AGENDA

JOINT MEETING AND PUBLIC HEARING
CALDWELL COUNTY, AND CITY OF LENOIR
5:00 PM, CITY-COUNTY CHAMBERS
905 WEST AVENUE NW, LENOIR, NORTH CAROLINA
TUESDAY, OCTOBER 22, 2024

1.	Welcome	Mark Transou, Caldwell County EDAC Board Vice Chair & Lenoir Business Advisory Board Chair
2.	Convene Boards	
	a. Caldwell County, Confirm Quorum	Chair Randy Church
	b. City of Lenoir, Confirm Quorum	Mayor Joe Gibbons
3.	Project Cardinal Overview and Incentive Proposal	Ashley Bolick, Caldwell County Economic Development Director
4.	Questions by Elected Bodies	
5.	Joint Public Hearing to Consider Economic Development Incentives	
	a. Caldwell County Board of Commissioners	
	b. Lenoir City Council	
6.	Consideration and Action	
	a. Caldwell County Board of Commissioners	
	b. Lenoir City Council	
7.	Virginia Street Segment Closing Overview	Hannah Williams, City of Lenoir Planning Director
8.	Public Hearing to Consider the Closure of a segment of Virginia Street between 815 and 1021 Virginia Street	
	a. Lenoir City Council	
9.	Consideration and Action on Virginia Street Closure	
	a. Lenoir City Council	
10.	Water Purchase & Allocation Agreement for Project Cardinal	Scott Hildebran, City of Lenoir Manager
11.	Consideration and Action on Water Purchase & Allocation Agreement for Project Cardinal	
	a. Lenoir City Council	
12.	Project Identification	Mark Transou, Caldwell County EDAC Board Vice Chair & Lenoir Business Advisory Board Chair
13.	Adjournment	
	a. Caldwell County Board of Commissioners	
	b. Lenoir City Council	

AGENDA

SPECIAL JOINT MEETING

**LENOIR CITY COUNCIL
AND
CALDWELL COUNTY COMMISSION
CITY/COUNTY CHAMBERS
905 WEST AVENUE
TUESDAY, OCTOBER 22, 2024
5:00 P.M.**

I. CALL TO ORDER

A. Public Hearing - Project Cardinal; Consideration of an Economic Development Agreement by and between Caldwell County, City of Lenoir and Tapaha Dynamics, LLC for expansion of the Lenoir Campus. Tapaha Dynamics, LLC acknowledges that but for the local governments' provision of the economic development grants set forth herein, it would not have agreed to locate Project Cardinal at the site and enter into this Agreement. In accordance with NCGS §158-7.1, the Caldwell County Board of Commissioners and the Lenoir City Council will hold a joint public hearing at the City/County Chambers on Tuesday, October 22, 2024 at 5:00 p.m. to consider awarding an economic development incentive to Project Cardinal. The notice of the public hearing was advertised in the Lenoir News-Topic on October 10, 2024. Upon the conclusion of the public hearing, the Caldwell County Commission and the Lenoir City Council may act on the Economic Development Agreement with Tapaha Dynamics, LLC as submitted.

B. Public Hearing - Consideration of a Resolution Ordering the Closing of a Portion of Virginia Street between 815 and 1021 Virginia Street: In accordance with NCGS §160A-299, the Lenoir City Council will hold a public hearing at the City/County Chambers on Tuesday, October 22, 2024 at 5:00 p.m. The Resolution of Intent was advertised for four (4) consecutive weeks in the Lenoir News-Topic on the following dates: September 24th and October 1st, 8th and 15th, 2024 for the street closure. Letters were sent by registered or certified mail to all owners of property adjoining the street as shown on the county tax records advising them of the day, time and place of the meeting, and city staff prominently posted notices along the street. Upon the conclusion of the public hearing, City Council may act on the Resolution Ordering the closing of a portion of Virginia Street from 815 Virginia Street to 1021 Virginia Street.

C. Water Purchase and Allocation Agreement #2; Tapaha Dynamics, LLC: City of Lenoir staff recommends approval of the proposed Water Purchase and Allocation Agreement #2 between the City of Lenoir and Tapaha Dynamics, LLC to insure water flow availability to meet current and future needs at the Tapaha Campus as submitted.

II. ADJOURNMENT

CALDWELL COUNTY
BOARD OF COMMISSIONERS ACTION FORM

I. **Agenda Item:** Project Cardinal; Consideration of an Economic Development Agreement by and between Caldwell County, City of Lenoir and Tapaha Dynamics, LLC for expansion of the Lenoir Campus. Tapaha Dynamics, LLC acknowledges that but for the local governments' provision of the economic development grants set forth herein, it would not have agreed to locate Project Cardinal at the site and enter into this agreement.

II. **Background Information:** Pursuant to N.C. G.S. 157-7.1, The Caldwell County Board of Commissioners and the Lenoir City Council will hold a joint public hearing to consider awarding an economic development incentive to Project Cardinal.

Tapaha Dynamics, LLC intends to construct, or cause the construction by one or more affiliates of, buildings and other real property improvements within the County and the City on land now or hereafter owned by the company to serve as a professional technology-based facility. The Project Site shall initially mean the following two parcels: 1) an approximately 38.26-acre parcel located at 914 Virginia Street, Lenoir, North Carolina, Tax Parcel No. 06 162 1 1A, NC PIN 2748394394, and 2) an approximately 21.63-acre parcel located at 919 Fairview Drive, Lenoir, North Carolina, Tax Parcel ID No. 06 162 1 1C, NC PIN 2748287853.

The value of the incentive is based upon the appraised value each year as appraised by the Caldwell County Tax Administration Office. The amount of Caldwell County and City of Lenoir property tax revenues which will be billed to the company for their capital investment in Improvements and Equipment for Project Cardinal will exceed the amount to be paid out by the county and city for economic development grants.

Each of the local governments will provide annual grant payments equal to 50% of the aggregate ad valorem taxes paid by the Company or any Affiliate to that local government during the term attributable to the Improvements upon the Site, and annual grant payments equal to 85% of the aggregate ad valorem taxes paid by the Company or any Affiliate to that local government during the term attributable to the Equipment located at the Site.

Project Cardinal will invest $600,000,000 and create thirty (30) Full-Time Jobs to be located at the Site that pay at or above the annualized average wage in the County within five (5) years after the last party has executed the incentive agreement. The term of the economic development grant period shall be for twenty (20) years, beginning within 3 years of certificate of occupancy and ending with the calendar year that is twenty (20) years thereafter.

This would be a performance-based grant. No money would be paid until after performance goals are met. The first payment would be following the investment and reporting to the Caldwell County Tax Office.

III. **Staff and Planning Board Recommendation:** Staff recommends the Board of Commissioners approval of the Economic Development Agreement by and between Caldwell County, City of Lenoir and Tapaha Dynamics, LLC for expansion of the Lenoir Campus as submitted.

CITY OF LENOIR
COUNCIL ACTION FORM

I. Agenda Item: Project Cardinal; Consideration of an Economic Development Agreement by and between Caldwell County, City of Lenoir and Tapaha Dynamics, LLC for expansion of the Lenoir Campus. Tapaha Dynamics, LLC acknowledges that but for the local governments' provision of the economic development grants set forth herein, it would not have agreed to locate Project Cardinal at the site and enter into this Agreement.

II. Background Information: Pursuant to N.C.G.S. 158-7.1, the Caldwell County Board of Commissioners and the Lenoir City Council will hold a joint public hearing to consider awarding an economic development incentive to Project Cardinal.

Tapaha Dynamics, LLC intends to construct, or cause the construction by one or more affiliates of, buildings and other real property improvements within the County and the City on land now or hereafter owned by the company to serve as a professional technology-based facility. The Project Site shall initially mean the following two parcels: 1) an approximately 38.26-acre parcel located at 914 Virginia Street, Lenoir, North Carolina, Tax Parcel No. 06 162 1 1A, NC PIN 2748394394, and 2) an approximately 21.63-acre parcel located at 919 Fairview Drive, Lenoir, North Carolina, Tax Parcel ID No. 06 162 1 1C, NC PIN 2748287853.

The value of the incentive is based upon the appraised value each year as appraised by the Caldwell County Tax Administration Office. The amount of Caldwell County and City of Lenoir property tax revenues which will be billed to the company for their capital investment in Improvements and Equipment for Project Cardinal will exceed the amount to be paid out by the county and city for economic development grants.

Each of the local governments will provide annual grant payments equal to 50% of the aggregate ad valorem taxes paid by the Company or any Affiliate to that local government during the term attributable to the Improvements upon the Site, and annual grant payments equal to 85% of the aggregate ad valorem taxes paid by the Company or any Affiliate to that local government during the term attributable to the Equipment located at the Site.

Project Cardinal will invest $600,000,000 and create thirty (30) Full-Time Jobs to be located at the Site that pay at or above the annualized average wage in the County within five (5) years after the last party has executed the incentive agreement. The term of the economic development grant period shall be for twenty (20) years, beginning within 3 years of certificate of occupancy and ending with the calendar year that is twenty (20) years thereafter.

This would be a performance-based grant. No money would be paid until after performance goals are met. The first payment would be following the investment and reporting to the Caldwell County Tax Office.

III. Staff Recommendation: Staff recommends City Council approval of the Economic Development Agreement by and between Caldwell County, City of Lenoir and Tapaha Dynamics, LLC for expansion of the Lenoir Campus as submitted.

IV. Reviewed by:

City Attorney: T.J. Rohr

City Manager: Scott Hildebran

STATE OF NORTH CAROLINA
COUNTY OF CALDWELL

ECONOMIC DEVELOPMENT AGREEMENT
CALDWELL COUNTY, CITY OF LENOIR AND TAPAHA DYNAMICS, LLC

This **ECONOMIC DEVELOPMENT AGREEMENT** ("Agreement") is made and entered into this ____ day of _________________, 2024, by and between **Caldwell County** ("County"), a North Carolina Body Politic Corporate in Nature, having a mailing address of P.O. Box 2200, Lenoir, North Carolina 28645, **City of Lenoir** ("City"), a North Carolina municipal corporation having a mailing address of P.O. Box 958, Lenoir, North Carolina 28645, and **Tapaha Dynamics, LLC** ("Company"), a Delaware limited liability company, having a mailing address of 1600 Amphitheatre Parkway, Mountain City, California 94043. County and City are collectively hereafter referred to as "the Local Governments." All material transactions regarding this Agreement shall be deemed to have occurred in Caldwell County, North Carolina.

WITNESSETH:

WHEREAS, the Local Governments desire to foster joint economic development within their boundaries; and

WHEREAS, the Local Development Act, North Carolina General Statute 158-7.1 ("Act"), authorizes the Local Governments to make appropriations for the purpose of aiding and encouraging the location of manufacturing enterprises and industrial and commercial facilities in or near their boundaries, and for other purposes which in the discretion of their governing bodies will increase their taxable property and business prospects; and

WHEREAS, Company is a Delaware limited liability company authorized to do business in the State of North Carolina; and

WHEREAS, Company intends to construct, or cause the construction by one or more Affiliates of, buildings and other real property improvements within the County and the City on land now or hereafter owned by the Company (hereinafter "the Site," as defined in Sec. 3.1, below) to serve as a professional technology-based facility (the "Project"); and

WHEREAS, as part of the Project, Company also intends to acquire, locate, relocate, replace or renovate, or cause the acquisition, location, relocation, replacement, or renovation by one or more Affiliates, from time-to-time taxable business personal property ("Equipment") and install, or cause the installation by one or more Affiliates of, the same at the Site and in the above-referenced buildings and other real property improvements ("Improvements") to be constructed on the Site, and to undertake, or cause the undertaking by one or more Affiliates, of such other work as may be appropriate to accomplish its business purposes; and

WHEREAS, Company anticipates that the total Expenditures (as defined below) in the Improvements and Equipment to be located on the Site will equal or exceed Six Hundred Million Dollars ($600,000,000.00) within five (5) years after the date the last party has executed this Agreement; and

WHEREAS, the Company is expected to create a minimum of thirty (30) Full-Time Jobs (hereinafter defined) to be located on the Site within five (5) years after the date the last party has executed this Agreement; and

WHEREAS, the Local Governments will expect Company to work with them to reasonably identify community events and activities that will benefit from Company's support; and

WHEREAS, as an inducement to Company and to assist Company in connection with the Improvements and the Equipment, the Local Governments are willing to appropriate and expend local government funds to provide certain economic development incentives for the creation of jobs and to cause capital investment, as provided in this Agreement, all such transactions, appropriations, and expenditures to be made pursuant to the terms and conditions of this Agreement and North Carolina General Statutes; and

WHEREAS, the Local Governments have approved the appropriation and expenditure of funds as hereinafter set forth for the specific purpose of making economic development grants based on the assessed tax value of the Improvements and the Equipment and, accordingly, any additional ad valorem taxes generated by same; and

WHEREAS, Company acknowledges that but for the Local Governments' provision of the economic development grants set forth herein, it would not have agreed to locate the Project at the Site and enter into this Agreement; and

WHEREAS, the parties hereto desire to reduce their agreement to written form.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. This Agreement is executed following, and as a result of, the fulfillment, on or before ______________, 2024, of each of the following conditions precedent, except to the extent that Company, in its absolute discretion, may waive one or more in whole or in part:

1.1 The Local Governments shall deliver to Company, in form and substance reasonably satisfactory to Company, evidence, in the form of a Resolution or official minutes of the Local Governments duly adopted, authorizing the execution and delivery by the Local Governments of this Agreement, as well as the economic development incentives set forth in this Agreement; and

1.2 No litigation is then pending that challenges this Agreement, nor is there any imminent threat that such that litigation will be filed.

1.3 The Local Governments agree to use commercially reasonable efforts to cause the conditions in Sections 1.1 and 1.2 to be satisfied on or before _________, 2024.

1.4 Each party hereto hereby represents and warrants to the other as follows: In order to induce the Local Governments to enter into this Agreement and to appropriate and expend monies for payment of economic development grants pursuant to this Agreement, Company represents and warrants to the Local Governments that as of the date Company executes this Agreement:

a. It is a limited liability company duly organized and existing under the laws of the State of Delaware, has a place of business in Lenoir, Caldwell County, North Carolina, and is in good standing and authorized to do business in the State of North Carolina.

b. It has the corporate power and authority to own its properties and assets and to carry on its business as now being conducted and has the corporate power and authority to execute and perform this Agreement.

c. This Agreement:

(i) Is the lawful, valid and binding agreement of Company, enforceable against Company in accordance with its terms;

(ii) Does not violate any order of any court or other agency of government binding on Company, the charter documents of Company or any provision of any indenture, agreement or other instrument to which Company is a party; and

(iii) Does not conflict with, result in a breach of, or constitute an event of default, or an event which, with notice or lapse of time, or both, would constitute an event of default, under any material indenture, agreement or other instrument to which Company is a party.

d. There is no suit, claim, action or litigation pending relating to this Agreement or the Site or the use of the Site for its intended purpose, nor to the best knowledge of Company is there any imminent threat that such litigation will be filed.

e. To the best of the Company's knowledge, there is no impediment to the use of the Site for the purposes contemplated by this Agreement.

f. Company is not engaged in a business at the Site that would be exempt from property taxes.

1.5 In order to induce Company to enter into this Agreement and to develop the Site pursuant to this Agreement, the Local Governments represent and warrant to Company that as of the execution date hereof:

a. They are North Carolina Bodies Politic Corporate in Nature duly organized and existing under the laws of the State of North Carolina.

b. They have the power and authority to execute and perform this Agreement.

c. This Agreement:

(i) Is the lawful, valid, and binding agreement of the Local Governments, enforceable against them in accordance with its terms;

(ii) Does not violate any order of any court or other agency of government binding on the Local Governments, their charter documents or any provision of any indenture, agreement, or other instrument to which they are party; and

(iii) Does not conflict with, result in a breach of, or constitute an event of default, or an event which, with notice or lapse of time, or both, would constitute an event of default, under any material indenture, agreement, or other instrument to which either of the Local Governments is a party.

d. There is no suit, claim, action, or litigation pending relating to this Agreement, nor to the best knowledge of the Local Governments is there any imminent threat that such litigation will be filed.

e. To the best of the Local Governments' knowledge, there is no impediment to the use of the Site for the purposes contemplated by this Agreement.

2. Subject to satisfaction of the conditions set forth in Paragraph 1, above, Company covenants and agrees with the Local Governments that in consideration of the appropriation of monies and the making of the annual grants described herein, Company shall do the following:

2.1 Company will create, or cause the creation by one or more Affiliates of, an aggregate minimum of thirty (30) Full-Time Jobs to be located at the Site that pay at or above the annualized average wage in the County as of the date the last party hereto has executed this Agreement, as provided by the North Carolina Department of Commerce, within five (5) years after the last party hereto has executed this Agreement. "Full-Time Jobs" shall mean any direct jobs created as a result of the Project, and will be calculated on a full-time equivalent basis. Notwithstanding anything in this Agreement to the contrary, these Full-Time Jobs may include contractors or employees of contractors who provide dedicated services (e.g., security or maintenance personnel).

2.2 Cumulative total expenditures by Company and any Affiliates in constructing the Improvements on, and acquiring, locating, relocating, replacing or renovating the Equipment at, the Site will meet or exceed Six Hundred Million Dollars ($600,000,000.00) (without regard to depreciation or other diminution in value) within five (5) years after the last party hereto has executed this Agreement (collectively, the "Expenditures"). The Expenditures qualifying for this threshold include all soft and hard costs in constructing the Improvements on the Site and acquiring, locating, relocating, replacing or renovating the Equipment at the Site.

2.3 Company may elect the first year that the annual economic development grants described herein are to be paid hereunder, such election to be made by written notice to the Local Governments no later than March 31 of the calendar year of the first year for which Company elects that the grants are to be paid by each of the Local Governments ("Commencement Date"). Company must make its election no later than three (3) years following the calendar year in which a final certificate of occupancy is issued for the Project, with such incentive grants to begin in the first-year taxes are received from Company and any Affiliates for that year elected. The term of this economic development grant period shall be for twenty (20) years, beginning with the calendar year in which the Commencement Date occurs and ending with the calendar year that is twenty (20) years thereafter (such period, referred to herein as the "Term").

3. Payment of annual economic development incentive grants will be made as provided in this Paragraph 3.

3.1 Company intends to create, or cause the creation by one or more Affiliates of, one or more professional technology-based structures at the Site that will qualify for the Section 3.2 grants herein, and hence, will become part of this Agreement. The "Site" shall mean the land in the City and County where the Project is now or hereafter located, and more specifically shall initially mean the following two parcels: 1) an approximately 38.26 acre parcel located at 914 Virginia Street, Lenoir, North Carolina, Tax Parcel No. 06 162 1 1A, NC PIN 2748394394, and 2) an approximately 21.63 acre parcel located at 919 Fairview Drive, Lenoir, North Carolina, Tax Parcel ID No. 06 162 1 1C, NC PIN 2748287853. The land comprising the Site may be supplemented by Company from time to time, by written notice to Local Governments, to include subsequent acquisitions by Company or an Affiliate of adjacent parcels to the Site, in Company's discretion.

3.2 Each of the Local Governments will provide annual grant payments equal to 50% of the aggregate ad valorem taxes paid by the Company or any Affiliate to that Local Government during the Term attributable to the Improvements upon the Site, and annual grant payments equal to 85% of the aggregate ad valorem taxes paid by the Company or any Affiliate to that Local Government during the Term attributable to the Equipment located at the Site. Each such grant shall, unless otherwise requested by the Company by written notice to the Local Government, be paid directly, and in whole, to Google LLC, a Delaware limited liability company and an Affiliate of the Company, within sixty (60) days after Company or any Affiliate, as the case may be, pays its ad valorem taxes to each Local Government for the first year for which Company elects that an annual grant be provided by each of the Local Governments and for each of the succeeding nineteen (19) years of the Term.

3.3 This grant process will be followed by the Local Governments in each of the twenty (20) years comprising the Term, subject to Company satisfying its Full-Time Jobs and Expenditures requirements as set forth in Sections 2.1 and 2.2, above. The Local Governments will not pay any grants in connection with ad valorem taxes paid by the Company or any Affiliate to the Local Governments for calendar years following the Term, and nothing in this Agreement precludes the Local Governments and Company from entering into a subsequent agreement pertaining to other economic development incentives. The statements in Exhibit A shall conclusively be deemed to be accurate and complete for all purposes unless the Local Governments object thereto within ninety (90) days after receipt. The objection will specifically identify the Local Governments' concerns. The parties will consult in good faith to try to resolve the objections, and upon request Company will supply verification of the relevant wages and Expenditures. If the objections are not resolved, the parties hereto may pursue their legal and equitable remedies, provided that the annual grants will continue to be made until and unless a non-appealable judicial decision enjoins them.

3.4 If the Full-Time Jobs requirements of Section 2.1 above has not been met within five (5) years after the date on which the last party hereto has executed this Agreement, or if, in any year that Company or an Affiliate receives grants, Full-Time Jobs at the Site do not meet the requirements of Section 2.1 above, the Local Governments will reduce the annual grant percentages as delineated in Section 3.2 by 10% per calendar year until the Full-Time Jobs requirements are met or restored, as the case may be. By way of example, Section 3.2 grants will be reduced to 45% (50% - (50% x 10%)) for the Improvements and to 77% (85% - (85% x 10%)) for the Equipment during each year of any such reduction. Once the Full-Time Jobs requirements have been met or restored, the full amount of the grants will be restored for the following year and each year of the Term thereafter subject to the above provisions of this Section 3.4.

3.5 If the Expenditures requirements of Section 2.2 above have not been met within five (5) years after the date on which the last party hereto has executed this Agreement, the obligation of the Local Governments as set out in this Agreement shall terminate, and Company and any Affiliate shall promptly refund to them annual grants that have been paid to Company or such Affiliate, as the case may be, in proportion to only the pro-rated expenditure shortfall. By way of example, if highest total Expenditures under Section 2.2 on or before the end of the five-year period set forth therein is $540,000,000.00, the shortfall would be $60,000,000.00, or 10% of the required Expenditures. Thus, the required refund would be 10% of the aggregate annual grants paid to Company or any Affiliate.

3.6 Notwithstanding any other provision of this Agreement, Company and any Affiliate must be current in its payment of all ad valorem taxes, fees and any other amounts which Company or Affiliate owes to either of the Local Governments in order for Company or any Affiliate to be entitled to receive these grants from that Local Government.

3.7 Notwithstanding any other provision of this Agreement, Company or any Affiliate is not entitled to receive any incentive grants, pursuant to this Agreement, for any improvements made or equipment purchased at any real property other than the Site. Specifically, the Company or any Affiliate shall not be entitled to receive any incentive grants under this Agreement for any improvements made or equipment purchased for which Company is entitled to receive and actually receives an incentive grant under the terms of that Master Agreement between Company, County, City and the Caldwell County Economic Development Commission dated as of December 19, 2006, including, but not limited to the Economic Development Agreement by and between the City, County and Company dated as of December 19, 2006 attached thereto.

4. It shall be an "Event of Default" by Company if any one or more of the following events occur for any reason whatsoever and whether such occurrence is voluntary or involuntary or comes about or is affected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule, or regulation of any administrative or governmental body:

4.1 If Company fails to timely file <u>Exhibit A</u> on or before March 5th of each year, following and corresponding to the previous July 1st when taxes are billed and any qualifying incentive grant that would be due to Company or an Affiliate, the Local Governments may grant a 30-day extension upon written request by Company. The Local Governments, in their discretion, may provide exceptions or extensions to the requirements of this subsection.

4.2 If any material representation, warranty, or other statement of fact contained in this Agreement or in any final writing, certificate, report, or statement furnished by Company in connection with the transaction described in this Agreement, is, to Company's knowledge, false or misleading in any material respect at the time given.

4.3 If Company is unable to pay its debts generally as they become due; files a petition to take advantage of any insolvency statute; makes an assignment for the benefit of creditors; commences a proceeding for the appointment of a receiver, trustee, liquidator or conservator of themselves or of the whole or any substantial part of their property; files a petition or answer seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state.

4.4 If a Court of competent jurisdiction enters an order, judgment, or decree appointing a custodian, receiver, trustee, liquidator, or conservator of Company or of the whole or any substantial part of their properties, or approves a petition filed against Company seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute; or if, under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction assumes custody or control of

Company or of the whole or any substantial part of its properties.

5. Both Company and the Local Governments acknowledge that any and all monies appropriated and expended by the Local Governments for economic development incentives, as provided in this Agreement, are for a bona fide public purpose and are expended in good faith reliance on the Act. If one or more lawsuits are brought against either or both of the Local Governments or any of their elected officials, officers, agents or employees challenging the legality of this Agreement, then the Local Government(s) shall exercise their best efforts to defend against any and all such lawsuits. Company will assist the Local Governments in such efforts in any such litigation. If both the Local Governments and Company are sued, the parties shall consider whether a joint defense agreement is feasible. The Local Governments agree to maintain adequate public official liability coverage.

6. All notices, certificates or other communications required or permitted to be given or served hereunder shall be deemed given or served in accordance with the provisions of this Agreement if the notice is (i) mailed in a sealed wrapper and is deposited in the United States mail, certified mail, return receipt requested, postage prepaid, (ii) deposited with a national overnight courier service that retains receipts for its deliveries, or (iii) sent via electronic mail, properly addressed as follows:

Caldwell County:	Caldwell County PO Box 2200 Lenoir, NC 28645 Attn: Randy Church, Chairman Email: rchurch@caldwellcountync.org
City of Lenoir:	City of Lenoir Manager PO Box 958 Lenoir, NC 28645
Company:	Tapaha Dynamics, LLC 1600 Amphitheatre Parkway Mountain City, California 94043 with copy to: Maynard Nexsen PC 1230 Main Street Columbia, SC 29201 Attn: Tushar Chikhliker Email: Tushar@maynardnexsen.com

The Local Governments or Company may, by notice given to the other, designate any further or different addresses to which notices, certificates, requests, or other communications shall be sent.

7. In entering into this Agreement, County and City are acting independently of each other with regard to their obligations and liabilities. Neither Local Government is jointly and severally liable to Company for any default or breach of the other Local Government. If Company claims that either Local Government is in default or breach of any obligation under the terms of this Agreement, then Company will look solely to the allegedly defaulting or breaching Local

Government for any remedy.

8. This Agreement shall inure to the benefit of, and is binding upon, the Local Governments and Company and their respective successors and assigns. However, neither this Agreement, nor any rights, privileges, or claims created by this Agreement may be transferred by Company without the prior, written approval of the Local Governments, which approval will not be unreasonably withheld, conditioned, or delayed; provided that, the rights and obligations of the Company under this Agreement, may be transferred or assigned in whole or in part by the Company to any Affiliate without the Local Governments' consent but with notice to them. For the purposes of this Agreement, "Affiliate" shall mean any corporation, limited liability company, partnership or other person or entity which now or hereafter directly or indirectly owns all of part of the Company, or by any partner, shareholder or owner of the Company and shall also include any subsidiary, affiliate or any other person, individual, or entity who now or hereafter bears a relationship to the Company as described in Section 267(b) of the Internal Revenue Code. As of the execution of this Agreement, the term "Affiliate" shall include (i) Google LLC, a Delaware limited liability company and (ii) Design, LLC, a Delaware limited liability company. In connection herewith, the Company may, in its sole discretion, designate, by written notice to the Local Governments, one or more additional Affiliates hereunder, and any such designation shall be effective as of January 1st of the year in which the Company makes such designation.

9. Except as otherwise provided in this Agreement, this Agreement may not be amended, changed, modified, or altered except by written agreement of the parties hereto.

10. If any provision of this Agreement, or its application to any person, is held to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, in order to achieve the intent of the parties hereto to the extent possible. In any event, invalidation of any provision of this Agreement, or its application to any person, shall not affect any other provisions of this Agreement or its application to any other person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect.

11. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such fully executed counterpart.

12. This Agreement is governed by and shall be construed in accordance with the laws of the State of North Carolina, venue in Caldwell County.

13. Both Company and the Local Governments acknowledge and stipulate that this Agreement is the product of mutual negotiation and bargaining and that it has been drafted by counsel for both Company and the Local Agreements. As such, the doctrine of construction against the drafter shall have no application to this Agreement.

14. Company shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if Company utilizes a subcontractor, Company shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

15. Company and the Local Governments acknowledge that this Agreement is subject to: (i) the North Carolina Public Records Act (North Carolina General Statutes § 132-1 et seq.), which includes provisions in § 132-6(d) limiting the release of certain information relating to the location of business or industrial projects, and (ii) open meetings law (North Carolina General Statutes §

143-318.9 et seq.) which requires that any actions by the governing bodies of the Local Governments to approve the incentives discussed herein and authorizing the execution of this Agreement must be taken in an open meeting. The parties hereto further acknowledge that § 143-318.11(a)(4) of the open meetings law allows consideration of, but not action upon, incentives in closed session. All parties hereto further acknowledge and agree that Company has advised the Local Governments that any and all information contained in this Agreement, or any related agreement, schedule, or other writing, relating to consumption of energy and utilization of water and sewage discharges, the amount paid by the Company for utilities consumed in the operation of the Project, and the number of employees required for the Project are and shall be, to the extent provided by law, "trade secrets" of Company, as such term is defined in North Carolina General Statutes § 66-152(3) and used in the Public Records Act. Accordingly, the parties hereto agree to limit, to the fullest extent permitted by law, any release of information related to or pertaining to this Agreement, its terms, and parties thereto. Before any disclosure is made related to or pertaining to this Agreement by the Local Governments to a third party, such Local Government shall provide reasonable advance written notice to Company. Each party to this Agreement that receives a request for records relevant to the subject matter of this Agreement or a request for a copy of this Agreement shall (i) make a good faith effort to notice Company prior to complying with any such request, (ii) delete or otherwise redact from this Agreement any trade secrets identified in writing by Company to such Local Government, and (iii) provide to Company a copy of any material disclosed to a third party. Company will indemnify the Local Governments against any claims, liabilities, losses, and expenses resulting from the Local Governments' withholding of information requested by a member of the public under applicable statutes at the request of Company. The provisions of this Section shall survive the termination of this Agreement.

Signature Page Follows

Caldwell County,
a North Carolina Body Politic

By:_______________________________
Randy Church, Chairman
Caldwell County Board of Commissioners

SEAL

STATE OF NORTH CAROLINA, COUNTY OF CALDWELL
I, __________________________ a Notary Public of said county and state, certify that Randy Church personally appeared before me this day and acknowledged that he is Chairman of the Caldwell County Board of Commissioners, and that by authority duly given and as the act of the Board, he executed the foregoing instrument as Chairman.

Witness my hand and seal this _____ day of _______________, 2024.

____
NOTARY PUBLIC SIGNATURE

____
NOTARY PUBLIC PRINTED NAME

My Commission Expires: __________________________

This document has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

____
Anthony Helton, Chief Financial Officer

Approved as to form on behalf of Caldwell County only:

____
County Attorney

City of Lenoir,
a North Carolina Municipal Corporation

By:______________________________
Joseph Gibbons, Mayor
Lenoir City Council

SEAL

STATE OF NORTH CAROLINA, COUNTY OF CALDWELL
I, _________________________ a Notary Public of said county and state, certify that Joseph Gibbons personally appeared before me this day and acknowledged that he is Mayor of the City of Lenoir, and that by authority duly given by the Lenoir City Council and as the act of the City of Lenoir, he executed the foregoing instrument as Mayor.

Witness my hand and seal this _____ day of _______________, 2024.

____
NOTARY PUBLIC SIGNATURE

____
NOTARY PUBLIC PRINTED NAME

My Commission Expires: _________________________

This document has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

____
_____________________, Chief Financial Officer

Approved as to form on behalf of the City of Lenoir only:

____
City Attorney

Tapaha Dynamics, LLC,
a Delaware Limited Liability Company

By:________________________________
Title: Manager

SEAL

STATE OF _____________________, COUNTY OF_________________
On ______________________, 2024, before me, ______________________ personally appeared _____________________, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the entity upon behalf of whom the person acted, executed the instrument.

Witness my hand and seal this _____ day of _______________, 2024.

____
NOTARY PUBLIC SIGNATURE

____
NOTARY PUBLIC PRINTED NAME

My Commission Expires: _________________________

Confidential & Proprietary Company Information

EXHIBIT A

Economic Development Agreement Among
Caldwell County, City of Lenoir and Tapaha Dynamics, LLC

CERTIFICATE

TO: Caldwell County and City of Lenoir

This Certificate is delivered pursuant to Section 4.1 of the Economic Development Agreement ("Agreement") dated _____________, 2024, among Caldwell County, City of Lenoir and Tapaha Dynamics, LLC ("Company"). Any capitalized term not otherwise defined herein shall have the meaning assigned to such term in the Agreement.

The undersigned authorized person of Company does hereby certify that, to such authorized person's knowledge:

(a) Company's listing and any Affiliate's listing with the Caldwell County Tax Office of the Improvements and Equipment on the Site are accurate in all material respects as of the date made;

(b) Expenditures attributable to Improvements on the Site during the 20_____ calendar year were $________________, for a cumulative total of $________________ from January 1, 20__ to December 31, 20__.

(c) Expenditures attributable to the Equipment located at the Site (including the acquisition and/or replacement thereof) during the 20__ calendar year were $________________, for a cumulative total of $________________ from January 1, 20__ to December 31, 20__; and

(d) The average annualized wage for the required aggregate 30 Full-Time Jobs as defined in Section 2.1 during the 20__ Calendar Year meets or exceeds the County's average wage as of the date the last party hereto executed the Agreement.

(e) Total Full-Time Jobs created as of the end of the calendar year: _____________

Proof of property taxes paid is attached hereto.

Dated this ___ day of _______________, 20__.

Tapaha Dynamics, LLC, a Delaware limited liability company

BY:_________________________

TITLE:_________________________

Company or an Affiliate will only provide aggregate payroll and is not required to provide proprietary employee information such as employee names, employee ID numbers, position wages or other personal information to the County

CITY OF LENOIR

COUNCIL ACTION FORM: October 22, 2024

I. Agenda Item:

Public Hearing to Close a section of Virginia Street from 815 Virginia to 1005-C Virginia St

II. Background Information:

Tapaha Dynamics LLC has proposed to close a section of Virginia Street for operations and security purposes. For exact location, please see attached preliminary map – the southern terminus has changed from 1021 Virginia St to 1005-C Virginia St since the resolution of intent was adopted on September 17, 2024.

Tapaha Dynamics proposes cul-de-sacs (or city-approved alternative turnarounds) to close the northern and southern ends of this segment. Provisions for city and privately owned utilities in the Virginia Street right-of-way will be granted a general easement for maintenance of these assets by Tapaha Dynamics. Tapaha Dynamics will also grant the City of Lenoir a Temporary Emergency Access Easement should the Virginia Street Bridge become impassible during a city or county state of emergency.

This section of Virginia Street was formerly a NCDOT state-maintained road. It was turned over to the City of Lenoir for maintenance in May 2015 for future economic development projects. See attached documentation confirming the transfer of maintenance from NCDOT to the City.

In accordance with NCGS 160A-299, the attached resolution of intent, which calls for a Public Hearing to be held at a special meeting on October 22, 2024 at 5:00pm, was advertised for 4 consecutive weeks in the Lenoir News-Topic – on dates September 24, and October 1, 8, and 15, 2024. A copy of the resolution was sent to each adjacent property owner by certified mail on September 30, 2024, and notice of the public hearing was posted on the subject properties on September 23, 2024 and checked following Hurricane Helene on October 3, 2024.

The city and Tapaha Dynamics have been working with abutting property owners Duke Energy and Max Prestwood on this project.

III. Staff Recommendation:

Adoption of the attached Street Closure Order, which releases the City's interest in the street, and directs the Clerk and the Mayor to file a certified copy of the street closure order with the Caldwell County Register of Deeds, reserving utility easements by granting specific easements, and making provision for temporary emergency access, by a separate document.

IV. Reviewed by:

City Attorney: ______________________________
Finance Director: ___________________________

Planning Director: Hannah Williams

STREET CLOSING ORDER

A Resolution Ordering the Closing of a Portion of Virginia Street between 815 and 1021 Virginia Street

WHEREAS, on September 17, 2024, the City Council of the City of Lenoir directed the City Clerk to publish a Resolution of Intent to close a portion of Virginia Street between 815 and 1021 Virginia Street; and,

WHEREAS, the street in question is represented in the following plat:

> The area described as “RIGHT-OF-WAY ABANDONED” on the “Boundary and Right-of-Way Geometry” map portion of RIGHT-OF-WAY ABANDONMENT AND EASEMENT PLAT — VIRGINIA STREET SW RIGHT-OF-WAY, prepared by Bowman North Carolina LTD, dated June 27, 2024, recorded in the Caldwell County Registry on October ___, 2024, in Plat Book ___, Page ____.

A copy of which is attached hereto; and,

WHEREAS, city staff has advised the City Council that the Resolution, advising that a public hearing would be held at 5:00 PM, on Tuesday, October 22, 2024, in the City/County Chambers at located at 905 West Avenue, Lenoir, North Carolina, was published in the Lenoir News-Topic newspaper once a week for four (4) successive weeks prior to the public hearing; and,

WHEREAS, city staff has advised the City Council that letters were sent by registered or certified mail to all owners of property adjoining the street as shown on the county tax records advising them of the day, time and place of the meeting, enclosing a copy of the Resolution of Intent, and advising the property owners that the City Council would be acting on the question of closing a portion of Virginia Street between 815 and 1021 Virginia Street; and

WHEREAS, city staff has advised the City Council that the city prominently posted notices along the street as required by N.C. Gen. Stat. § 160A-299; and

WHEREAS, the City Council granted full and complete opportunity for all interested persons to appear and register any objections on the record that they might have with respect of the closing of the street in the scheduled public hearing on Tuesday, October 22, 2024; and

WHEREAS, the City Council gave full and complete consideration of the matter and finds as follows:

1. The abandonment of the street will in no way degrade the efficiency of the provision of any City service, including but not limited to garbage

collection, fire and police protection, access to emergency medical services, delivery of both water and sewer services, or school bus routes; and

2. The closing of the public right-of-way is not contrary to the public interest and no individual owning property abutting or in the vicinity of the street will as a result of the abandonment be deprived of reasonable means of ingress and egress to their property.

WHEREAS, it appears to the satisfaction of the City Council that abandonment of said public right-of-way will be in the public interest.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LENOIR, NORTH CAROLINA HEREBY ORDERS THAT:

Section 1. A portion of the public right-of-way lying between 815 and 1021 Virginia Street depicted and denoted upon the aforementioned plat is hereby abandoned. Except as limited herein, all right, title, and interest to the area is hereby vested in those persons owning lots or parcels of land adjacent to the street. The title of such adjoining landowners, for the width of the abutting land owned by them, extends to the centerline of the street or alley. However, as provided under N.C. Gen. Stat. § 160A-299(f) and shown on the "Water and Sewer Easement Geometry" portion of the plat, the City reserves its right, title, and interest in utility easements within the closed street as considered by the City to be in the public interest. This reservation also extends to utility improvements or easements owned by private utilities which at the time of the street closing have a utility agreement or franchise with the city. A separate deed of easement to the City must be executed and recorded at the Office of the Register of Deeds in Caldwell County prior to right-of-way abandonment.

Section 2. The aforementioned plat serves as a plat of abandonment for the purposes of this order.

Section 3. The City Clerk is hereby authorized and directed to file in the Office of the Register of Deeds in Caldwell County a certified copy of this Order, a copy of the published Resolution of Intent, and a notarized statement that all the abutting property owners were notified by certified mail.

Section 4. This Order becomes effective upon its adoption and approval.

Adopted this the 22nd day of October, 2024.

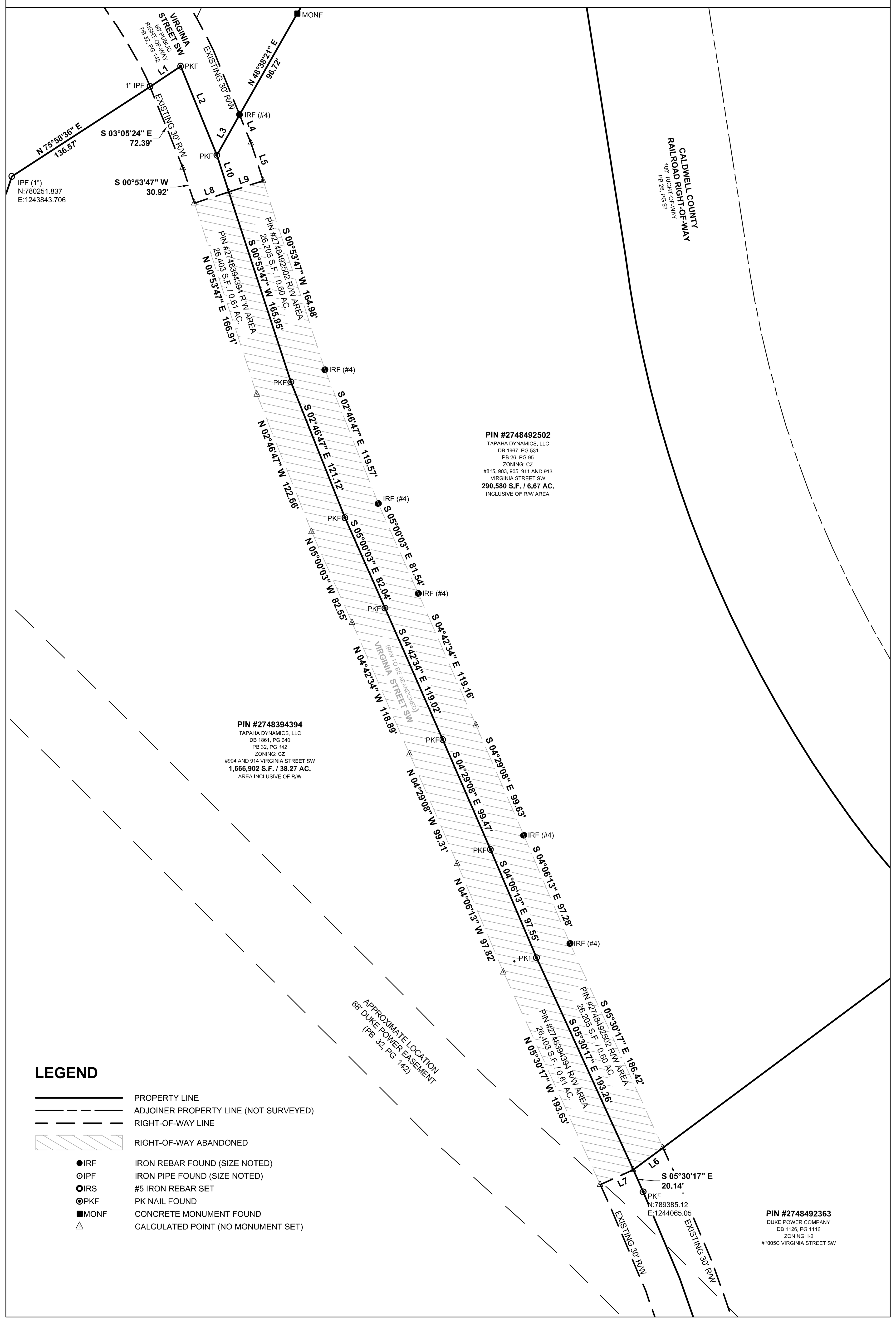
SEAL

Joseph L. Gibbons, Mayor

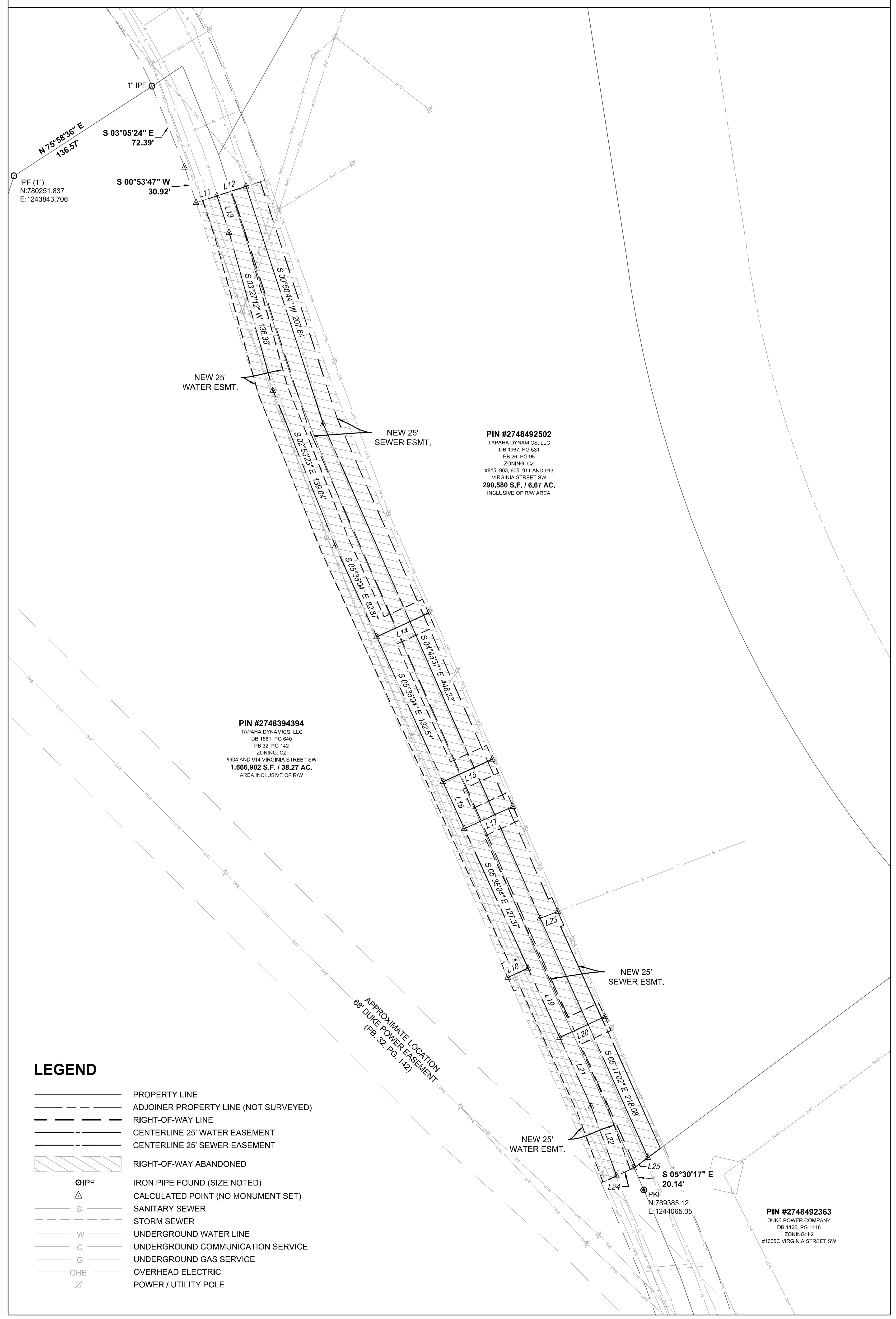
ATTEST:

Shirley M. Cannon, City Clerk

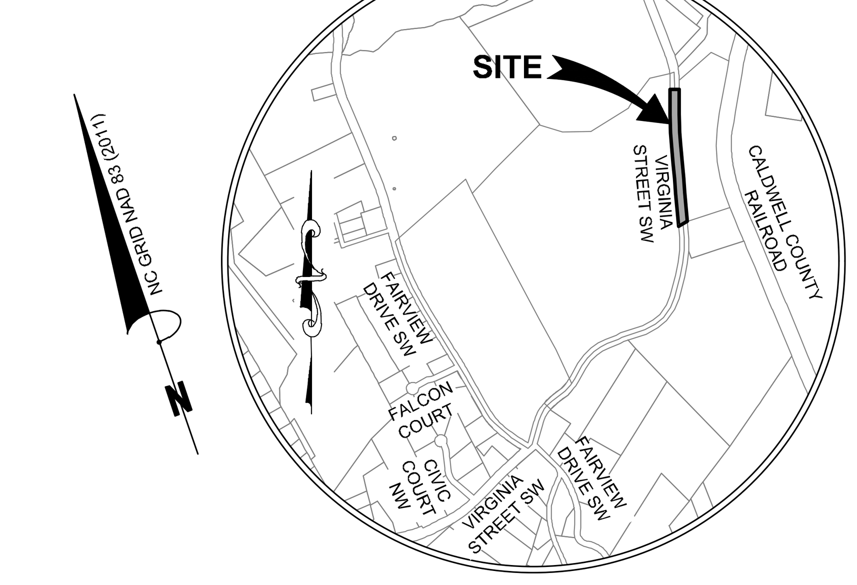
BOUNDARY AND RIGHT-OF-WAY GEOMETRY



WATER AND SEWER EASEMENT GEOMETRY



EXISTING VIRGINIA STREET UTILITIES	
UTILITY SERVICE	OWNER
POTABLE WATER	CITY OF LENOIR
SANITARY SEWER	CITY OF LENOIR
NATURAL GAS	PIEDMONT NATURAL GAS
CABLE TV	TBD
FIBER OPTIC	TBD
OVERHEAD POWER	DUKE ENERGY
STORMWATER	CITY OF LENOIR



VICINITY MAP
SCALE: 1" = 1000'

NOTES

1. THE SURVEYED PROPERTY DELINEATED HEREON IS LOCATED IN CALDWELL COUNTY, NORTH CAROLINA AS PIN #2748287853, 2748394394 AND 2748492502.
2. THE SURVEYED PROPERTY IS CURRENTLY IN THE NAME OF TAPAHA DYNAMICS, LLC RECORDED IN DEED BOOK 1697, PAGE 550, DEED BOOK 1861, PAGE 640 AND DEED BOOK 1967, PAGE 531 IN THE ROD OFFICE OF CALDWELL COUNTY, NORTH CAROLINA.
3. BOUNDARY INFORMATION AS SHOWN HEREON IS BASED ON A FIELD SURVEY PERFORMED BY BOWMAN CONSULTING GROUP, LTD. ON 04/15/2024. SURVEY REPRESENTS A SURVEY OF OCCUPATION USING EVIDENCE FOUND AND REFERENCES SHOWN.
4. NORTH MERIDIAN INFORMATION AS SHOWN HEREON IS BASED ON NORTH CAROLINA STATE PLANE COORDINATE SYSTEM, NAD 83 US SURVEY FOOT, DISTANCES SHOWN ARE HORIZONTAL "GROUND DISTANCES".

REFERENCES

1. PLAT PREPARED BY: TAYLOR WISEMAN AND TAYLOR
   RECORDED: OCTOBER 12, 2016
   PLAT BOOK 32, PAGE 142
2. PLAT PREPARED BY: BP BARBER
   RECORDED: JULY 08, 2009
   PLAT BOOK 26, PAGE 95

LINE TABLE		
LINE	BEARING	LENGTH
L1	N 75°19'15" E	30.62'
L2	S 3°05'24" E	79.59'
L3	N 48°09'29" E	38.49'
L4	S 3°02'33" E	25.14'
L5	S 0°53'47" W	33.01'
L6	S 72°18'21" W	30.69'
L7	S 84°29'43" W	30.00'
L8	S 89°06'13" E	30.00'
L9	S 89°06'13" E	30.00'
L10	S 0°53'47" W	31.97'

EASEMENT LINE TABLE		
LINE	BEARING	LENGTH
L11	S 89°06'13" E	18.17'
L12	S 89°03'47" E	25.41'
L13	S 0°34'14" W	32.02'
L14	N 84°24'56" E	47.36'
L15	N 84°24'56" E	45.22'
L16	S 5°35'04" E	42.83'
L17	N 84°24'56" E	44.39'
L18	S 84°24'56" W	18.52'
L19	S 5°35'04" E	63.17'
L20	N 84°24'56" E	41.31'
L21	S 5°35'04" E	62.80'
L22	S 1°11'11" E	61.68'
L23	N 88°18'39" E	15.69'
L24	N 84°29'43" E	15.87'
L25	N 72°18'21" E	14.50'

60 30 0 60 120
GRAPHIC SCALE
1" = 60'

DEDICATION STATEMENT

I (WE) HEREBY CERTIFY THAT I AM (WE ARE) THE OWNERS(S) OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I (WE) HEREBY DEDICATE THIS PLAN OF A NEW 25' WATER AND 25' SEWER EASEMENT WITH MY (OUR) OWN FREE CONSENT. FURTHER, I (WE) CERTIFY THE LAND AS SHOWN IS WITHIN THE PLATTING JURISDICTION OF THE CITY OF LENOIR, NORTH CAROLINA.

____
OWNER SIGNATURE DATE

____
PRINTED NAME

CERTIFICATE OF REVIEW OFFICER

I, ______________________________, REVIEW OFFICER OF CALDWELL COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

____
REVIEW OFFICER DATE

CERTIFICATE OF RIGHT-OF-WAY ABANDONMENT

I (WE) HEREBY CERTIFY THAT I AM (WE ARE) THE OWNERS(S) OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I (WE) HEREBY ADOPTS THIS PLAN OF RIGHT-OF-WAY ABANDONMENT WITH MY (OUR) FREE CONSENT AND ABANDON RIGHT-OF-WAY AS SHOWN.

____
OWNER SIGNATURE DATE

____
PRINTED NAME

CERTIFICATION

I, TIMOTHY J. GRIFFITH, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTIONS AS SHOWN ON PLAT), THAT THE RATIO OF PRECISION OR POSITIONAL ACCURACY AS CALCULATED IS 1:10,000+; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION LICENSE NUMBER AND SEAL THIS __________ DAY OF ___________, A.D., 2024.

____
TIMOTHY J. GRIFFITH
NORTH CAROLINA PROFESSIONAL LAND SURVEYOR
LICENSE NO. L-5550

NORTH CAROLINA PROFESSIONAL SEAL L-5550 LAND SURVEYOR TIMOTHY J. GRIFFITH

RIGHT-OF-WAY ABANDONMENT
AND EASEMENT PLAT
VIRGINIA STREET SW
RIGHT-OF-WAY
LOCATED IN THE
CITY OF LENOIR,
CALDWELL COUNTY, NORTH CAROLINA

SCALE: 1" = 60' DATE: JUNE 27, 2024

REVISION

Bowman
Bowman North Carolina LTD.
10130 Perimeter Pkwy, Suite 100
Charlotte, NC 28216
Phone: (704) 412-7474
F-1445
www.bowman.com

DWG: V:\031624 - LNR4A Lenoir NC\031624-01-001 (SUR) - LNR4A Lenoir NC\Survey\Plats\ROW Abandonment\031624-01-001 Easement Plat	BY: SCM	CHK: TJG	QC:
BCG PROJECT NO: 031624-01-001	TASK: 00001	SURVEY DATE: 04/15/2024	SHEET 1 OF 1

NORTH CAROLINA

CALDWELL COUNTY

DEED OF EASEMENT FOR UTILITIES & TEMPORARY EMERGENCY ACCESS

THIS DEED OF EASEMENT FOR UTILITIES & TEMPORARY EMERGENCY ACCESS (the "Easement")**,** made this the ___ day of October, 2024, from **TAPAHA DYNAMICS, LLC**, a Delaware limited liability company; to the **CITY OF LENOIR,** a municipal corporation of Caldwell County, North Carolina;

For and in consideration of payment by the City of Lenoir to Tapaha Dynamics, LLC, of the sum of one dollar ($1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, Tapaha Dynamics, LLC, has this day granted, and by these presents does grant unto CITY OF LENOIR a permanent non-exclusive easement and right of way, including the perpetual right to enter upon the Easement Area (as defined below) as necessary for the purposes set forth herein, at any time it may see fit, and construct, maintain and repair one or more storm water control, water, and sanitary sewer lines for the purpose of conveying and carrying water, sanitary sewage, storm water runoff, and other municipal and other public utilities, over, across, through and under the Easement Area, together with the right to excavate and refill ditches and/or trenches for the location of said pipelines within the Easement Area, and the further right to remove trees, bushes, undergrowth, and other obstructions (excepting fences) interfering with the location, construction and maintenance of said lines within the Easement Area.

The land affected by the grant of this Easement is located in the County of Caldwell, State of North Carolina, and is more particularly described in the following plat maps recorded at the Caldwell County Register of Deeds: Plat Book 26 at Page 95 and Plat Book 32 at Page 142. See also the October 22, 2024, Street Closing Order of the City of Lenoir as to a portion of Virginia Street between 815 and 1021 Virginia Street, recorded in Book ____, Page _____ of the Caldwell County Register of Deeds (the "Property").

The Easement hereby granted covers a strip of land over and across the Property as specifically shown and described in the attached "Exhibit A," titled "Right-of-Way Abandonment and Easement Plat Virginia Street SW Right-of-Way Located in the City of Lenoir, Caldwell County, North Carolina," across the Property, including the area designated for easements in the attached "Exhibit A." (the "Easement Area").

TO HAVE AND TO HOLD said Easement unto City of Lenoir, its successors and assigns forever.

Tapaha Dynamics, LLC, does hereby covenant with City of Lenoir that it will construct no permanent buildings or structures within the Easement Area without first obtaining written permission and approval from the City of Lenoir; that it is lawfully seized and possessed of the Property; that it has a good and lawful right to grant the Easement encumbering the Property, or any part thereof; that it is free from all encumbrances except for all matters of record; and that it will forever warrant and defend the title thereto against the lawful claims of all persons whomsoever.

Tapaha Dynamics, LLC, and its successors and assigns, may use the Easement Area for any purpose not inconsistent with the rights hereby granted and provided such use does not unreasonably interfere with the City of Lenoir's rights set forth in this Easement.

All activities of the City of Lenoir and its agents and contractors pursuant to this Easement shall be conducted in accordance with all applicable laws, regulations, ordinances and legal duties. The City of Lenoir shall repair damage to roads, fences and other such improvements caused by the City of Lenoir which are not inconsistent with the rights granted to the City of Lenoir within thirty (30) days of such damage. The City of Lenoir shall repair or shall pay Tapaha Dynamics, LLC, at the City of Lenoir's discretion, for other physical damage done in the process of the construction, inspection, maintenance, or repair of the facilities installed by the City of Lenoir in the Easement Area within thirty (30) days of such other physical damage.

The City of Lenoir acknowledges and agrees to adhere to the notice and access requirements set forth in that certain Water Purchase & Allocation Agreement #2 by and between Tapaha Dynamics, LLC and the City of Lenoir dated as of even date herewith in connection with the City of Lenoir's access to the Easement Area.

As part of the consideration for this grant, Tapaha Dynamics, LLC, does hereby release any and all claims for damages from whatsoever cause incidental to the exercise of the rights herein granted except as expressly set forth herein or to the extent caused by the negligence or willful misconduct of the City of Lenoir. Tapaha Dynamics, LLC agrees that more than one line can be placed in the Easement Area at any time or times the City desires to so use this Easement.

Tapaha Dynamics, LLC, also covenants with the City of Lenoir to (i) construct temporary gravel turnarounds during Tapaha Dynamic, LLC's initial phase of Tapaha Dynamics, LLC's proposed construction on the Property and (ii) construct permanent turnarounds at a later date pursuant to Tapaha Dynamic LLC's construction plans and timeline on the northern and southern termini of certain closure areas on the Property in locations determined by Tapaha Dynamics, LLC. Pending acceptance by the City of Lenoir, the permanent turnarounds shall be dedicated to the City of Lenoir and meet the requirements of Lenoir City Code Sec. 18-22, Design Requirements.

Tapaha Dynamics, LLC, also grants to the City of Lenoir a Temporary Emergency Access Easement and promises that should NC Bridge Structure #130066 (located within 100 feet of the junction of US64/NC18 and Virginia Street over Lower Creek) become impassible, and Caldwell County or the City of Lenoir declares a State of Emergency under relevant NC General Statutes, Tapaha Dynamics, LLC, or its successors to the Property will work with the City of Lenoir and other governmental entities to assist the owners, and their successors, of the following properties to have, gain, or maintain access to their property during the declared State of Emergency with appropriate notification and through a route deemed acceptable by Tapaha Dynamics, LLC and in accordance with its security requirements. Caldwell County and/or the City of Lenoir agree to use good faith efforts to minimize the duration for which access may be required through the Property during any declared State of Emergency and such Temporary Emergency Access Easement shall only be used for the limited purposes set forth in this paragraph:

723 Unit A Virginia Street – NCPIN: 2749319109
723 Lot B Virginia Street – NCPIN: 2749411176
723 Virginia Street – NCPIN: 2749400730
781/785 Virginia Street – NCPIN: 2749403744
714 Virginia Street – NCPIN: 2749303670

IN WITNESS WHEREOF, Tapaha Dynamics, LLC, has executed this Easement in the manner required by law, the day and year first above written.

TAPAHA DYNAMICS, LLC

By: ___________________________
Carl Bivens, Authorized Signatory

State of _________________________
County of _________________________

I, a Notary Public of the County and State aforesaid, certify that Carl Bivens personally appeared before me this day and acknowledged that he is an Authorized Signatory of Tapaha Dynamics, LLC, a Delaware limited liability company, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by Carl Bivens as an Authorized Signatory.

Witness my hand and official stamp or seal this ______ day of October 2024.

____
Notary's Signature

____
Notary's Typed or Printed Name

My Commission Expires:

____

Exhibit A

RESOLUTION OF INTENT

A Resolution Declaring the Intention of the Lenoir City Council as Petitioned by the Adjacent Property Owners to Consider the Closing Virginia Street between 815 and 1021 Virginia St

WHEREAS, G.S. 160A-299 authorizes the Lenoir City Council to close public streets and alleys; and

WHEREAS, the Lenoir City Council considers it advisable to conduct a public hearing for the purpose of giving consideration to the closing of Virginia Street between 815 and 1021 Virginia Street; and

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

(1) A meeting will be held at 5:00 p.m. on the 22nd day of October, 2024, in the City/ County Chambers, 905 West Avenue, to consider a resolution closing Virginia Street Right-of-Way.

(2) The City Clerk is hereby directed to publish this Resolution of Intent once a week for four successive weeks in the News-Topic, or other newspaper of general circulation in the area.

(3) The City Clerk is further directed to transmit by registered or certified mail to each owner of property abutting upon that portion of said street a copy of this Resolution of Intent.

(4) The City Clerk is further directed to cause adequate notices of this Resolution of Intent and the scheduled public hearing to be posted as required by G.S. 160A-299.

Any person with a disability needing special accommodations should contact the City Clerk's office 72 hours prior to the scheduled meeting time.

Adopted this the 17th day of September, 2024.

SEAL

Joseph L. Gibbons [signature]

Joseph L. Gibbons, Mayor

ATTEST:

Shirley M. Cannon [signature]

Shirley M. Cannon, City Clerk

STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

PAT MCCRORY
GOVERNOR

1534 MAIL SERVICE CENTER
RALEIGH, N.C. 27699-1534

ANTHONY J. TATA
SECRETARY

May 8, 2015

The Honorable Joseph L. Gibbons
Mayor, City of Lenoir
P. O. Box 958
Lenoir, North Carolina 28645-0958

Dear Mayor Gibbons:

This will acknowledge receipt of official notification that your City Council approved a certain change in the State Highway System within the corporate limits of Lenoir. This Resolution was forwarded to us by Division Engineer M. A. Pettyjohn.

On May 7, 2015, the Board of Transportation approved the requested deletion to the State Highway System. A copy of our BOT Agenda Item P is attached. **Please provide a copy to the party who prepares the City's 2015 Powell Bill Map.**

Sincerely,

Stephanie D. Benson

Stephanie D. Benson
Powell Bill Program Manager

Attachments

cc: Shirley Cannon, City Clerk
M. A. Pettyjohn, Division 11 Engineer
Douglas Eller, District 2 Engineer

Telephone 919-707-4586 Powell Bill Program FAX 919-715-5520

NCDOT May 2015 Board of Transportation Agenda

Approval of Municipal Street System Changes

Deletions from the State Highway System

Division	County	Municipality	Road	Termini	Length
11	Caldwell 2015_05_M001	Lenoir	SR 1145	To delete (SR 1145) Virginia Street from Morganton Boulevard to Fairview Drive SW	0.78
11	Watauga 2015_05_M001	Boone	SR 1102	To delete (SR 1102) South Water Street from West King Street to Rivers Street.	0.11

CITY OF LENOIR
COUNCIL ACTION FORM

I. **Agenda Item:** Water Purchase and Allocation Agreement #2; Tapaha Dynamics, LLC: City Staff recommends approval of the proposed Water Purchase and Allocation Agreement #2 between the City of Lenoir and Tapaha Dynamics, LLC to insure water flow availability to meet current and future needs at the Tapaha Campus.

II. **Background Information:** Tapaha Dynamics, LLC and the City are currently parties to an initial Water Purchase & Allocation Agreement, dated November 14, 2017, which outlines the duties and obligations of the parties for the provision of water and sewer services. With the proposed expansion of their Campus to the west, Tapaha has requested additional water flow availability to meet current and future needs on the overall Tapaha Campus.

The City has the water capacity to meet the requested demands. The Water Purchase and Allocation Agreement #2 provides for Tapaha Dynamics to pay a reserve capacity fee of $6,880,000 to the City in exchange for an increase in its water capacity allocation to meet current and future needs to serve the Tapaha Campus.

Upon execution of this agreement and receipt of the payment, the City will provide such additional water flow allocation to Tapaha upon the conditions and specifications set forth within the agreement.

Tapaha's new water capacity allocation would be for a term of 25 years, and requires that the parties meet prior to the contract's expiration to negotiate an extension or replacement of the agreement. If Tapaha discontinues operations or its water usage falls below a specified quantity, the allocation would cease and revert back to the City.

Further, Tapaha will continue to pay the prevailing bulk water and sewer rates, as amended from time to time, just as all other bulk utility customers during the term of the agreement. Tapaha will comply with all water use policies, restrictions, and ordinances adopted by the City, just as all other utility customers.

III. **Staff Recommendation:** Staff recommends City Council approval of the Water Purchase and Allocation Agreement #2 with Tapaha Dynamics, LLC as submitted.

IV. **Reviewed by:**

City Attorney: T.J. Rohr

City Manager: Scott Hildebran

Public Utilities Director: Dr. Jeff Church

City Engineer: Joel Whitford

State of North Carolina

Caldwell County

WATER PURCHASE & ALLOCATION AGREEMENT #2

This WATER PURCHASE & ALLOCATION AGREEMENT #2 ("WPA Agreement #2") is made by and between Tapaha Dynamics, LLC, a Delaware corporation having an office at 1600 Amphitheatre Parkway, Mountain View, California 94043 ("Tapaha") and the City of Lenoir, North Carolina, a North Carolina Municipal Corporation ("City"), collectively referred to hereinafter as the "Parties."

WITNESSETH

WHEREAS, Tapaha and the City are among the parties to a MASTER AGREEMENT, dated December 19, 2006, ("Master Agreement") wherein Article Ill, Sect. 3.3 sets forth certain rights, obligations and duties of the Parties pertaining to water and sewer service, including provisions related to the upgrade of the City's water system as specifically set forth therein;

WHEREAS, Tapaha and the City are also among the parties to SUPPLEMENT NO. 1 TO MASTER AGREEMENT, also dated December 19, 2006, ("Supplement No. 1") which deleted Sects. 3.3 (c) & (d) of the Master Agreement, and which supplemented and amended the Master Agreement by the addition of provisions related to the rights, obligations and duties of the parties pertaining to water and sewer service, including expansion of the City's water system and system capacity as specifically set forth in said Supplement No. 1;

WHEREAS, Tapaha and the City are also parties to an initial WATER PURCHASE & ALLOCATION AGREEMENT dated November 14, 2017, which terminated the obligations of the City for its water plant expansion set out in Item 4 of SUPPLEMENT NO. 1 TO MASTER AGREEMENT and which revised the relationship and obligations of the parties as to the proposed expansion of the City's water system, Tapaha's use of the City's water system, and the City's allocation to Tapaha of water flow;

WHEREAS, the City has and continues to own and operate a water treatment and distribution system in compliance with its agreements, obligations and duties to Tapaha, and is engaged in the enterprise of managing, operating, and maintaining said system and selling potable water to the public within its service area, including to Tapaha;

WHEREAS, Tapaha intends to expand its "Facility," as that term is defined in the Master Agreement, west of Virginia Street onto property it currently owns but has not improved, including but not necessarily limited to current NCPINs 2748394394 and 2748287853.

WHEREAS, Tapaha has determined and has informed the City that it now needs increased "Additional Water Flow Allocation" and "Revised Flow Allocation" (as those terms are described and specifically set forth in the attached and incorporated Appendix No. 1 hereto) beyond the "Initial Water Flow Capacity" (as that term is described and specifically set forth in the initial Water Purchase & Allocation Agreement) to be available to its expanded "Facility," as that term is defined in the Master Agreement and modified above;

WHEREAS, the City has determined that upon execution of this agreement and receipt of the payments set out herein, it will provide such Additional Water Flow Allocation to Tapaha upon the conditions and specifications set forth herein. The City will then proceed to make water system improvements necessary to ensure the continued Additional Water Flow Allocation (the "Project"). Tapaha will pay and provide to the City a sum to offset the costs of the Project under the terms and conditions of this WPA Agreement #2;

WHEREAS, Tapaha is voluntarily entering into this WPA Agreement #2 to enable the City to construct water utility capital improvements in order to ensure its ability to provide the continued Additional Water Flow Allocation and has agreed to be financially responsible for such expenses; therefore the costs assessed to Tapaha under this WPA Agreement #2 are not "system development fees" under N.C. Gen. Stat. § 162A-201(9);

And WHEREAS, the Parties mutually desire to enter into this WPA Agreement #2 to sell and purchase water in accordance with the terms and provisions contained herein.

NOW THEREFORE, in consideration of the mutual covenants, conditions, agreements and terms contained herein, and other good and valid consideration, the parties hereto, intending to be legally bound hereby, agree and covenant as follows:

1. TERMS. Terms used in this WPA Agreement #2 shall have the same meaning as set forth or defined in the Master Agreement, Supplement No. 1 to the Master Agreement, and the initial Water Purchase & Allocation Agreement as specifically additionally set forth and defined herein.

2. TERMINATION OF INITIAL WATER PURCHASE & ALLOCATION AGREEMENT OBLIGATIONS FOR WATER PLANT EXPANSION. The initial Water Purchase & Allocation Agreement is hereby canceled in its entirety and this WPA Agreement #2 is hereby substituted in place of it. The City's acceptance and agreement to the obligations and duties herein constitute full and complete satisfaction of the duties and obligations under the initial Water Purchase & Allocation Agreement. Except as herein stated, the remaining portions of the Master Agreement and its Supplement No. 1 remain in full force and effect.

3. REVISED WATER FLOW ALLOCATION. Subject to the terms and conditions of this WPA Agreement #2, the City will provide to Tapaha total water flow allocation as specifically stated and described in the attached and incorporated Appendix 1 ("Revised Water Flow Allocation") for the term of this WPA Agreement #2 as set forth in Section 4 below. The City's acceptance and agreement to provide the Revised Water Flow Allocation also constitutes full and satisfactory completion of its duties and obligations for providing the Revised Water Flow Allocation of the initial Water Purchase & Allocation Agreement. Maximum daily flow of water is measured through metered connections which are located, prescribed, and maintained by the City.

The City will ensure that the Revised Water Flow Allocation is continuously available to Tapaha subject to usual and reasonable limitations, including firefighting, flushing, repairs, breaks, maintenance, droughts, Force Majeure acts and also those noted in Section 11 C and G of the General Provisions of this Agreement. Within thirty (30) days following Tapaha's compliance with its obligations under Section 6 of this WPA Agreement #2, the City will confirm in writing the availability of the Revised Water Flow Allocation to Tapaha, as set forth in Appendix 1.

4. TERM. The initial term of this WPA Agreement #2 is a period of twenty-five (25) years ("Initial Term") following the City's written notice to Tapaha of the availability of the Revised Water Flow Allocation. At least 180 days prior to the expiration of the Initial Term, the Parties are to meet to negotiate in good faith an extension or replacement of this WPA Agreement #2 for a period of not less than ten (10) additional years, unless Tapaha notifies the City that it does not seek such extension or replacement. This WPA Agreement #2 will continue month-to-month after the Initial Term until the execution of such extension or replacement agreement or unless either party provides written notice to the other party of termination of such negotiations no sooner than twelve (12) months after commencement of negotiations. Notwithstanding the foregoing, this WPA Agreement #2 may terminate prior to the expiration of the Term in the event of cessation of operations of Tapaha as set forth below.

5. RESPONSIBILITY FOR PROJECT DESIGN AND OPERATION. The parties covenant and agree that all duties, authorities and liabilities in connection with the design, permitting, construction, operation, maintenance and repair of the City's water system as described in this Agreement are and will be the sole responsibility of the City and not of Tapaha, subject to the specified payment and other obligations set forth herein. However, the City shall not be responsible for design, permitting, construction, operation, water quality, maintenance or repair of water lines and system beyond the Service Delivery Points to Tapaha.

6. PAYMENT OF RESERVE CAPACITY FEE. Within 30 days of execution of this WPA Agreement #2, Tapaha is to pay to the City the sum of $6,880,000.00 U.S. dollars into an account supplied by the City.

7. OWNERSHIP BY CITY. All improvements, facilities, equipment, components, and appurtenances of the water system, including those contemplated by this agreement, are and will remain the sole property of the City, and Tapaha does not and will not claim any ownership interests therein. The City may at any time expand its water system capacity or seek additional potable water supply through neighboring systems.

The City owns water and sewer lines that run along and with Virginia Street. In the event Tapaha proceeds with its intended expansion of its "Facility" across Virginia Street, Tapaha may call on the City to close a portion of Virginia Street. Should that happen and the City does close a portion of the street, the City will retain sole ownership of all improvements, facilities, equipment, components, and appurtenances of the water and sewer lines, and Tapaha does not and will not claim any ownership interests therein. Furthermore, the City will retain an easement, to improve, repair, replace or upgrade in place or parallel, inspect, and otherwise monitor and maintain the water and sewer lines for their entire length across Tapaha's property. The parties contemplate a survey and recorded reservation of easement to carry out this provision.

The City will reasonably notify Tapaha by providing twenty-four (24) hours prior notice of its intent to access its easement within the secured site and Tapaha will grant the City access to its easement.

Notwithstanding, in the event of an Emergency (as defined below), the City will attempt, where reasonably practicable, to notify Tapaha as set forth above to access the easements within the security gates, security checkpoints, or security entrances.

An "Emergency" is an unexpected situation that requires immediate action due to a legitimate threat or imminent danger to (a) human life, safety, health, or physical well-being, or (b) personal property, real property, or improvements located upon the property.

8. NO RESALE OF WATER. Tapaha shall not resell, give away, transfer, or otherwise dispose of water purchased from Lenoir to third-parties without the prior written permission of the City.

9. NO ASSIGNMENT. The rights of this WPA Agreement #2 may not be assigned to any third party except as allowed in Article VIII, Sect. 8.2 of the Master Agreement.

10. CESSATION OF OPERATIONS. In the event during the term of this WPA Agreement #2 that Tapaha subsequently ceases its operations at its Facility in Lenoir as described in either of the two events below, then Tapaha's rights and entitlement for the Revised Water Flow Allocation as described in this WPA Agreement #2 shall cease and shall revert to the City:

A. If Tapaha discontinues its operations at the Facility as described in Sect. 1.1 Cessations of Operations in the Master Agreement; or

B. If the City notifies Tapaha that, over a period of any six consecutive months (i.e. all of the days in six monthly billing periods), Tapaha's average daily water usage during that six- month period fell below the Minimum Average Daily Water Flow as defined in the attached Appendix 1 of this WPA Agreement #2, and if no alternative agreement between the parties has been reached within six months after delivery of that notification of that usage level.

11. GENERAL PROVISIONS.

A. Tapaha shall, during the period of this WPA Agreement #2, abide by and adhere to all water use policies, restrictions, and ordinances adopted now or subsequently adopted by City which impose temporary water use restrictions, water conservation requirements, moratoriums, and other such limitations on the use of water during times of emergency or drought conditions or during other situations which for public health or financial reasons justify said policies, restrictions, and ordinances, so long as such adherence by Tapaha is proportionately commensurate with its allotted share of the City's total water system capacity prior to the imposition of such policies, restrictions, or ordinances, and does not permanently reduce Tapaha's Additional Water Flow Allocation shown in Appendix No. 1.

B. The City will promptly notify Tapaha upon becoming aware of any activity, problem, or circumstance within the City's system that might present a danger to the health, safety, and welfare of water users. Further, the City shall take prompt and appropriate action to remedy such activity, problem, or circumstance within the City system and to avoid or minimize disruptions in service.

C. In the event of damage or destruction of the City's key water facilities or any emergency which, in the reasonable judgment of the City is likely to result in material loss or damage to the system or constitute a material threat to human health or safety, the City may temporarily suspend operation of its water system. The City's response to emergencies and other such unusual circumstances is to be in accordance with applicable policies, regulations, laws, and requirements and with such personnel and equipment as necessary to maintain or restore the operations of its water system in a timely manner with the least possible disruption or inconvenience to the users connected to the city's water system.

D. The Parties agree that should any disputes arise under this agreement, including but not limited to disputes pertaining to services, rates, or invoices, said disputes are to be resolved, if at all possible, through good faith negotiations between the parties. It is the intent of the City and Tapaha that legal action is a remedy of last resort and that a negotiated resolution, including the use of outside experts or mediators, is the preferred means of resolving disputes hereunder. Notwithstanding the preceding sentences in this Section, if the City is unable to provide the quantity of available capacity of the Revised Water Flow Allocation to Tapaha, as set forth in Appendix 1, then Tapaha reserves its rights under this WPA Agreement #2 to take such action as necessary to ensure the availability of the Revised Water Flow Allocation to Tapaha.

E. The agreement of the Parties regarding Sewer Service as set out in the Master Agreement remain unchanged, and the "Initial Sewer Discharge Capacity" remains in force.

F. The Parties, upon written request by Tapaha, will annually conduct a mutual review and joint analysis for planning purposes of past and projected future water usages and needs. The Parties will share appropriate information and data with each other to facilitate such review and planning. Such information is to include, but will not be limited, to the following:

1. The average daily flow for each month;

2. The maximum daily flow on the peak day of that month;

3. Except for trade secret and other confidential information, any guaranteed or reserved capacity, committed by contract, by tariff, or otherwise for any and all wholesale and retail customers in the aggregate receiving water from the City's water system, and not yet utilized by those customers;

4. The City's five- (5) year growth projections of water utilization;

5. The total permitted production capacity of the City's Water Treatment Facilities and distribution facilities (e.g. booster pump stations, storage facilities, interconnections etc.) as allowed by the operational parameters and most stringent regulations then applicable to the City's Water Treatment Facilities.

G. Default, Termination, Remedies

1. Termination for cause by City. This WPA Agreement #2 may be terminated prior to its stated expiration date by the City upon the happening of any the following events of default by Tapaha:

a. The failure of Tapaha to perform or observe any of its material covenants, agreements, obligations and/or duties created by this agreement.

b. The failure of Tapaha to make any payment required pursuant to the terms of this agreement within sixty (60) days of its receipt of notice from the City that any such payment is overdue.

2. Remedies of Tapaha for breach by City. If

a. the average daily flow on any month during the previous twelve month period, not including the water usage by Tapaha, plus

b. the guaranteed or reserved capacity quantities committed to other customers, not including the water usage by such other customers, as reported under Subsection F.3. above, plus

c. the Revised Water Flow Allocation for Tapaha,

is greater than the total permitted capacity reported pursuant to Subsection F.5. above (the difference of which shall be the "GPD Capacity Deficiency"),

then Tapaha, in its sole discretion and judgment, may choose to require the City to pay to Tapaha, within sixty days of written notice and demand from Tapaha to the City, an amount ("Payment Remedy") equal to

{(GPD Capacity Deficiency) / (Additional Water Flow Capacity as defined in the attached Appendix 1 of this WPA Agreement #2)} X (Reserve Capacity Fee as defined in Section 6 of this WPA Agreement #2) X {(The then-remaining term of this WPA Agreement #2) / (Term of this WPA Agreement #2)}.

In the event of the exercise of this Payment Remedy in this Subsection G.2., the Additional Water Flow Capacity and Revised Water Flow Capacity allocation commitments by the City to Tapaha shall be reduced at that time by the GPD Capacity Deficiency, as well as for purposes of reporting and recalculating any Payment Remedy in future years.

3. Upon the happening of any event which may constitute good cause for termination of this agreement or claims for breach or default as stated above, the aggrieved party is to provide written notice to the party committing the alleged violation setting forth in detail the alleged failure or deficiency. Thereafter, within thirty (30) days of receipt of notice of the alleged default, the parties to this agreement are to meet to discuss the circumstances and attempt to reach a

resolution.

H. NOTICES: For the purposes of this agreement, all notices required are deemed to have been properly served and will only be served when posted by certified United States mail, postage prepaid, return receipt requested, addressed to the party to whom directed at the address herein set forth or at such other address as may from time to time be designated in writing by either party:

To City of Lenoir:	To Tapaha Dynamics, LLC:
City of Lenoir Manager P. 0. Box 958 Lenoir, NC 28645	Tapaha Dynamics, LLC Attn: Legal Department 1600 Amphitheatre Parkway Mountain View, CA 94043

I. This WPA Agreement #2 embodies the entire agreement between the parties in connection with this transaction, and there are no oral agreements, representations or inducements existing between the parties relating to this transaction, which are not expressly set forth herein. This agreement may not be modified except by a written agreement signed by all parties to this agreement. The payments hereunder and obligations herein constitute the entire agreement with regards to Tapaha's reservation of the Revised Water Flow Allocation and no additional payments will be required except as set forth herein. Neither party may sell, convey, or otherwise alienate the rights and obligations created herein without the prior written permission of the other party to this agreement, except as is allowed by Section 8.2 of the Master Agreement.

J. Nothing contained herein is to be construed to place the parties in the relationship of partners or joint venturers, and neither party shall have the power to obligate or bind the other party in any manner whatsoever. No joint agency is established by this Agreement pursuant to Article 20, Part 1 of Chapter 160A of the North Carolina General Statutes, by other similar statutory authority authorizing interlocal cooperation between units of local government, or otherwise.

K. No written waiver by any party to this agreement at any time of any breach of any other provision of this agreement shall be deemed a waiver of a breach of any provision herein or consent to any subsequent breach of the same or any other provision.

L. The captions and article numbers appearing in this agreement are inserted only as a matter of convenience and do not define, limit, construe, or describe the scope of such paragraphs or articles of this agreement or in any way affect this agreement.

M. This agreement is to be governed by, subject to, and interpreted in accordance with the laws of the State of North Carolina. In the event of litigation for any alleged breach, enforcement or interpretation of rights under this WPA Agreement #2, the aggrieved party must provide notice to and meet in person with the alleged breaching party regarding any such claim or assertion, and thereafter the parties will exercise best efforts to resolve any such dispute in good faith prior to litigation. Any litigation arising from and enforcing this WPA Agreement #2 is to be conducted in the State of North Carolina, and the parties do and will submit to the jurisdiction of the appropriate court in North Carolina for the purposes of such litigation.

N. Words of any gender used in this agreement include any other gender, and words in the singular number include the plural, when the sense requires. If any provision under this agreement or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of this agreement or its application that can be given effect without the invalid provision or application.

O. This agreement may be executed in any number of counterparts, each of which when so executed and delivered is deemed an original, and it is not necessary in making proof of this agreement to produce or account for more than one such fully executed counterpart.

P. Except as provided herein, the rights and remedies provided for in this agreement are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

Q. CONFIDENTIALITY. The Parties acknowledge that this WPA Agreement #2 is subject to the North Carolina Public Records Act {NCGS §§ 132-1, *et seq.*) and the open meetings law {NCGS §§ 143- 318.9, *et seq.*) Tapaha asserts that this WPA Agreement #2 contains trade secret information that is confidential and that if the City receives public information or documents requests regarding such trade secret information, it will be addressed and governed by the terms of Sec. 8.4 of the Master Agreement and the applicable laws of the State of North Carolina in accordance with the provisions of Sec. 8.4 of the Master Agreement. Similarly, Project Contract documents and other information related to the key infrastructure assets of the City are to be kept confidential and Tapaha is not to disseminate them beyond the Parties without the City's prior written approval.

IN WITNESS WHEREOF, the parties have executed this agreement this the ____ day of ______________________, 2023.

City of Lenoir, North Carolina

By: __________________________
Joseph L. Gibbons, Mayor

(SEAL)

Attest:

By: __________________________
Shirley M. Cannon, City Clerk

Tapaha Dynamics, L.L.C.

By: ___________________________
___________________________ (Print Name)
___________________________ (Title)

(SEAL)

This agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

By: ____________________________
Donna Bean
Finance Officer of the City of Lenoir, North Carolina

APPENDIX No. 1

The "INITIAL WATER FLOW CAPACITY" is ________ gallons of potable water per day.

The "ADDITIONAL WATER FLOW ALLOCATION" is ________ gallons of potable water per day.

The "REVISED WATER FLOW ALLOCATION" is the total of the Initial Water Flow Capacity and the Additional Water Flow Allocation, being __________ gallons of potable water per day.

The "MINIMUM AVERAGE DAILY WATER FLOW" as referred to in subsection b. of the section titled "Cessation of Operations" of this agreement is __________ gallons of potable water per day.

WATER SERVICE DETAIL

Cumulative Expected Daily Water Use (mgd)	Cumulative Max Day Water Use (mgd)
____	____

Notes:
- Actual water use is dependent upon weather, operational, and technological conditions.
- Expected daily usage estimates are not intended as water or sewer reservations.
- Expected daily usage is based upon the latest information available at the time this agreement is executed. Actual usage could be lower or higher than reported on this chart, up to guaranteed max day values.
- Peak hour to max day peaking factor = 1____