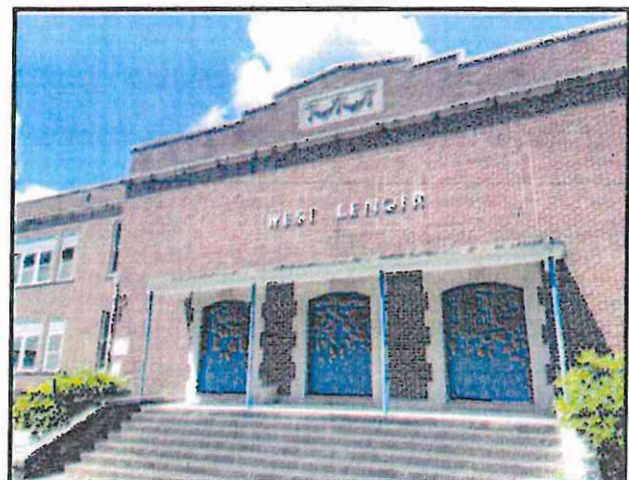
Above: Back of West Lenoir Elementary; auditorium (left), classrooms (right)



Above: Side entrance to Auditorium (top) and basement (bottom)

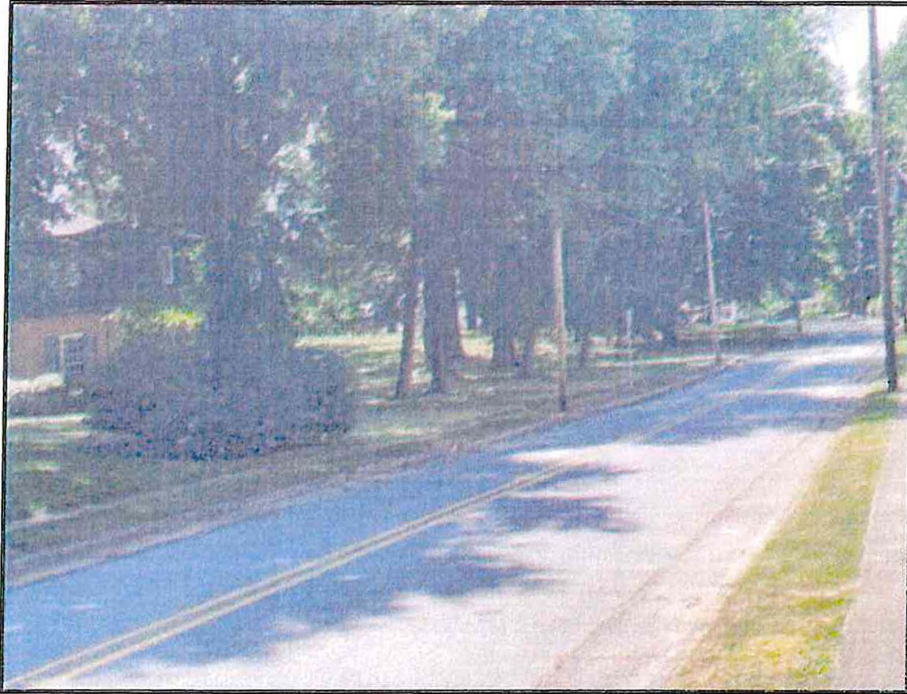


Above: Playground behind West Lenoir Elementary

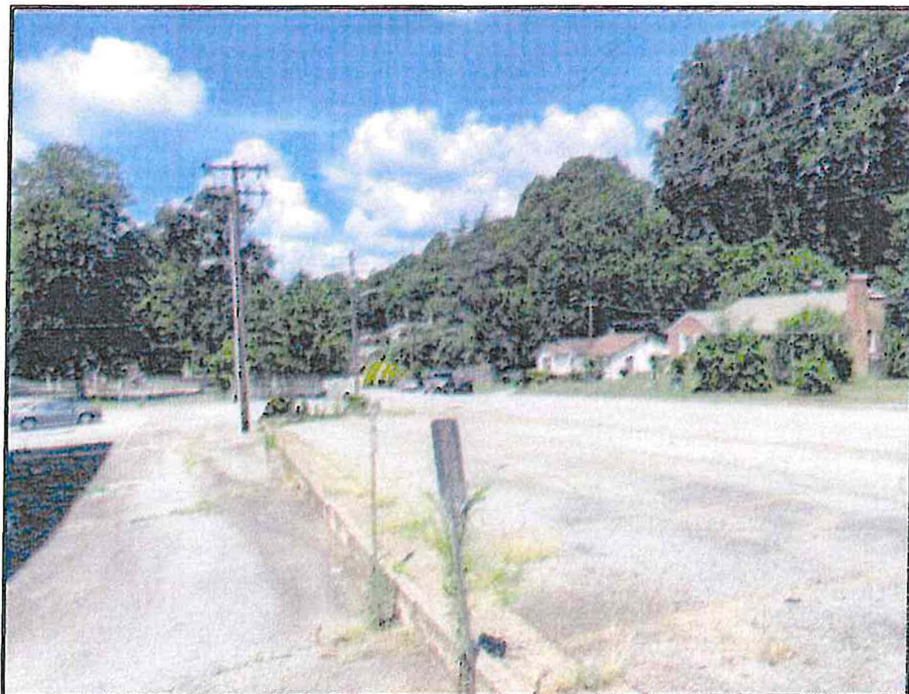


Above: Front of West Lenoir Elementary Auditorium where church service will take place

SITE PHOTOS CONT'D.



Above: Maple Street along front of West Lenoir Elementary facing neighborhood park towards Harper Avenue



Above: Poplar Street along side of West Lenoir Elementary

FINDINGS

No Special Use Permit shall be approved unless the Planning Board and City Council find that:

1. The proposed special use will comply with all height, yard, lot and area requirements and other regulations of the district in which it is located unless otherwise specified. *The applicant does not intend to make any structural or physical changes to the building nor any additions to accommodate a cultural/religious facility use.*
2. All driveways will be designed with respect to such matters as proper ingress and egress for automobiles in order to minimize traffic congestion and increase pedestrian safety and conveniences. *The applicant will utilize the existing driveways to the existing parking areas. Off-street parking is large enough that it will limit traffic congestion in the neighborhood.*
3. Off-street parking and loading areas will be provided in compliance with the Zoning Ordinance. *The existing parking spaces will accommodate the applicant's parking needs and will be in compliance with the zoning ordinance.*
4. The establishment of the special use will not hinder the normal and orderly development and improvement of surrounding property for uses already permitted in the district. *All uses created by the church will be contained inside existing structures and will not affect surrounding areas in any way.*
5. Any required screening and landscaping will be designed or planted with full consideration of the effectiveness of individual plant types, dimensions, and characteristics in minimizing the noise, glare, visual impacts and other economic effects on adjoining properties. *All landscaping is managed by the existing owners, HASO Holdings, and will comply with standards set out by the planning department concerning buffer standards (Sec. 712).*
6. Any permitted signs and proposed exterior lighting will be designed to reduce glare and to mitigate any adverse effects of sign size and height; so as to make the signs aesthetically pleasing and compatible with adjoining properties. *The applicant will use the existing signage incorporating the name and logo of the church, where necessary. Any exterior lighting will be incidental to the needs of the church use and will be fully shielded and cut off from spilling over onto residential property.*
7. The exterior architectural appearance and functional plan of any proposed building or structure will not vary greatly from any buildings or structures already construction or in the course of construction in the immediate vicinity or from the character of the applicable district, so as to cause a substantial depreciation in the property values of the immediate vicinity. *The applicant intends to wrap exterior doors in vinyl with Outcast Community Church logo displayed; a sign permit is required.. There will be no structural changes.*
8. The type, size, hours of operations, location of the use upon the site, and intensity of the proposed special use will not be harmful or annoying to surrounding properties. *Sunday mornings are the hours of operation for the church and will always take place inside the building. There will be no neighbors affected unless they attend the church.*

STAFF RECOMMENDATIONS

Staff recommends approval of the requested Special Use Permit for the proposed church, with the following conditions:

1. *The applicant must maintain and improve upon landscaping where necessary on the site. A zoning permit will be required.*
2. *Any new lighting for the church use shall be fully cut-off and shielded so as to eliminate and minimize light spill-over onto adjacent residential properties.*
3. *The applicant must obtain zoning and sign permits from the Lenoir Planning Department within two years of the issuance of the SUP. All proposed changes must adhere to Sec. 817 (B-6 Transitional Business District Design Standards) of the Lenoir Zoning Ordinance.*

PLANNING BOARD RECOMMENDATIONS

Approval of the request, subject to the findings of fact and the conditions as recommended by staff.

APPENDIX A—APPLICANT'S RESPONSES

SPECIAL USE APPLICATION—PAGE 2

The Planning Board shall not recommend and the City Council shall not grant a request for a Special Use unless the requested use is (1) not detrimental to the public health or general welfare; (2) is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal and similar services; and (3) will not violate neighborhood character and not adversely affect surrounding land uses. To that end, the ordinance specifies criteria and standards that, when satisfied, allow the granting of the Special Use. In the spaces below, provide your responses as to how you believe your proposed project satisfies each of the standards. (Attach additional sheets as necessary.)

The Planning Board and City Council must find that ALL of the standards are met and may impose specific conditions to assure that the proposed use and its location will be harmonious with the area in which it is located and with the spirit of the zoning ordinance and to insure that the proposed use will not be detrimental to surrounding environment and property values.

Criteria for SUP approval

- (1) The proposed special use will comply with all height, yard, lot and area requirements and other regulations for the district in which it is located unless otherwise specified.
No structural or physical changes will be made to the existing building. Nothing added as well.
- (2) All driveways will be designed with respect to such matters as proper ingress and egress for automobiles in order to minimize traffic congestion and increase pedestrian safety and conveniences.
We will utilize only the existing parking areas of the building.
- (3) Off-street parking will be provided in compliance with Section 1000 and off-street loading will be provided in compliance with Section 1001 of Lenoir's Zoning Ordinance.
~~None~~ The building has two designated parking areas and should not require additional spots.
- (4) The establish of the special use will not hinder the normal and orderly development and improvement of surrounding property for uses already permitted in the district.
All use will be contained inside the existing structure and will not affect any surrounding areas.
- (5) Any required screening and landscaping will be designed or planted with full consideration of the effectiveness of individual plant types, dimensions, and characteristics in minimizing the noise, glare, visual impacts and other economic effects on adjoining properties.
All landscaping is managed by the existing owners HASS Holdings
- (6) Any permitted signs and proposed exterior lighting will be designed to reduce glare and to mitigate any adverse effects of sign size and height; so as to make the signs aesthetically pleasing and compatible with adjoining properties.
Any exterior signage will be limited to using the existing signs.
- (7) The exterior architectural appearance and function plan of any proposed building or structure will not vary greatly from any buildings or structures already constructed or in the course of construction in the immediate vicinity or from the character of the applicable district, so as to cause a substantial depreciation in the property values of the immediate vicinity.
Our only plan is to wrap exterior doors in vinyl with our logo displayed. No structural changes at all.
- (8) The type, size, hours of operations, location of the use upon the site, and intensity of the proposed special use will not be harmful or annoying to surrounding properties.
Use hours will be Sunday mornings and always contained inside the building. No effect on neighbors should be expected.

City of Lenoir

Resolution Authorizing Sale of Property

August 20, 2024

WHEREAS, the City of Lenoir owns certain property, the fire pump premises described as follows in that Special Warranty Deed at Volume 724, Page 296 ("the Property"):

Starting at a reference point, a point in the center line on the C and NW Railroad Track, said point also being in the center line of a 40 foot street leading from old Highway 321 in the International Paper Company line: thence two reference lines as follows: South 25°31 '09" East 20.00 feet to a point in the center of the railroad track; South 63°09'26" West 50.01 feet to an iron stake on the west right-of-way of the railroad track, the true point of beginning; thence with the right-of-way for two calls South 25°31 '09" East 30.90 feet to an iron stake: South 28°41 '3 l" East 9.10 feet to an iron stake; thence leaving the right-of- way for three new calls: South 68 °09'26" West 50.50 feet to an iron stake; North 25°31 '09" West 40.00 feet to an iron stake; North 63°09'26" East 50.00 feet to an iron stake, the true point of beginning, containing 2,002 square feet by coordinates as surveyed by Western Carolina Surveyors, T. R. Bishop, R.L.S., on the 2nd day of January, 1979;

And

WHEREAS, N.C. Gen. Stat. § 160A-269 permits the city to sell property by upset bid after receipt of an offer for the property; and

WHEREAS, the City has received an offer to purchase the Property described above, in the amount of \$1,000, submitted by Sealed Air Corporation of Hudson, NC; and

WHEREAS, the City followed the upset bid procedure required by N.C. Gen. Stat. § 160A-269 and received no additional offers for the Property.

THEREFORE, the City Council of the City of Lenoir resolves that:

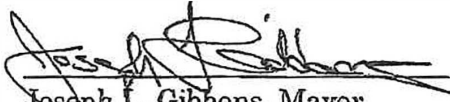
1. It authorizes the sale of the Property to Sealed Air Corporation.
2. The terms of the final sale are that:
 - a. The buyer must pay with cash or certified funds at the time of closing.

b. The buyer must assume all property taxes associated with the Property.

c. The buyer must pay all recording fees regarding the transfer of the Property from the City to the buyer.

d. The Property will be sold as-is, with no warranties other than warranties of title.

This 20th day of August, 2024.


Joseph L. Gibbons, Mayor

Attest:


Shirley M. Cannon, Clerk



AGREEMENT FOR ENGINEERING SERVICES

This AGREEMENT, made and entered into this the 20th day of August 2024, by and between the City of Lenoir (OWNER) and McGill Associates, P.A. (ENGINEER).

WHEREAS, the OWNER proposes to do certain work toward the accomplishment of the Project entitled Harper Avenue Sewer Replacement as generally described in Attachment "A", and

WHEREAS, the ENGINEER desires to render professional services in accordance with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and benefits contained herein, it is hereby mutually understood and agreed as follows:

SECTION 1 - GENERAL SERVICES

The ENGINEER shall:

- 1.1. The ENGINEER shall, as directed by the OWNER, provide professional engineering services for the OWNER in all phases of the Project; serve as OWNER's professional engineering representative for the Project; and provide professional consultation and advice to OWNER during the performance of the services hereunder.
- 1.2. The ENGINEER shall provide all personnel required in performing the Project unless otherwise provided herein. Such personnel shall not be employees of or have any contractual relationship with the OWNER. All services rendered hereunder shall be performed by the ENGINEER or under his supervision and all personnel engaged in the Project shall be fully qualified under North Carolina law to perform such services.
- 1.3. The ENGINEER shall assist in the pursuit of obtaining approvals and permits from governmental authorities having jurisdiction over the Project, unless otherwise agreed to herein.
- 1.4. The ENGINEER shall seek and obtain authorization from the OWNER or the OWNER's assignee before proceeding with the Project, or before performing any Additional Services as described in Section 3, or before performing any other services which would not be included in the fee for Basic Services set forth in Section 6 hereof, subject to OWNER's right to terminate as herein provided.
- 1.5. The ENGINEER shall comply with applicable federal, state and local laws and regulations regarding equal employment opportunity. The ENGINEER is further obligated to include all requirements hereunder in any subcontract written by him in association with this Agreement.

SECTION 2 - BASIC SERVICES

2.1 DESIGN PHASE

- 2.1.1 Consult with the OWNER to discuss project objectives for concurrence and acceptance.
- 2.1.2 Conduct a route survey to provide topography of the proposed work area and to locate existing conflicts. The survey will include a determination of rim and invert elevations for existing manholes in the proposed work area, for the upstream manhole on each existing connecting sewer line, and for several downstream existing manholes.
- 2.1.3 Prepare planning documents including preliminary design, sewer routing, and design calculations.
- 2.1.4 Review preliminary design with OWNER for concurrence and acceptance.
- 2.1.5 Coordinate the provision of any subsurface investigation by others, if any, and assist with solicitations and preparing site maps identifying test locations.
- 2.1.6 Prepare bid documents, contract documents, technical specifications and construction drawings to detail the character and scope of the work including all design functions and coordination for all construction sequencing of the Project as determined in the Engineering Report.
- 2.1.7 Prepare and submit permit application and supporting documents to NCDEQ Division of Water Resources to assist in obtaining the construction approval.
- 2.1.8 Prepare and submit permit application and supporting documents to NCDEMLR Land Quality Section to assist in obtaining the erosion and sediment control approval, if required.
- 2.1.9 Respond to review agency comments and modify documents as necessary to achieve permit approvals, if required.
- 2.1.10 Prepare opinion of probable cost after submission of plans and specifications and advise the OWNER of any adjustment of the Project cost caused by changes in scope, design requirements or construction costs.
- 2.1.11 Furnish up to two (2) hard copies of the final design documents to the OWNER.

2.2 BIDDING AND AWARD PHASE

- 2.2.1 Assist the OWNER with informal bidding, receiving, opening and evaluating bids.
- 2.2.2 Consult with and advise the OWNER as to the acceptability of contractors and subcontractors and make recommendations as to the lowest, responsive, responsible bidder.
- 2.2.3 Assist the OWNER in the preparation and execution of construction contracts and in checking Performance and Payment Bonds and Insurance Certificates for compliance.

2.3 CONSTRUCTION PHASE

Upon successful completion of the Bidding and Award Phase, ENGINEER shall:

- 2.3.1 Schedule a Pre-Construction Conference with the OWNER, Contractor, ENGINEER and other applicable parties to assure discussion of all matters related to the Project. Prepare and distribute minutes of the Pre-Construction Conference to all parties.
- 2.3.2 Provide General Administration of Construction Contract. Consult with OWNER and act as OWNER's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities, and authority of ENGINEER as assigned in the General Conditions shall not be modified, except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor will be issued through ENGINEER, which shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and the General Conditions except as otherwise provided in writing. ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractors, suppliers, or other individuals or entities performing or furnishing any of the Work. ENGINEER shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.
- 2.3.3 Provide a Construction Field Representative (CFR) to periodically observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents. During such visits and on the basis of on-site observations as an experienced and qualified design professional, keep the OWNER informed of the progress of the work, endeavor to guard the OWNER against defects and deficiencies in the work of the Contractor.
- 2.3.4 The total construction contract time is planned to be two (2) months. As part of this contract, field observation will be provided by a CFR on a part-time basis during active work. Additional CFR time or construction phase services provided beyond this timeframe will involve an increase in the payments to the ENGINEER as Additional Services under Section 3 of this Agreement.
- 2.3.5 The purpose of ENGINEER's visits and the representation by the Construction Field Representative, (CFR) at the Site, will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. ENGINEER shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety on the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, ENGINEER neither guarantees

the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. However, ENGINEER shall give prompt notice to the OWNER whenever ENGINEER observes or otherwise becomes aware of any defect in the Project or of any material deviation of Contractor's work from the Contract Documents.

2.3.6 Review and determine the acceptability of any schedules that Contractor is required to submit to ENGINEER, including Progress Schedule, Schedule of Submittals and Schedule of Values.

2.3.7 Review and take action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and any actions will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Review of Shop Drawings and Samples identified as frivolous in the General Conditions of the construction contract documents, or review of substitute materials as defined in the same, shall be deemed as Additional Services.

2.3.8 Schedule monthly construction progress meetings during active work periods with the OWNER, Contractor, ENGINEER and all other applicable parties discuss matters related to the Project. Prepare and distribute minutes of the meeting to all parties.

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

- a. Determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe Contractor's Work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).
- b. By recommending any payment, ENGINEER shall not thereby be deemed to have represented that observations made by ENGINEER to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities

specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment including final payment will impose on ENGINEER responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to OWNER free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

- 2.3.10 Require such testing of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.
- 2.3.11 Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare documentation as required.
- 2.3.12 Issue instructions to the Contractor from the OWNER as to interpretations and clarifications to the project design plans, specifications and contract documents.
- 2.3.13 Prepare information required to resolve problems due to actual field conditions and to respond to Requests for Information (RFI) from the Contractor.
- 2.3.14 Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by OWNER or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if ENGINEER in its discretion concludes that to do so would be inappropriate. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
- 2.3.15 Recommend to OWNER that Contractor's Work be rejected while it is in progress if, on the basis of ENGINEER's observations, ENGINEER believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
- 2.3.16 Promptly after notice that Contractor considers the entire Work ready for its intended use, in company with OWNER, DWI, and Contractor, conduct a pre-final

observation site visit to determine if the Work is substantially complete. If after considering any objections of OWNER, ENGINEER considers the Work substantially complete, ENGINEER shall deliver a certificate of Substantial Completion to OWNER, DWI, and Contractor.

- 2.3.17 In company with OWNER's and DWI's representatives, conduct a final site visit to determine if the completed Work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall also provide a notice that the Work is acceptable to the best of ENGINEER's knowledge, information, and belief and based on the extent of the services provided by ENGINEER under this Agreement.
- 2.3.18 Review Contractor's final application for payment and make recommendation as to approval once all issues with the project final observation site visit have been completed and resolved.
- 2.3.19 Prepare for the OWNER a set of record drawings showing changes made during the construction process, based on marked-up prints and other data furnished.
- 2.3.20 Provide or make available Project files and information to effect project closeout.

SECTION 3 - ADDITIONAL SERVICES

If authorized by the OWNER, the ENGINEER will furnish or obtain from others additional services of the following types, which are not considered Basic Services under this Agreement.

- 3.1 Additional services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction.
- 3.2 Revising previously approved studies, reports, design documents, drawings or specifications, when such revisions are due to causes beyond the control of the ENGINEER.
- 3.3 Providing geotechnical and subsurface investigations, archeological surveys and any other environmental site surveys necessary for the construction of the project.
- 3.4 Preparing easement maps or plats.
- 3.5 Preparing documents for alternate bids requested by the OWNER for work, which is not executed, or documents for out-of-sequence work other than agreed upon in the Design Phase.
- 3.6 Bidding the project multiple times either due to an insufficient number of bids, or due to the need or desire by the OWNER to re-bid the project.
- 3.7 Additional or extended services during construction made necessary by prolongation of the construction contract, award of multiple contracts, or default by the Contractor under any prime construction contract if such construction contract is delayed beyond the original completion date.
- 3.8 Review of Shop Drawings and Samples identified as frivolous in the General Conditions of the construction contract documents, or review of substitute materials as defined in the same General Conditions.
- 3.9 Preparing to serve or serving as a witness for the OWNER in any litigation, condemnation or other legal or administrative proceeding involving the Project.
- 3.10 Evaluation of unsuitable subgrade materials during construction.
- 3.11 Additional services in connection with the Project, including services normally furnished by OWNER and services not otherwise included in this Agreement.

SECTION 4 - OWNERS RESPONSIBILITIES

The OWNER shall:

- 4.1 Provide full information as to the requirements for the Project.
- 4.2 Assist the ENGINEER by placing at his disposal in a timely manner all available information pertinent to the Project including previous documents and plans and any other data relative to the evaluation, design, and construction of the Project. Subject to the generally accepted standard of care, ENGINEER and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to the OWNER.
- 4.3 Designate a person to act as OWNER's representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions pertinent to the services in this Agreement.
- 4.4 Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by the ENGINEER and render decisions and comments pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.
- 4.5 Guarantee access to and make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform the services under this Agreement, provided the same does not unreasonably interfere with the operation of the existing facilities.
- 4.6 Obtain any right-of-way easements from public bodies, entities or persons necessary for satisfactory construction of the Project.
- 4.7 Obtain any subsurface geotechnical investigations or other types of testing and analysis needed for the Project.
- 4.8 Pay for permit fees, and all costs incidental to advertising for bids, and receiving bids or proposals from licensed Contractors.
- 4.9 Provide such legal, accounting and insurance counseling services as may be required for the Project, and such auditing services as may be required to ascertain how or for what purpose any Contractor will or has used the monies paid to him under the construction contract.
- 4.10 Give prompt notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the Project.
- 4.11 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project, subject to the obligations of the ENGINEER outlined in Sections 1.3 and 2.2 of this Agreement.
- 4.12 Furnish, or direct the ENGINEER to provide necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 4.13 Bear all costs incident to compliance with the requirements of this Section 4, except where Contractor will assume responsibility for the same.

SECTION 5 - PERIOD OF SERVICES

- 5.1 Unless this Agreement has been terminated as provided in paragraph 7.1, the ENGINEER will be obligated to render services hereunder for a period, which may reasonably be required for the services described herein. The ENGINEER may decline to render further services hereunder if the OWNER fails to give prompt approval of the various phases as outlined. Upon receiving a written authorization to proceed, the ENGINEER shall provide the OWNER with a written schedule of completion for the services so authorized.
- 5.2 If the Project is delayed significantly for reasons beyond the ENGINEER's control, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation.

SECTION 6 - PAYMENT TO THE ENGINEER

6.1 PAYMENT FOR BASIC SERVICES

- 6.1.1 The OWNER agrees to pay the ENGINEER for Basic Services as outlined in Section 2 of the following lump sum and hourly fees, inclusive of all reimbursable expenditures.

Design Phase	\$46,000
Bidding and Award Phase	\$5,000
Construction Phase	\$34,000

6.2 PAYMENT FOR ADDITIONAL SERVICES

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

6.3 TIMES OF PAYMENT

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

6.4 GENERAL

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

SECTION 7 - GENERAL CONDITIONS

7.1 TERMINATION

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

7.2 OWNERSHIP OF DOCUMENTS

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

7.3 CHOICE OF LAW

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

7.4 OPINIONS OF PROBABLE COSTS

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

7.5 INSURANCE AND CLAIMS

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

- A. AUTOMOBILE LIABILITY - Bodily injury and property damage liability insurance covering all owned, and hired automobiles for limits for bodily injury of not less than \$1,000,000 per person and \$2,000,000 per accident, and property damage limits of not less than \$1,000,000 per accident. The automobile liability insurance coverage amounts may be satisfied with a combination of primary and excess/umbrella coverage.
- B. COMMERCIAL GENERAL LIABILITY - Bodily injury and property damage liability shall protect the ENGINEER performing work under this Agreement from claims of bodily injury or property damage which arise from operation of this Agreement, whether such operations are performed by ENGINEER or anyone directly or indirectly working for or on ENGINEER'S behalf. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/\$2,000,000 aggregate and \$1,000,000 property damage each occurrence/\$2,000,000 aggregate. This insurance shall include coverage for products/completed operations, personal and advertising injury liability and contractual liability in an amount not less than \$1,000,000 each occurrence / \$2,000,000 aggregate. The liability insurance coverage amounts may be satisfied with a combination of primary and excess/umbrella coverage.
- C. PROFESSIONAL LIABILITY – Insuring against professional negligence/ errors and omissions on an occurrence basis with policy limits of \$2,000,000 per claim/\$2,000,000 annual aggregate.
- D. WORKERS' COMPENSATION – Worker's Compensation insurance meeting the statutory requirements of the State of North Carolina, even if not required by law to maintain such insurance. Said Workers' Compensation insurance shall have at least the following limits: Employers Liability - \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit.

7.5.2 ENGINEER's total liability, in the aggregate, of ENGINEER and ENGINEER's officers, directors, members, partners, agents, employees, and sub-consultants, to the OWNER and to anyone claiming by, through, or under OWNER for any and all claims, losses, cost, or damages whatsoever arising out of, resulting from, or in any way related to the Project, this Agreement, or ENGINEER's performance, from any cause including but not limited to negligence, professional errors or omissions, strict liability, breach of contract, or indemnity, shall not exceed the total insurance proceeds paid on behalf of or to ENGINEER by ENGINEER's insurers in settlement or satisfaction of claims under the terms and conditions of ENGINEER's insurance policies applicable thereto.

7.6 SUCCESSORS AND ASSIGNS

7.6.1 The OWNER and the ENGINEER each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the OWNER nor the ENGINEER will assign, sublet or transfer his interest in this Agreement without

the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the OWNER and the ENGINEER.

7.7 INDEMNIFICATION

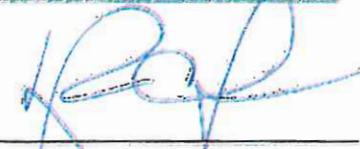
- 7.7.1 OWNER agrees to indemnify, defend and hold ENGINEER, its owners, agents, employees, officers, directors and subcontractors harmless from any and all claims, and costs brought against ENGINEER which arise in whole or in part out of the failure by the OWNER to promptly and completely perform its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

7.8 ENTIRE AGREEMENT

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

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

McGILL ASSOCIATES, P.A.

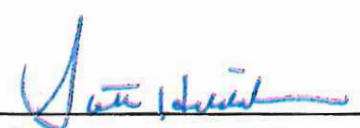
By: 

Douglas Chapman, PE
Principal – Hickory Office Manager

CITY OF LENOIR

ATTEST: 

Shirley M. Cannon
City Clerk

By: 

Scott Hildebran
City Manager

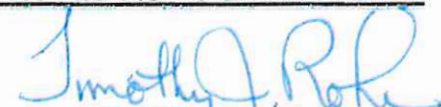
PRE-AUDIT CERTIFICATION:

THIS INSTRUMENT has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act as amended.

By: 

Donna Bean, Finance Director
City of Lenoir

APPROVED AS TO LEGAL FORM:

By: 

Timothy J. Rohr, Wilson Lackey, Rohr & Hall, P.C.
City Attorney



ATTACHMENT "A"
PROJECT UNDERSTANDING
HARPER AVENUE SEWER REPLACEMENT

The Harper Avenue Sewer Replacement project generally involves the replacement of approximately 1,400 linear feet of an existing 8-inch gravity sewer line that is a contributor to inflow and infiltration and has limited capacity due to insufficient pipe slopes. The proposed sewer is planned to parallel a tributary to Zacks Fork Creek and the existing sewer within the existing sewer easement. The sewer is expected to begin at the downstream end connecting to an existing sewer line located on NCPIN 2759079256 (Shields of Lenoir Inc), then extending northwest through the City's existing sewer easement to NCPIN 2749989016 (U Save Mart LLC), if funds allow. If easements are necessary for installation of the sewer line and/or to gain access to the existing sewer easement, the City will be notified.

ATTACHMENT "B"

FEE SCHEDULE



Shaping Communities Together

BASIC FEE SCHEDULE

July 2024

PROFESSIONAL FEES	I	II	III	IV
Senior Principal	\$300			
Principal – Regional Manager – Director	\$245	\$255	\$280	\$290
Practice Area Lead	\$220	\$240	\$270	\$280
Senior Project Manager	\$220	\$235	\$260	\$270
Senior Engineer	\$220	\$235	\$260	\$270
Project Manager	\$190	\$205	\$210	\$215
Senior Project Engineer	\$190	\$205	\$210	\$215
Project Engineer	\$155	\$165	\$175	\$185
Engineering Associate	\$135	\$140	\$145	\$150
Planner- Consultant – Designer	\$140	\$150	\$175	\$190
Engineering Technician	\$120	\$135	\$140	\$150
CAD Operator – GIS Analyst	\$100	\$110	\$120	\$130
Construction Services Manager	\$155	\$165	\$180	\$200
Construction Administrator	\$130	\$145	\$155	\$165
Financial Services Manager	\$140	\$150	\$160	\$170
Grant Administrator	\$125	\$140	\$150	\$160
Construction Field Representative	\$105	\$115	\$125	\$140
Environmental Specialist	\$105	\$115	\$120	\$125
Administrative Assistant	\$85	\$90	\$100	\$115
Survey Party Chief	\$100	\$115	\$130	\$150
Survey Field Technician	\$85	\$90	\$95	\$100

EXPENSES

- Mileage - \$0.70/mile
- Flow Monitoring Equipment: Pressure Flow Meter- \$400/wk.; Gravity Flow Meter - \$1,000/deployment
- Robotics/GPS Equipment: \$30/hr.
- Telephone, reproduction, postage, lodging, and other incidentals shall be a direct charge per receipt.

ASSOCIATED SERVICES

- Associated services required by the project such as soil analysis, materials testing, etc., shall be at cost plus ten (10) percent.



**City of Lenoir
Parks and Recreation Department
Mulberry Recreation Center - Gymnasium Floor Replacement
Bid Tabulation - August 16, 2024**



****NOT AWARDED****

Bidder	Base Bid	Alt. No. 1 (2nd Grade Maple)	Alt. No. 2 (Water-Based Sealer)	Total with Alternate No. 1
Motley Krue Construction	\$274,774.50	Not priced	Not priced	\$274,774.50
Floor Action (Superior Court Systems)	\$131,404.00	\$17,550.00	\$2,500.00	\$148,954.00
Sports Flooring Group	\$130,771.15	\$8,661.20	\$2,745.79	\$139,432.35

*Pricing is based upon the attached *Request for Proposals* dated August 13, 2024 (Rev. August 14, 2024)*

Base Bid includes Grade 3 maple flooring and polyethylene vapor barrier



CITY MANAGER
SCOTT E. HILDEBRAN

CITY OF LENOIR
NORTH CAROLINA

MAYOR
JOSEPH L. GIBBONS

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

City of Lenoir Resolution
Application for North Carolina Division of Parks & Recreation
Great Trails State Grant Program
OVT Connector and Support Building Project

WHEREAS, the City of Lenoir City Council has indicated its desire to assist in development efforts within the City; and,

WHEREAS, the City Council fully supports the proposed OVT Connector and Support Building Project which will result in construction of the Overmountain Victory National Historic Trail Connector and renovation of the City-owned building at 1129 West Avenue to provide public facilities to support the trail; and,

WHEREAS, the City Council wishes to pursue a formal application for a Great Trails State Grant in the amount of \$497,994.00 from the North Carolina Division of Parks & Recreation Great Trails State Grant Program and will contribute the required 1/3rd match (\$248,997.00) of the awarded amount; and,

NOW, THEREFORE, BE IT RESOLVED, by the City of Lenoir City Council:

That the City of Lenoir is authorized to submit a formal application to the North Carolina Division of Parks & Recreation Great Trails State Grant Program in order to provide assistance to benefit the OVT Connector and Support Building Project.

That this Resolution shall take effect immediately upon its adoption.

Adopted this the 20th day of August, 2024 in Lenoir, North Carolina.

SEAL


Joseph L. Gibbons, Mayor

ATTEST:


Shirley M. Cannon, City Clerk



CITY OF LENOIR
COUNCIL ACTION FORM

I. Agenda Item:

Execution of the contract agreement with J.M. Cope, Inc. for Construction Manager at Risk services for the Campus Improvements Project

II. Background Information:

In March, 2024, the City of Lenoir adopted use of the Construction Manager at Risk (CMaR) project delivery method for the upcoming Campus Improvements Project. A qualification-based selection process was used by the City to identify and select the most qualified firm to perform CMaR services for this project, and on August 6, 2024, following a thorough review of all received submittals, the City selected J.M. Cope, Inc., 346 9th Street SE, Hickory, North Carolina 28602.

Contract agreements for CMaR services typically include an executed standard agreement and future amendment(s) as work progresses on the project. The Construction Manager's scope of work generally consists of pre-construction and construction tasks including but not limited to assistance during the schematic design phase, assistance during the actual design phase, assembling of construction documents, administration of the procurement and bidding process, and ultimately, presentation of a Guaranteed Maximum Price (GMP) for the total project. These tasks are further outlined in the attached "Exhibit D" presented by J.M. Cope, Inc. dated August 28, 2024. The above described scope includes a fee for completion of all associated tasks in the amount of **\$43,000.00**, or 1% of the project budget. This percentage is common for CMaR-delivered projects. At such time as the GMP is developed and presented to the City, further action will be necessary to accept the project price, as presented, and this agreement will be amended to include the City's formal acceptance of the construction price and authorization to move forward with the project.

III. Staff Recommendation:

Staff recommends execution of the agreement, AIA Document A133-2019, with J.M. Cope, Inc. for completion of CMaR services for the Campus Improvements Project, for a contract price of **\$43,000.00**. J.M. Cope, Inc.'s scope of work is described in the attached agreement and further outlined in the attached "Exhibit D" document.

IV. Reviewed by:**City Attorney:** _____**Finance Director:** _____**Director of Special Projects and Grants:** _____

—

Attachments:

- **AIA Document A133-2019, Standard Form of Agreement Between Owner and Construction Manager** *where the basis of payment is Cost of the Work Plus a Fee with a Guaranteed Maximum Price*
- **Exhibit D, J.M. Cope, Inc.'s Scope of Services**



AIA® Document A133® – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 3rd day of September in the year 2024
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

City of Lenoir
801 West Avenue
Lenoir, NC 28645

and the Construction Manager:
(Name, legal status, address, and other information)

J.M. Cope Inc.
346 9th Street SE
Hickory, NC 28602

for the following Project:
(Name, location, and detailed description)

The "Campus" Project
114 College Avenue SW
Lenoir, NC 28645

The project consists of improvements of the Historic Old Lenoir High School facilities, grounds, and surrounding properties, collectively known as the "Campus" project. The scope of work is anticipated to include renovation of existing facilities, complete with structural, architectural, and MEP elements, demolition of existing structures, and construction of a new open air pavilion, along with site improvements.

The Architect:
(Name, legal status, address, and other information)

Maurer Architecture
115 ½ E. Hargett Street, Suite 300
Raleigh, N.C. 27601

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	GENERAL PROVISIONS
3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
4	OWNER'S RESPONSIBILITIES
5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
7	COST OF THE WORK FOR CONSTRUCTION PHASE
8	DISCOUNTS, REBATES, AND REFUNDS
9	SUBCONTRACTS AND OTHER AGREEMENTS
10	ACCOUNTING RECORDS
11	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
12	DISPUTE RESOLUTION
13	TERMINATION OR SUSPENSION
14	MISCELLANEOUS PROVISIONS
15	SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

The City of Lenoir Construction Manager at Risk includes Pre-construction services, including without limitation design and constructability reviews, value management, project schedule development and management, procurement strategy development, preparation and submission of an open book Guaranteed Maximum Price (GMP), and related construction services, including without limitation of bidding, award and management of trade contracts for the actual construction, start-up and warranty services, for the "Campus" project located in Lenoir, NC.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

The City is currently in the schematic design phase for planned improvements of the Historic Old Lenoir High School facilities, grounds, and surrounding properties, collectively known as the "Campus" project. Improvements can generally

Init.

be described as renovation, restoration, and construction of facilities on an approximate 5-acre site owned by the City of Lenior. Specific buildings or facilities in the project scope include an existing 10,000 square feet gymnasium, an existing 7,000 square feet, 500-seat auditorium, and parcel(s) north of these principal structures that include a 12,200 square feet timber-frame and metal siding building, and an existing 4,966 square feet, single-story building on the adjacent parcel. The scope of work to complete the Campus Improvements project is anticipated to include renovation of existing facilities, complete with structural, architectural, and MEP elements, demolition of existing structure(s), and construction of a new open-air pavilion, complete with related site work and associated improvements.

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

The Project budget is Four million Three-Hundred Thousand dollars and no cents (\$4,300,000.00)

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

Design Development and Construction Documents - January 31st, 2025

.2 Construction commencement date:

March 31st, 2025

.3 Substantial Completion date or dates:

March 31st, 2026

.4 Other milestone dates:

Final Project Completion – June 1st, 2026

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

To be determined. Note, Design and Construction milestones above are from RFQ.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

To be determined

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

To be determined

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

Jared Wright, Director of Special Projects and Grants

801 West Avenue
 Lenoir, NC 28645
 828.757.2153
 jwright@CI.LENOIR.NC.US

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

N/A

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

To be determined

.2 Civil Engineer:

To be determined

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

N/A

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

Ethan page, RA
 Maurer Architecture
 115 ½ E. Hargett Street, Suite 300
 Raleigh, N.C. 27601
 919.238.1784
 ethan@maurerarchitecture.com

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

Gary C. Webb, Vice President
 346 9th Street SE
 Hickory, NC 28602
 704.917.9755
 cwebb@jmcope.com

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:

(List any Owner-specific requirements to be included in the staffing plan.)

N/A

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

(List any Owner-specific requirements for subcontractor procurement.)

To be determined

§ 1.1.15 Other Initial Information on which this Agreement is based:

N/A

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

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ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing written protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

N/A

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

1. A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
2. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
3. A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
4. The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
5. A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner

and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner

shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

See attached Exhibit D, Preconstruction Fee Proposal dated August 28, 2024, in the amount of Forty-three Thousand Dollars and no cents (\$43,000.00). The Construction Manager will invoice the owner monthly in an amount not exceeding the stated Preconstruction Fee. Any Preconstruction Services required to addition to those set forth on the Exhibit D will be included as part of the Guaranteed Maximum Price to be defined within the Exhibit A – Guaranteed Maximum Price Amendment, at a later date.

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position
N/A

Rate
N/A

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within Seven (7) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

(Insert rate of monthly or annual interest agreed upon.)

Two % Plus Prime rate as calculated by the Wall Street Journal on a daily basis.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

5% of the Cost of Work

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

Changes will be adjusted at the same rate of the Construction Manager's Fee.

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

The maximum amount a subcontractor will be allowed to cost changes for overhead and profit is 15%

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed one-hundred percent (100 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

Owner and Contractor agree that the actual damages that would be incurred by Owner as a result of delay of Substantial Completion of the entire Work by the scheduled date of Substantial Completion, subject to adjustments as provided for in the Contract Documents, would be both significant and difficult to ascertain. Thus, in the event that the Contractor fails to achieve Substantial Completion on or before the scheduled date of Substantial Completion, subject to adjustments as provided for in the Contract Document, the Contractor agrees to pay Owner liquidated damages of TO BE DETERMINED Dollars (\$TBD) per day for each calendar day past the scheduled Substantial Completion, until the actual date of Substantial Completion as defined by the Contract Documents. In the event of Owner's use or occupancy of the Work prior to Substantial Completion, liquidated damages shall be reduced proportionately based on the percentage of the Work being used or occupied by Owner.

Owner and Contractor acknowledge and further agree that these liquidated damages shall be the Owner's sole and exclusive monetary remedy for Contractor's delay. The Owner may recover such liquidated damages from the Contractor in any manner permitted by the Contract Documents or applicable law, including deducting the same from any unpaid amount then or thereafter due Contractor.

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

At the conclusion of the construction phase, the unused portion of the Construction Manager's Construction Contingency may be considered available for a 50% Construction Manager to 50% Owner split based on Owner's evaluation of the performance of the Contract. The distribution of savings in the Construction Manager's Construction Contingency fund shall be considered as a performance incentive only if the project completed within the specified construction duration established in the Guaranteed Maximum Price.

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and when stationed at the Construction Managers office as indicated and defined in the Construction Manager's General Conditions presented with the Guaranteed Maximum Price. The General Conditions will be paid as a monthly lump sum as agreed upon with the delivery of the Guaranteed Maximum Price. The General Conditions will include labor rates for Management of the Project and misc. items that will be identified and agreed upon between the Owner and Construction Manager prior to setting duration of project.

§ 7.2.2.1 Actual Construction Manager billing rates for Construction Manger's Labor will include all labor burdens, benefits, taxes, insurances, IT network support, etc and will be established in the Guaranteed Maximum Price as Lump Sum:

Actual Construction Manager billings rates for insurances and bonds:

- | | |
|---|---------------------|
| a. Performance & Payment Bonds and Insurances | 2.10 % of total COW |
| b. SDI | 1.25% of total COW |

N/A

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

Init.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason

to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 30th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

Init.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

5%

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

General Conditions, Performance and Payment Bond, Insurances, and Subguard shall not be subject to retainage.

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

Construction Manager may make written request to reduce to 2.5% at project 50% completion, and Owner shall not unreasonably withhold approval of same so long as the project schedule is in good standing and there are no existing issues with work.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for

Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

None.

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the

Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

None.

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

Two % Plus Prime rate as calculated by the Wall Street Journal on a daily basis.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

N/A

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☒ [X] Arbitration pursuant to Article 15 of AIA Document A201–2017

☐ [] Litigation in a court of competent jurisdiction

☐ [] Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

1. Take the Cost of Work incurred by the Construction Manager to the date of Termination.
2. Add the Construction Manager's fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
3. Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than One million dollars (\$ 1,000,000.00) for each occurrence and Two million dollars (\$ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than One million dollars (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than One million dollars (\$ 1,000,000.00) each accident, One million dollars (\$ 1,000,000.00) each employee, and One million dollars (\$ 1,000,000.00) policy limit.

(Paragraph deleted)

§ 14.3.1.6.1 Construction Manager shall purchase all risk policy "Builder's risk" to be included in the Final GMP.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits
1. Excess Liability (umbrella): Minimum Limits	a. \$5,000,000 Over Primary Insurance Policies must follow the form of the base policies

§ 14.3.1.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

Init.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .5

- .6 Other Exhibits:
(Check all boxes that apply.)

☐ AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

☐ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

- .7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

This Agreement is entered into as of the day and year first written above.

Init.

OWNER (Signature)

(Printed name and title)


CONSTRUCTION MANAGER (Signature)

Gary C. Webb Vice President
(Printed name and title)

Init.

Additions and Deletions Report for AIA® Document A133® – 2019

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:21:09 ET on 08/29/2024.

PAGE 1

AGREEMENT made as of the 3rd day of September in the year 2024

...

City of Lenoir
801 West Avenue
Lenoir, NC 28645

...

J.M. Cope Inc.
346 9th Street SE
Hickory, NC 28602

...

The "Campus" Project
114 College Avenue SW
Lenoir, NC 28645

The project consists of improvements of the Historic Old Lenoir High School facilities, grounds, and surrounding properties, collectively known as the "Campus" project. The scope of work is anticipated to include renovation of existing facilities, complete with structural, architectural, and MEP elements, demolition of existing structures, and construction of a new open air pavilion, along with site improvements.

...

Maurer Architecture
115 ½ E. Hargett Street, Suite 300
Raleigh, N.C. 27601

PAGE 2

The City of Lenoir Construction Manager at Risk includes Pre-construction services, including without limitation design and constructability reviews, value management, project schedule development and management, procurement strategy development, preparation and submission of an open book Guaranteed Maximum Price (GMP), and related construction services, including without limitation of bidding, award and management of trade contracts for the actual construction, start-up and warranty services, for the "Campus" project located in Lenoir, NC.

...

The City is currently in the schematic design phase for planned improvements of the Historic Old Lenoir High School facilities, grounds, and surrounding properties, collectively known as the "Campus" project. Improvements can

generally be described as renovation, restoration, and construction of facilities on an approximate 5-acre site owned by the City of Lenoir. Specific buildings or facilities in the project scope include an existing 10,000 square feet gymnasium, an existing 7,000 square feet, 500-seat auditorium, and parcel(s) north of these principal structures that include a 12,200 square feet timber-frame and metal siding building, and an existing 4,966 square feet, single-story building on the adjacent parcel. The scope of work to complete the Campus Improvements project is anticipated to include renovation of existing facilities, complete with structural, architectural, and MEP elements, demolition of existing structure(s), and construction of a new open-air pavilion, complete with related site work and associated improvements.

PAGE 3

The Project budget is Four million Three-Hundred Thousand dollars and no cents (\$4,300,000.00)

...

Design Development and Construction Documents - January 31st, 2025

...

March 31st, 2025

...

March 31st, 2026

...

Final Project Completion – June 1st, 2026

...

To be determined. Note, Design and Construction milestones above are from RFQ.

...

To be determined

...

To be determined

...

Jared Wright, Director of Special Projects and Grants

801 West Avenue

Lenoir, NC 28645

828.757.2153

jwright@CI.LENOIR.NC.US

PAGE 4

N/A

...

To be determined

...

To be determined

...

N/A

...

Ethan page, RA
Maurer Architecture
115 ½ E. Hargett Street, Suite 300
Raleigh, N.C. 27601
919.238.1784
ethan@maurerarchitecture.com

...

Gary C. Webb, Vice President
346 9th Street SE
Hickory, NC 28602
704.917.9755
cwebb@jmcpe.com
PAGE 5

N/A

...

To be determined

...

N/A
PAGE 8

N/A
PAGE 11

See attached Exhibit D. Preconstruction Fee Proposal dated August 28, 2024, in the amount of Forty-three Thousand Dollars and no cents (\$43,000.00). The Construction Manager will invoice the owner monthly in an amount not exceeding the stated Preconstruction Fee. Any Preconstruction Services required to addition to those set forth on the Exhibit D will be included as part of the Guaranteed Maximum Price to be defined within the Exhibit A – Guaranteed Maximum Price Amendment, at a later date.

...

N/A

N/A

...

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within Seven (7) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

...

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

Two % Plus Prime rate as calculated by the Wall Street Journal on a daily basis.

...

5% of the Cost of Work

...

Changes will be adjusted at the same rate of the Construction Manager's Fee.

...

The maximum amount a subcontractor will be allowed to cost changes for overhead and profit is 15%

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed one-hundred percent (100 %) of the standard rental rate paid at the place of the Project.

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Owner and Contractor agree that the actual damages that would be incurred by Owner as a result of delay of Substantial Completion of the entire Work by the scheduled date of Substantial Completion, subject to adjustments as provided for in the Contract Documents, would be both significant and difficult to ascertain. Thus, in the event that the Contractor fails to achieve Substantial Completion on or before the scheduled date of Substantial Completion, subject to adjustments as provided for in the Contract Document, the Contractor agrees to pay Owner liquidated damages of TO BE DETERMINED Dollars (\$TBD) per day for each calendar day past the scheduled Substantial Completion, until the actual date of Substantial Completion as defined by the Contract Documents. In the event of Owner's use or occupancy of the Work prior to Substantial Completion, liquidated damages shall be reduced proportionately based on the percentage of the Work being used or occupied by Owner.

Owner and Contractor acknowledge and further agree that these liquidated damages shall be the Owner's sole and exclusive monetary remedy for Contractor's delay. The Owner may recover such liquidated damages from the Contractor in any manner permitted by the Contract Documents or applicable law, including deducting the same from any unpaid amount then or thereafter due Contractor.

...

At the conclusion of the construction phase, the unused portion of the Construction Manager's Construction Contingency may be considered available for a 50% Construction Manager to 50% Owner split based on Owner's evaluation of the performance of the Contract. The distribution of savings in the Construction Manager's Construction Contingency fund shall be considered as a performance incentive only if the project completed within the specified construction duration established in the Guaranteed Maximum Price.

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§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, ~~with the Owner's prior approval, when stationed at the Construction Managers office as indicated and defined in the Construction Manager's General Conditions presented with the Guaranteed Maximum Price.~~ The General Conditions will be paid as a monthly lump sum as agreed upon with the delivery of the Guaranteed Maximum Price. The General Conditions will include labor rates for Management of the Project and misc. items that will be identified and agreed upon between the Owner and Construction Manager prior to setting duration of project.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below: Actual Construction Manager billing rates for Construction Manger's Labor will include all labor burdens, benefits, taxes, insurances, IT network support, etc and will be established in the Guaranteed Maximum Price as Lump Sum:

Actual Construction Manager billings rates for insurances and bonds:

a. Performance & Payment Bonds and Insurances	2.10 % of total COW
(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)	
b. SDI	1.25% of total COW

N/A

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§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 30th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

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5%

...

General Conditions, Performance and Payment Bond, Insurances, and Subguard shall not be subject to retainage.

...

Construction Manager may make written request to reduce to 2.5% at project 50% completion, and Owner shall not unreasonably withhold approval of same so long as the project schedule is in good standing and there are no existing issues with work.

PAGE 19

None.

PAGE 20

None.

...

Two % Plus Prime rate as calculated by the Wall Street Journal on a daily basis.

...

N/A

...

[☒] Arbitration pursuant to Article 15 of AIA Document A201-2017

PAGE 22

1. Take the Cost of Work incurred by the Construction Manager to the date of Termination.

2. Add the Construction Manager's fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the

same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

3. Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

PAGE 23

§ 14.3.1.1 Commercial General Liability with policy limits of not less than One million dollars (\$ 1,000,000.00) for each occurrence and Two million dollars (\$ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than One million dollars (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

...

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than One million dollars (\$ 1,000,000.00) each accident, One million dollars (\$ 1,000,000.00) each employee, and One million dollars (\$ 1,000,000.00) policy limit.

~~§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.~~

§ 14.3.1.6.1 Construction Manager shall purchase all risk policy "Builder's risk" to be included in the Final GMP.

...

1. Excess Liability (umbrella): Minimum Limits

a. \$5,000,000 Over Primary Insurance

Polices must follow the form of the base policies

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.5 Building Information Modeling Exhibit, if completed:

PAGE 25

Gary C. Webb Vice President

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Chad Webb, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:21:09 ET on 08/29/2024 under Order No. 4104242339 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

Mr. Jared Wright
Director of Special Projects and Grants
801 West Avenue
Lenoir, NC 28645

August 28, 2024

Mr. Wright,

On behalf of the J.M. Cope, Inc team, we are truly excited about the opportunity to be on the Campus Improvements project located in Lenoir, NC. Pursuant to your request, this letter is to propose the Preconstruction phase services for the referenced project above.

After careful consideration, we propose a lump sum price of **\$43,000.00 (Forty-three Thousand Dollars and no/100) or 1% of the construction budget of \$4.3 million dollars** for preconstruction services for your project.

The Preconstruction services would include the following as outlined below and in accordance with NC General Statutes:

Preconstruction Phase Services

Goal and Objectives:

1. Develop a comprehensive understanding of program goals and requirements.
2. Listen and identify all client expectations of the overall program.
3. Review and confirm programming requirements and goals are being met through the design phase.
4. Develop a site logistics plan that maximizes construction efficiency with a focused approach on public safety and minimum disruption.
5. Engage the local community and maximize project inclusion goals during the construction phase.
6. Be a fiduciary agent to the owner and the taxpayers of City of Lenoir.

Preconstruction Services Scope:

1. Schematic Design Phase
 - a. Participate in design meeting with Owner and their consultants.
 - b. Prepare a Preconstruction schedule with milestone dates.
 - c. Review existing building as-built drawings and Schematic Design documents.
 - d. Prepare conceptual site logistics plan.
 - e. Prepare schematic design estimate based on current design team documents.

- f. Provide formal deliverable with constructability report, value management, budget analysis, and schedule update.
- 2. Design Development Phase
 - a. Participate in design meeting with Owner and their consultants.
 - b. Update Preconstruction schedule with milestone dates.
 - c. Review and coordinate Design Development documents.
 - d. Update site logistics plan.
 - e. Prepare design development estimate based on current design team documents.
 - f. Provide formal deliverable with constructability report, value management log, budget analysis, and schedule update.
- 3. Construction Documents Phase
 - a. Participate in design meeting with Owner and their consultants.
 - b. Update Preconstruction schedule with milestone dates.
 - c. Review and coordinate 95% Construction Documents.
 - d. Update site logistics plan.
 - e. Prepare 95% Construction Document estimate based on current design team documents.
 - f. Provide formal deliverable with constructability report, value management log, budget analysis, and schedule update.
- 4. Procurement and Bidding Process
 - a. Manage solicitation and pre-qualification process.
 - b. Prepare project bid manual.
 - c. Develop comprehensive scope packages.
 - d. Create specific bid packages tailored to promote local and minority participation.
 - e. Conduct 2ea. Trade Partners Outreach / Information Sessions.
 - f. Achieve or exceed City of Lenior and state MWSBE participation goal.
 - g. Overall, manage all bid procedures during the bid phase.
 - h. Prepare and deliver certified bid tabulation and estimate reconciliation.
 - i. Provide recommendations for each bid package.
 - j. Open book approach with trade partner solicitation, budget reconciliation and final GMP.
- 5. Guaranteed Maximum Price

- a. Provide City of Lenoir with a GMP after formal bids have been scoped to confirm the low responsive responsible bidder.

In closing, we thank you for the opportunity. Please do not hesitate to call if you have any questions.

Sincerely,

Chad Webb, Vice President

J.M. Cope

cwebb@jmcope.com

704.917.9755

CITY OF LENOIR

COUNCIL ACTION FORM: September 3, 2024

I. Agenda Item:

Naming a shared driveway off Lee Roy Lane, Coyote Creek Place

II. Background Information:

Upon the proposal of a variance taken to the Board of Adjustment, it was noted that no new addresses can be placed on Lee Roy Lane to accommodate the property owners. There are currently no addresses and a new street name is needed to create an address.

The property owners have agreed to name the driveway Coyote Creek Place. See attached memo and map outlining this request.

III. Staff Recommendation:

Planning staff recommend the naming of Coyote Creek Place, as it is a drive that will serve up to two dwellings, and currently is without appropriate signage to allow for E-911 addressing and access to properties.

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: MATT DUCHAN – LENOIR PLANNING DEPARTMENT
DATE: AUGUST 28, 2024
SUBJECT: NAMING SHARED DRIVEWAY – COYOTE CREEK PLACE
CC: MAP IDENTIFYING STREET NAMING

Dear City Manager Hildebran,

We recently became aware that there is a shared driveway south of Starlight Court along Lee Roy Lane that would be better suited as a named access road. The shared driveway will serve one (1) dwelling, and we require the private right-of-way to be named so it can be addressed, as there are no longer any addresses available along Lee Roy Lane. The location can be more easily found in an emergency situation if the driveway is named, and signage is posted. Our office has notified everyone who is a property owner on the driveway to be involved in the road naming process.

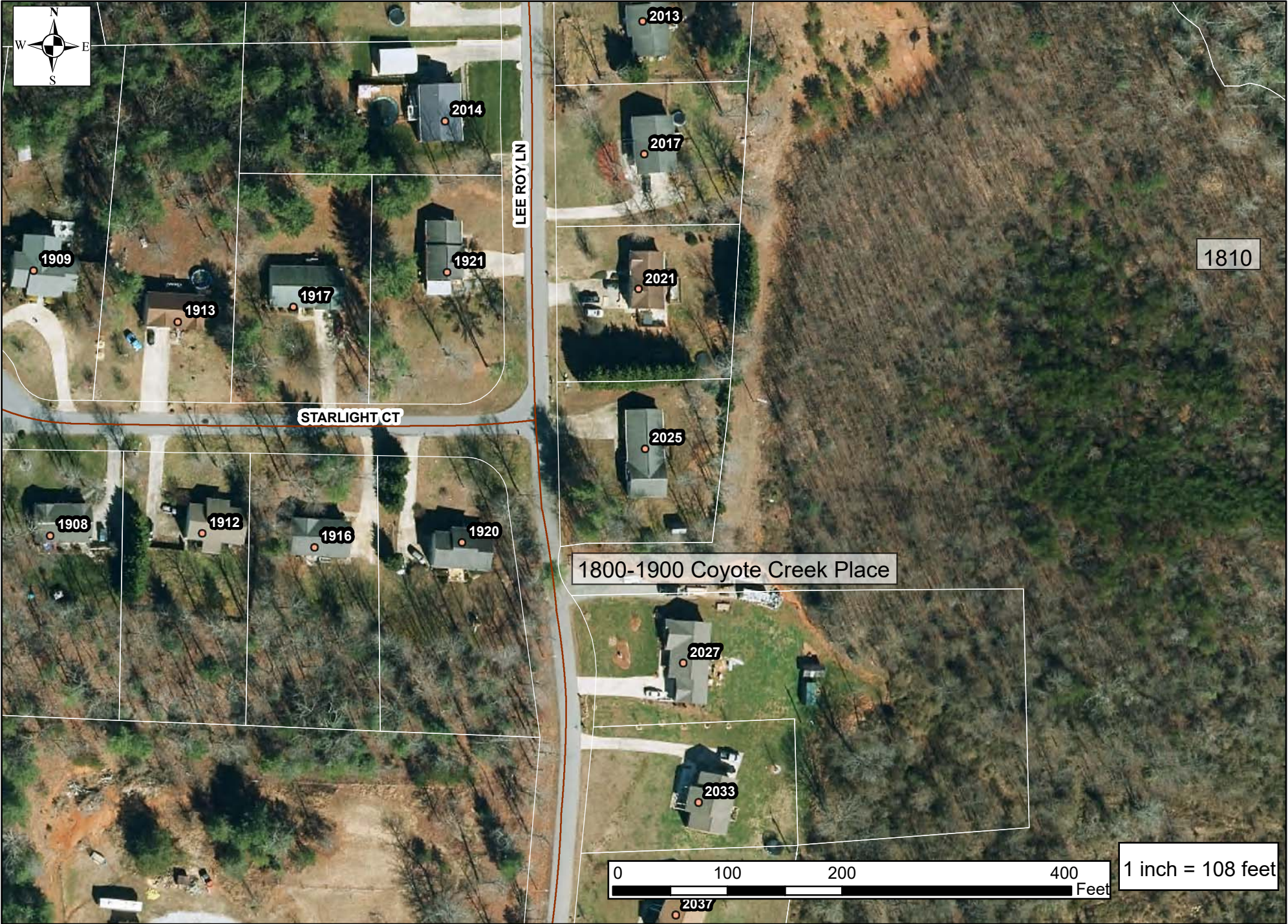
The property owners agreed to allow the Planning Department to name the street, and the proposed name is Coyote Creek Pl. The street suffix shall be Place (Pl) because it is a “dead end street with no turn around area” (Sec. 18-205 of the Lenoir Code). Consistent with addressing in the area, the street numbers for Coyote Creek Place will be 1800-1899, all even-numbered.

If you have questions, please call 828-757-4439 or email matthew.duchan@ci.lenoir.nc.us.

Sincerely,

Matt Duchan
Planner / GIS Specialist

Coyote Creek Place Street Naming and Addressing



CITY OF LENOIR
COUNCIL ACTION FORM

- I. Agenda Item:** Consideration to approve the submitted Authorization Resolution to authorize the City Manager and Finance Director to execute and file the Lead Service Line Identification and Replacement Grant application for the Fall 2024 funding round.

Background Information: Authorizing Resolution: Division of Water Infrastructure. Staff recommends approval of the submitted resolution authorizing the City Manager and Finance Director to execute and file the Lead Service Line Identification and Replacement Grant application with the NC Division of Water Infrastructure for Assistance for Lead Service Line Identification and Replacement for the project in order to develop a comprehensive Lead Service Line Inventory and to construct, plan or conduct a study of the needs in the community regarding lead service line replacements. Note: The grant will provide funding up to \$500,000 and no match is required by the City. This application will also assist in meeting EPA requirements regarding lead service line replacements.

- II. Staff Recommendation:** Staff recommends City Council approve the Authorization Resolution as presented.

- III. Reviewed by:**

City Attorney: _____

Finance Director: _____

Public Works/Public Utilities Director: Jeff Church

**CITY OF LENOIR
RESOLUTION BY THE CITY OF LENOIR FOR
FALL 2024 DEPARTMENT OF WATER INFRASTRUCTURE
LEAD SERVICE LINE INVENTORY PROJECT**

WHEREAS, The City of Lenoir has need for and intends to construct, plan for, or conduct a study in a project described as the City of Lenoir Lead Service Line Inventory Project, and

WHEREAS, The City of Lenoir intends to request State loan and/or grant assistance for the project,

NOW THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF LENOIR

That the City of Lenoir, the **Applicant**, will arrange financing for all remaining costs of the project, if approved for a State loan and/or grant award.

That the **Applicant** will provide for efficient operation and maintenance of the project on completion of construction thereof.

That the **Applicant** will adopt and place into effect on or before completion of the project a schedule of fees and charges and other available funds which will provide adequate funds for proper operation, maintenance, and administration of the system and the repayment of all principal and interest on the debt.

That the governing body of the **Applicant** agrees to include in the loan agreement (if required) a provision authorizing the State Treasurer, upon failure of the City of Lenoir to make a scheduled repayment of the loan, to withhold from the City of Lenoir any State funds that would otherwise be distributed to the local government unit in an amount sufficient to pay all sums then due and payable to the State as a repayment of the loan.

If applying for a regional project, that the **Applicant** will partner and work with other units of local government or utilities in conducting the project.

That Scott Hildebran, City Manager and/or Donna Bean, City Finance Director, the **Authorized Representatives** and successors so titled, are hereby authorized to execute and file an application on behalf of the **Applicant** with the State of North Carolina for a loan and/or grant to aid in the study of or construction of the project described above.

That the **Authorized Representatives**, and successors so titled, are hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That the **Applicant** has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, ordinances, and funding conditions applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted this the 3rd day of September 2024 at Lenoir, North Carolina.

Joseph L. Gibbons, Mayor

ATTEST:

Shirley M. Cannon, City Clerk

FORM FOR CERTIFICATION BY THE RECORDING OFFICER

The undersigned duly qualified and acting City Clerk of the City of Lenoir, NC does hereby certify: That the above/attached resolution is a true and correct copy of the resolution authorizing the filing of an application with the State of North Carolina, as regularly adopted at a legally convened meeting of the City of Lenoir, City Council duly held on the 3rd day of September 2024; and, further, that such resolution has been fully recorded in the journal of proceedings and records in my office. IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of September 2024.

Shirley M. Cannon, City Clerk