AGENDA

CITY OF LENOIR
CITY COUNCIL MEETING
905 WEST AVENUE
TUESDAY, FEBRUARY 18, 2025
6:00 P.M.

I. CALL TO ORDER

A. Moment of Silence & Pledge of Allegiance

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

A. Rezoning; 220 Sunset Street NW: A public hearing will be held to consider approval of the proposed rezoning of 220 Sunset Street NW, NCPIN# 2840940055, 0.71 acre and the 25 other identified parcels along Sunset Street and Calvary Place, from R-9 (Medium Density Residential) to R-6 (Medium and High Density Residential) as requested by applicant Marcus Sims, MWS Investments, LLC to accommodate a minor subdivision for two duplexes based on the following consistency statement. Planning Staff and the Planning Board are in approval of the request.

All decisions of the Planning Board and City Council should be based on consistency of the proposal with the comprehensive plan and any other officially adopted plan that is applicable. The comprehensive plan's future land use map identifies this parcel as "existing high density residential", flanked by future commercial sites in the ETJ, existing low-density residential to the north, and non-commercial sites to the south. Staff finds the proposed rezoning to be consistent with the goals and policy concepts of the Comprehensive Plan, as this would establish and reinforce the presence of high-density residential in an area that calls for it.

III. CONSENT AGENDA ITEMS

A. Minutes: Approval of the minutes of the City Council meeting of Tuesday, February 4, 2025 as submitted.
B. Minutes: Approval of the minutes of the Committee of the Whole meeting of Tuesday, January 28, 2025 as submitted.
C. Design-Build Contract, Aquatics & Fitness Center Improvements: Staff recommends execution of the agreement, AIA Document A141-2014, with J. M. Cope, Inc. for Design-Build services for the 2022 PARTF Project – Lenoir Aquatic and Fitness Center Improvements interior renovation. The pre-construction services contract will be $25,000.00.The remainder of the project budget will be allocated to construction.
D. Surplus Property; Lenoir Police Department Disposal to Town of Glen Alpine Police Department: Pursuant to N.C.G.S §160A-280, Donations of personal property to other governmental units, Staff recommends transferring the submitted listed of surplus ballistic vests and helmets to the Glen Alpine Police Department for use in patrol and special response duties, enhancing officer protection and operational capabilities. Note: These items are all past the manufacturer's 5-year warranty dates and Glen Alpine personnel are aware of the status of the warranty dates for these specific items.

E. Bid Award, Paving; Unity Park & Community Gardens: Following the review of bids submitted, Staff recommends awarding the bid to Asphalt Roads for the total sum of $58,000.00 for the paving of the parking lot and driveway of the Unity Park & Community Gardens. Asphalt Roads is appropriately licensed in the state of North Carolina, is adequately equipped to perform work of this nature and has completed many paving jobs throughout Caldwell.

F. Renewal; Side Street Pour House Café Permit: Staff recommends renewal of the Sidewalk Café Permit with the following conditions for Side Street Pour House Café (carried forward from the original approval):

1. The applicant must coordinate with the City's Public Works Director prior to modifying or installing any support structures for lights or awnings or modifying any enclosure fencing.
2. String lights installed over the sidewalk café are limited to white, non-blinking lights.
3. All provisions of Sec. 13-3(C) shall continue to apply to the use and operation of the sidewalk café area.
4. Current copy of Certificate of Liability Insurance naming the City as an additional insured must be provided to the Planning Department.

IV. REQUESTS AND PETITIONS OF CITIZENS

V. REPORTS OF BOARDS AND COMMISSIONS

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

A. Items of Information

1. The Planning Board will meet on Monday, February 24 at 5:30 p.m. at the City/County Chambers.
2. The Committee of the Whole will meet on Tuesday, February 25 at 8:30 a.m. at City Hall, Third Floor Conference Room.
3. The Foothills Regional Airport Authority will meet on Wednesday, March 5 at noon at the airport facility.
4. The City Council Planning Retreat will be held on Friday, February 28 at 8:30 a.m. at Blue Ridge Energy meeting room.

B. Items for Council Action

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

IX. REPORT AND RECOMMENDATIONS OF COUNCIL MEMBERS

X. ADJOURNMENT

CITY OF LENOIR

COUNCIL ACTION FORM: February 18, 2025

I. Agenda Item:

R 2-25 Consideration of a request to re-zone 220 Sunset Street (NCPIN 2840940055) and surrounding properties along Sunset Street and Calvary Place from R-9 (Medium-density Residential) to R-6 (High-density Residential).

II. Background Information:

The applicant is requesting to rezone the property, zoned R-9, to be zoned as R-6 to allow for greater flexibility to develop multiple duplexes on the lot located at 220 Sunset Street. Planning Staff proposed to rezone several properties in addition to the subject property at 220 Sunset Street from R-9 to R-6. See attached staff report for more information.

III. Staff and Planning Board Recommendation:

Planning Board recommends approval of the proposed rezoning of 220 Sunset St and the 25 other identified parcels along Sunset Street and Calvary Place, as recommended by staff, according to the following consistency statement:

All decisions of the Planning Board and City Council should be based on consistency of the proposal with the comprehensive plan and any other officially adopted plan that is applicable. The comprehensive plan's future land use map identifies this parcel as "existing high density residential", flanked by future commercial sites in the ETJ, existing low-density residential to the north, and non-commercial sites to the south. Staff finds the proposed rezoning to be consistent with the goals and policy concepts of the Comprehensive Plan, as this would establish and reinforce the presence of high-density residential in an area that calls for it.

IV. Reviewed by:

City Attorney: _____
Finance Director: _____

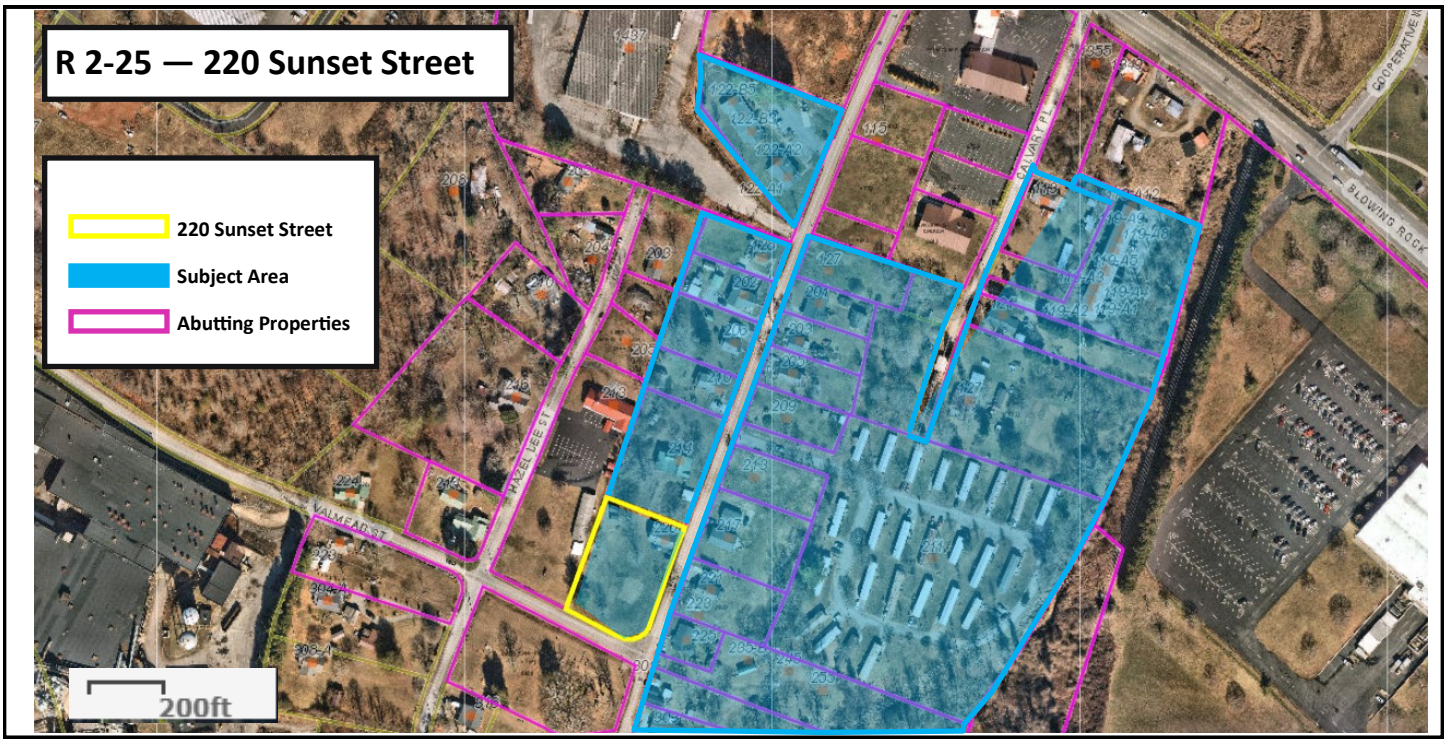
Planning Director: Hannah Williams _____

Staff Report

Zoning Amendment

Case Number R #2-25

Location Map/Aerial Photograph



Summary

Owner

MWS Investments LLC
(Marcus Sims)

Applicant

Marcus Sims

Location

220 Sunset St NW

NC PIN

2840940055; multiple

Project Planners

Hannah Williams, AICP, CZO
Matt Duchan, CZO

Description of Request:

The applicant is requesting to rezone the subject property (.71 AC) from R-9 (medium -density residential) to R-6 (medium– and high-density residential) to accommodate a minor subdivision for two duplexes. Planning staff recommends that the rezoning encompass the entire block of Sunset St and Calvary Pl to US-321, which is more consistent with the existing development pattern.

Staff Recommendation:

Approval of the request, based on the consistency statement on page 9.

Planning Board Recommendation:

Approval of the request as submitted by staff.

Public Comment:

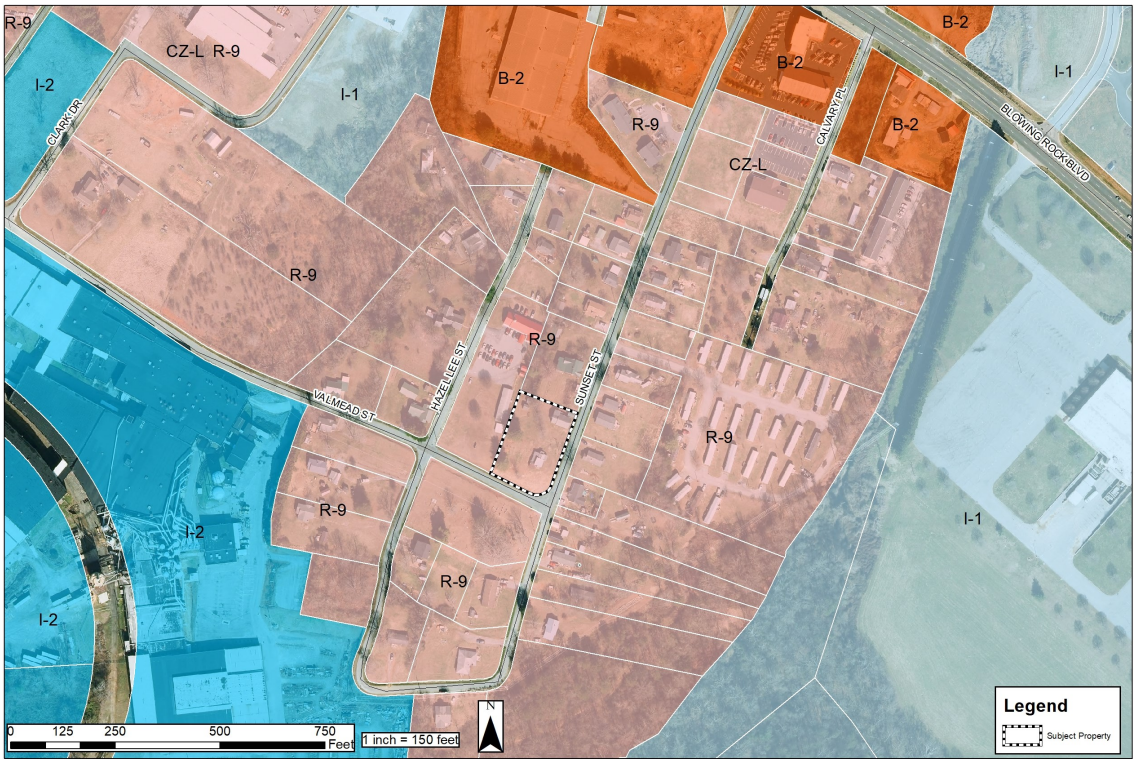
Neighborhood residents, property owners, and churchgoers of Liberty Baptist Church addressed the board.

Planning Board Meeting: January 27, 2025. Notice of the meeting was mailed to the owners of all adjacent parcels (identified on map above) on January 17, 2025.

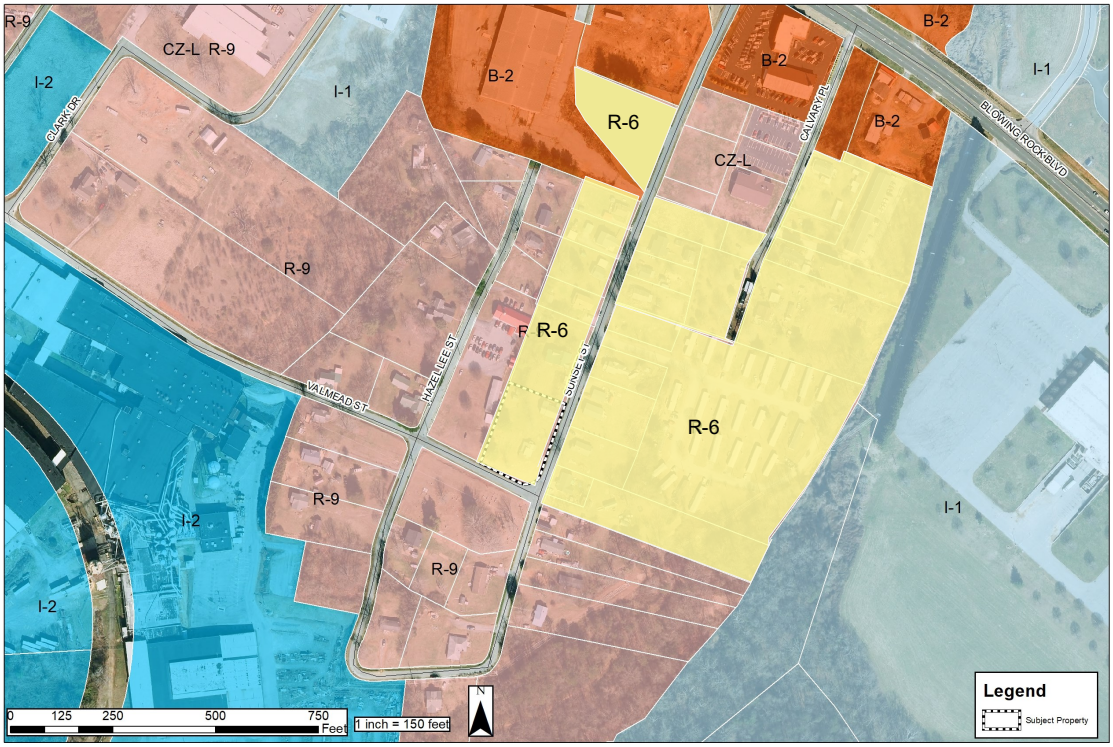
City Council (Public Hearing): Scheduled for February 18, 2025.

EXISTING AND PROPOSED ZONING MAPS

Existing Zoning: R-9



Proposed Zoning: R-6



Background and Staff Analysis

Zoning Map Amendments

The City of Lenoir Zoning Ordinance establishes an official zoning map/atlas for the City of Lenoir. The zoning map may be amended from time to time by the City Council when public necessity, convenience, general welfare, or good zoning practice justifies the amendment. The zoning map cannot be changed until the Planning Board reviews the request and makes a report to City Council on the proposed change and the City Council holds a public hearing to consider the request.

Reason for Request

The applicant is requesting a zoning change from R-9 to R-6 in order to be able to subdivide an existing lot to build two duplexes. Under the current zoning, the lot is not large enough to subdivide and accommodate two duplex lots. Both R-9 and R-6 zoning districts allow for two-family and multi-family developments. The key difference between the two zoning districts is the minimum lot size (9,000 SF for multi-family in R-6; 15,000 SF for multi-family in R-9).

Intent of the Zoning Districts

R - 9 Residential (Multi-family) District is intended to establish and preserve areas of land within the city for medium density single-family residences, doublewide manufactured homes, duplexes, townhomes, low-rise garden apartments, and other compatible land uses, with higher density multi-family apartments allowed as special uses. Any uses which would adversely affect or interfere with the residential character and development of these areas are excluded.

R - 6 Residential (Multi-family) District is intended to establish and preserve areas of land within the city for medium and high density residences, including single family, doublewide manufactured homes, duplexes, townhomes, multi-family developments, and other compatible uses at appropriate densities. Higher density multi-family developments are allowed as special uses. Any uses which would adversely affect or interfere with the residential character and development of these areas are excluded.

Subject and Surrounding Properties

The subject property at the intersection of Sunset Street and Valmead Street is .71 acres and can be accessed via Valmead Street coming from North Main Street or via Sunset Street coming from Blowing Rock Boulevard (US-321). The interior neighborhood is zoned R-9 on Sunset Street, Hazel Lee Street, and Calvary Place. There are two apartment complexes; one on Sunset Street with five units and one on Calvary Place with 12 units. which is considered non-conforming in the present zoning designation. The properties along US-321 are zoned B-2 (General Business), while properties to the south of the neighborhood are zoned I-2 (Heavy Industrial). The applicant owns a mobile home park off of Sunset Street called Sunset Manor, located at 211 Sunset Street. The neighborhood features a mix of stick-built single-family homes and doublewide manufactured homes in addition to the aforementioned two multi-family developments.

ZONING ANALYSIS

Minimum Lot Size

On the 220 Sunset site, the developer proposes to subdivide the lot into three lots: one lot for the existing house, and two lots for two new duplexes. Today, the existing lot is 30,990 square feet (.71 acres). Under the R-9 zoning, the single family house lot would be required to be 9,000 sq. ft., and each duplex lot would be required to have 15,000 square feet. The developer lacks around 8,000 square feet to accommodate his proposal under R-9 zoning.

In the R-6 zoning district, the single family house lot would be required to be 6,000 sq. ft., and each duplex lot would be required to have 9,000 square feet. To accomplish the proposal under R-6, the developer has more than enough land area to accommodate these minimum lot size standards. See illustration to the right, where each proposed resultant lot exceeds the minimum lot size requirement.

Approximation of proposed subdivision

Unit Count and Multi-family Densities

Under the current R-9 zoning, a quadplex (4-unit apartment building) is allowed by right on a 15,000 sq. ft. lot. The developer could achieve the same number of residential units as proposed if they were 4 attached apartments rather than detached duplexes. However, the developer desires to construct duplexes rather than apartments.

Aside from minimum lot sizes, there are a two major differences between R-9 and R-6. The first regards manufactured housing. While R-9 allows for doublewide manufactured homes on private lots, R-6 allows for doublewides and replacements of singlewide manufactured homes on private lots. In the proposed rezoning area, there are no singlewides outside of the existing manufactured home park, so there are no singlewides that will need replacing in the area. (Note: Manufactured Home Parks are permitted separately from manufactured homes on private lots.) The other major difference regards density—dwelling units per acre for multifamily complexes.

Dwelling units per acre vary between what is permitted "by right" as "low density" and what would be permitted with a Special Use Permit as high density. These numbers are different for R-9 and R-6, as illustrated in the table below and in the Zoning Ordinance:

	R-9	R-6
Low Density "By Right"	4.8 Dwelling Units per Acre	7.2 Dwelling Units per Acre
High Density w/ SUP	9 Dwelling Units per Acre	15 Dwelling Units per Acre

Note: Maximum densities do not apply to accessory apartments or any development of 4 or fewer total units (duplex, triplex, or quadplex developments).

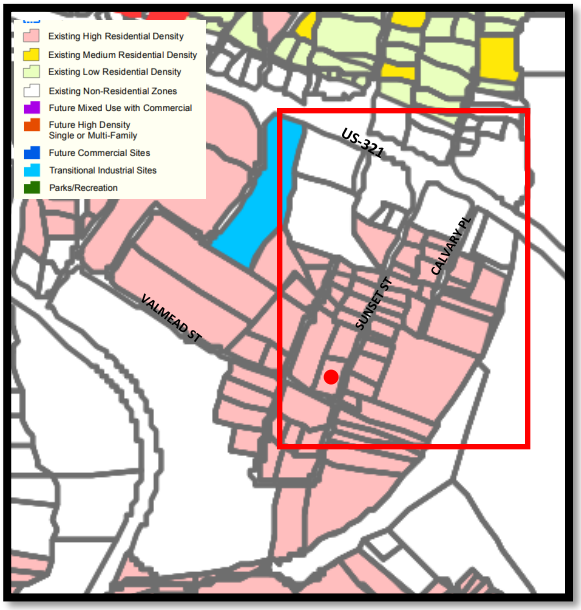
Taken from Section 600, Permitted Use Chart, footnote A5 and Section 800, Table A & footnote A10

ZONING ANALYSIS

Today under R-9 zoning, the subject property could have up to 4 multifamily units on .71 acres for a low density development. With an SUP, it could have up to 6 multifamily units. Under R-6 zoning, the property would be able to have 5 multifamily units by right. With an SUP, it could have up to 21 units. (Keep in mind, other factors, such as building height, landscaping, parking lots, and open space requirements can mitigate the amount of development allowed on a site.)

Rezoning the Block vs Spot Zoning

In considering the applicant's request to rezone his property, staff analyzed the area of Sunset Street to see if a spot zone was warranted, or if the neighborhood would also benefit from rezoning to R-6. Staff narrowed down the subject area to the streets with direct access onto US-321, in order to increase density near major transportation corridors. This neighborhood features small single family homes on small lots. Most of these lots, except for three, conform to the 9,000 sq. ft minimum lot size. Only one home conforms to the 35' front yard requirement, while the rest are within 20' of the road. There are two apartment complexes in the subject area. The one at 122 Sunset St has 5 units on .86 acres, resulting in a density of 5.8 units per acre—and conforms to the low density standard of the R-9 district. The other, 119 Calvary Place has 12 units on 1.14 acre, resulting in a density of 10.5 dwelling units per acre. This exceeds the maximum density allowed in R-9, but would be considered medium to high density in R-6. This complex would require an SUP today.



Lenoir Future Land Use Map

There is precedent in Lenoir for rezoning several properties in one neighborhood to accommodate a new development on one property in Lenoir (R 2-19, Summit Pl/Norwood St). It is uncommon but not illegal in NC planning to "spot zone" properties. A spot zone is a conscious to decision to rezone a property in a way that does not reflect the surrounding area's land use and zoning (e.g. a property zoned B-2 in the middle of an R-15 zoning district). Good zoning practice dictates that such requests be scrutinized for their overall compatibility with the surrounding districts, and not be arbitrarily applied to the benefit of one landowner.

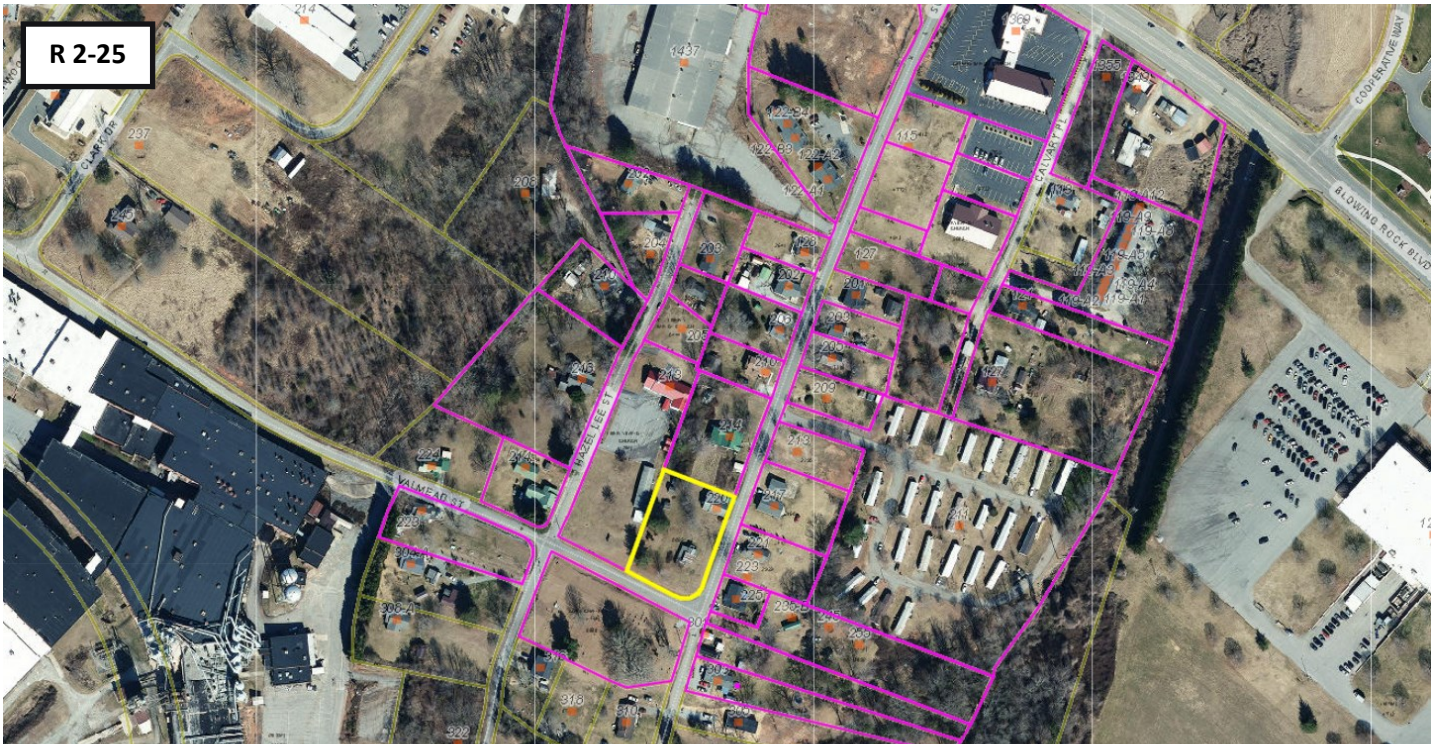
This neighborhood is identified in the Future Land Use Map as Existing High Density Residential. Rezoning the subject area to R-6 would be closer to its designated land use category than R-9 currently is. There are already a few lots within the neighborhood that fulfill minimum lot size standards for R-6 and are therefore non-conforming to the current R-9 zoning district. A photo on the next page identifies those properties which fall under the minimum lot size for R-9. While R-9 and R-6 maintain the same permitted uses, a lowering of minimum lot size makes living in the neighborhood a more reasonable undertaking for those seeking lower-cost housing options in the future adjacent to US-321.

For the sake of continuity, it makes sense to not only rezone the subject property, but also properties in the surrounding area to R-6. Doing so would give way for further opportunities to (re-)develop property in this neighborhood to better serve the growing population in need of more affordable and convenient housing options.

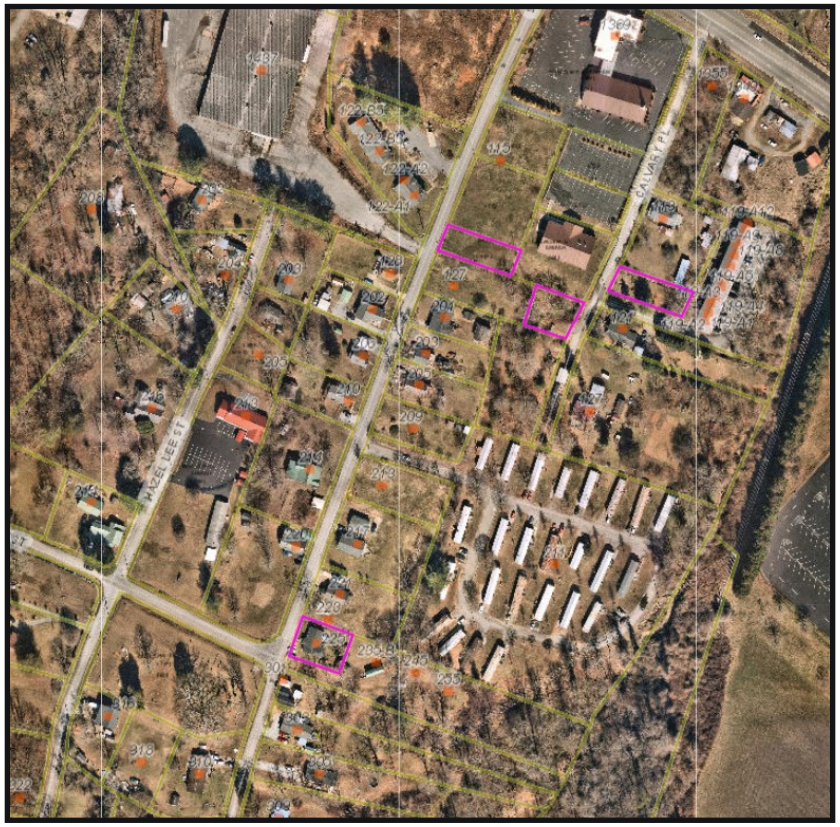
SB 382

A bill was recently passed in North Carolina (SB 382) that precludes local governments from downzoning properties without expressed consent from property owners. What is proposed in this instance, however, is an "upzoning" or, an increase in residential density. Staff is not required to obtained expressed consent from all property owners to up-zone property.

Aerial Photographs (Surrounding Area & Property Owners)



Letters regarding the rezoning request were mailed on January 17, 2024 informing the property owners on the following page.



Properties identified under the minimum lot size in R-9 (< 9000 square feet)

PROPERTY OWNERS

Name	Address	City	State	Zip
Hubert & Helen Day	214 SUNSET ST NW	LENOIR	NC	28645
MWS Investments LLC	PO BOX 3495	LENOIR	NC	28645
Julian & Mary Baker	2310 HICKORY BLVD SW SUITE A	LENOIR	NC	28645
Paula Gilbert	210 SUNSET ST NW	LENOIR	NC	28645
Ricky & Cynthia Greene	202 SUNSET ST NW	Lenoir	NC	28645
Trustees of Edward & Carolyn Lutz	220 COUNTRYSIDE DR SE	LENOIR	NC	28645
Jeremy Story & Allison Hoyle	205 HAZEL LEE ST NW	LENOIR	NC	28645
Liberty Baptist Church	213 HAZEL LEE ST NW	LENOIR	NC	28645
Heather Gragg & Burlene Arnett	225 SUNSET ST	LENOIR	NC	28645
Madison & Natalie Crump	PO BOX 1654	LENOIR	NC	28645
Larry & Arlene Soblotney	6155 VENICE CT	HICKORY	NC	28601
William & Karen Dickson	509 PINEHURST PL	LENOIR	NC	28645
Dorothy Hendrix	203 SUNSET ST NW	LENOIR	NC	28645
Bobby & Adene James	PO BOX 2549	LENOIR	NC	28645
David Henson	201 SUNSET ST NW	LENOIR	NC	28645
Louis & Cornelia Cornell	127 CALVARY PL NW	LENOIR	NC	28645
Ann Gragg	225 SUNSET ST NW	LENOIR	NC	28645
Crystal Bryant	121 CALVARY PL	LENOIR	NC	28645
JBRG LLC	135 COMMERCIAL CT NE	LENOIR	NC	28645
Julio Garcia	106 CONLEY ST	Morganton	NC	28655
Minnie Church W/ Hrs C/O Kathy Church	301 SUNSET ST	LENOIR	NC	28645
Scott Benge	PO BOX 2017	LENOIR	NC	28645
Jeffrey Nichols	216 HAZEL LEE ST NW	LENOIR	NC	28645
Caldwell Gardens Renewal LLC	11810 GRAND PARK AVE, SUITE 600	ROCKVILLE	MD	20852
Dale Triplett	1349 BLOWING ROCK BLVD	LENOIR	NC	28645
Calvary Baptist Church	PO BOX 2005	LENOIR	NC	28645
Marc & Karen Guerra	28 MEANDERING WAY	GRANITE FALLS	NC	28630
Structall Building Systems LLC	350 BURBANK RD	OLDSMAR	FL	34677
Alyson Pittman	1711 POPLAR ST NW APT 13	LENOIR	NC	28645
Mary Ann Mendez	202 HAZEL LEE ST NW	LENOIR	NC	28645

Comparison of Allowable Uses

Sec. 600 of the Lenoir Zoning Ordinance establishes a chart of permitted and special uses for each zoning district. The R-9 zoning district allows for medium-density residential including single-family homes, manufactured homes, duplexes, triplexes, quadplexes, and higher-density multi-family as a special use. The R-6 zoning district allows for high-density residential and other compatible uses at appropriate densities.

Comparison of Zoning Districts

	R-9	R-6
Development Standards	Min Lot Size—9,000 SF for single-family; 15,000 SF for multi-family Setbacks Front: 35' Side Yard: 12' (non-residential abutting residential, 30') Street Side Yard: 25' Minimum Rear Yard: 25'	Min Lot Size - 6,000 SF for single-family; 9,000 SF for multi-family Setbacks Front: 35' Side Yard: 10' Street Side Yard: 25' Minimum Rear Yard: 25'
Summary of Permitted Uses	Accessory Cottage or Apartment Attached Dwellings (Townhomes) Bungalow Court Dwelling, single/two-family Group Care Facility (1-6 non-related residents) Manufactured Homes Multi-family, low-density (garden apartments) Zero Lot Line (single-family)	Accessory Cottage or Apartment Attached Dwellings (Townhomes) Bungalow Court Dwelling, single/two-family Group Care Facility (1-6 non-related residents) Manufactured Homes Multi-family, low-density (garden apartments) Zero Lot Line (single-family)
	Special Uses: Bed & Breakfast Communication Towers Day Care Centers Cultural and Community Facilities Group Care Facility (7+ residents) Group Housing (no care) (1-6 non-related residents) Manufactured Home Parks (existing) Multi-Family, medium/high-density Planned Residential Development Public Service Facilities	Special Uses: Bed & Breakfast Communication Towers Day Care Centers Cultural and Community Facilities Group Care Facility (7+ residents) Group Housing (no care) (1-6 non-related residents) Manufactured Home Parks (existing) Multi-Family, medium/high-density Planned Residential Development Public Service Facilities

Consistency with the Comprehensive Plan and Next Steps

Consistency with the Comprehensive Plan

All decisions of the Planning Board and City Council should be based on consistency of the proposal with the comprehensive plan and any other officially adopted plan that is applicable. The comprehensive plan's future land use map identifies this parcel as "existing high density residential", flanked by future commercial sites in the ETJ, existing low-density residential to the north, and non-commercial sites to the south. Staff finds the proposed rezoning to be consistent with the goals and policy concepts of the Comprehensive Plan, as this would establish and reinforce the presence of high-density residential in an area that calls for it.

Next Steps

Following Planning Board, the rezoning request will be brought before a City Council public hearing and voted on. Pending approval, the applicant will then submit a zoning permit application along with civil and architectural plans as applicable, which will be reviewed by City of Lenoir planning staff. Concurrently, the applicant will apply for a driveway permit to establish access to the property in the future.

Staff Recommendation And Consistency Statement

Staff recommends that the Planning Board recommend approval of the request, based on the following consistency statement, and call for a Public Hearing for City Council to consider the request on February 18th, 2025:

All decisions of the Planning Board and City Council should be based on consistency of the proposal with the comprehensive plan and any other officially adopted plan that is applicable. The comprehensive plan's future land use map identifies this parcel as "existing high density residential", flanked by future commercial sites in the ETJ, existing low-density residential to the north, and non-commercial sites to the south. Staff finds the proposed rezoning to be consistent with the goals and policy concepts of the Comprehensive Plan, as this would establish and reinforce the presence of high-density residential in an area that calls for it.

Planning Board Recommendation

Planning Board recommends approval of the rezoning of 220 Sunset Street and the 25 additional parcels from R-9 to R-6, as recommended by staff, based on the above consistency statement as presented at the Planning Board Meeting on January 27th.

Property Photos (220 Sunset St.)

View of 220 Sunset Street home located on north-east corner of site

West view of site with Liberty Baptist Church sign and cemetery across the street in the background

Valmead St. heading west towards Clark Dr., Elizabeth Dr., and North Main St.

North view of property encompassing home on property and adjacent Liberty Baptist Church on Hazel Lee St.

LENOIR CITY COUNCIL
TUESDAY, FEBRUARY 4, 2025
6:00 P.M.

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

ABSENT: Councilmember Todd Perdue and Economic Development Main Street Director Brenda Floyd.

CITY STAFF: In attendance was Finance Director Donna Bean, Fire Chief Norman Staines, Police Chief Brent Phelps, Police Major Andy Wilson, Planning Director Hannah Williams, Parks & Recreation Director Phil Harper, Public Services & Public Works Director Jon Hogan, Public Services Public Utilities Director Jeff Church, Director of Special Projects & Grants, Jared Wright and Public Information/Communication Director, Joshua Harris.

I. CALL TO ORDER

A. The meeting was opened by a moment of silence and the pledge of allegiance as led by Mayor Gibbons along with Boy Scout Troop 271.

BOY SCOUT TROOP 271:

B. On behalf of City Council, Mayor Gibbons welcomed Boy Scout Troop 271 and their Scout Leader Paula Castleman. Ms. Castleman shared that Alan Clark would be taking over as the new Troop Leader. Troop 271 was in attendance to observe the City Council meeting. Mayor Gibbons along with City Councilmembers met and spoke with the members of the Troop following the meeting.

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

III. CONSENT AGENDA ITEMS

A. Minutes: Approval of the minutes of the City Council meeting of Tuesday, January 21, 2025, as submitted.

B. Proclamation; Black History Month: Approval of a proclamation in celebration of the month of February 2025 as Black History Month throughout the City of Lenoir. The 2025 Black History Month theme, “African Americans and Labor” focuses on the significant role that labor has played in shaping the Black experience throughout history with educational and inspirational events. Since 1976, every United States President has officially designated the month of February as National Black History Month to honor and affirm the importance of Black history throughout our American experience. Mayor Gibbons read the proclamation and stated events were scheduled during the month at the Martin Luther King, Jr. Center to celebrate this historic event. (A copy of the proclamation is attached to these minutes as information.)

Additionally, Mayor Gibbons commended Councilmembers Ike Perkins and Crissy Thomas and thanked them for their leadership and work in the community. Mayor Gibbons stated he was honored they were a part of City Council. Mayor Gibbons further mentioned several other individuals who were pioneers and made great contributions to the community including Claude Irwin (first African American to serve on City Council), Larkin Horton, Inez Jones, Sam Sturgis, Sylvia Greene, Dr. Helen Hall, R.B. Everett and wife Rosetta and Reverend Jimmy Norwood. Mayor Gibbons also described Sylvia Greene as a visionary who worked hard in the community and shared her love of art with others.

C. Unifour Hazard Mitigation Plan Update (2025): Approval of the attached Resolution of Adoption of the Unifour Hazard Mitigation Plan Update (2025). As background information, the Federal Disaster Mitigation Act of 2000 states that local governments must develop an All-Hazards Mitigation Plan in order to be eligible to receive future Hazard Mitigation Grant Program Funds and other disaster-related assistance funding. The Plan must be updated and adopted within a five-year cycle. (A copy of the resolution is attached to these minutes as information.)

D. McGill Associates, P.A.; Task Orders No. 1 and No. 2: Staff recommends approval of Task Orders No. 1 and No. 2 as prepared by McGill Associates, P.A. for civil engineering services related to the Campus Improvements Project (OVT) Pavilion/former LEOS site and Historic Old Lenoir High School Gymnasium and Auditorium. The fee for Task Order No. 1 is $30,000 (lump sum.) The fee for Task Order No. 2 is a maximum of $45,000, to be billed hourly as work progresses not to exceed $45,000. (Copies of the Task Orders are attached to these minutes as information.)

E. Acceptance of Engineering Services Proposal; SKA Consulting Engineers, Inc.: Staff recommends City Council acceptance of an Engineering Services Proposal for a 2025 Concrete Condition Assessment of Exterior Treatment Basins at the George L. Bernhardt, Sr. Rhodhiss Lake Water Treatment Facility with estimated fees up to $65,000. (A copy of the Engineering Services Proposal is attached to these minutes as information.)

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

IV. REQUESTS AND PETITIONS OF CITIZENS

V. REPORTS OF BOARDS AND COMMISSIONS

FY 2025-2029 CONSOLIDATED PLAN & THE FY2025 ACTION PLAN:

1. Rick Oxford, Plan Administrator, Western Piedmont Council of Governments held a public meeting to receive input and public comments for the FY2025-2029 Consolidated Plan for the City of Lenoir and the Unifour HOME CONSORTIUM, and the FY2025 Action Plan. This Consolidated Plan, as required by the U.S. Department of Housing and Urban Development (DHUD), identifies needs, outlines goals, develops action plans and prepares budgets for the City of Lenoir and the Unifour HOME Consortium, for the use of Community Development Block Grant (CDBG) funds and HOME funds for the next five years, beginning July 1, 2025 and ending June 30, 2029.

   Mr. Oxford shared the City of Lenoir is the Lead Entity for the Unifour Consortium. He stated that it may be March or April before the DHUD releases funding numbers for 2025 and reviewed the following funding information from 2024 as information. The City of

Lenoir received $138,743 in CDBG funds which continues to be used for Public Facility Improvements. Also, the City of Lenoir, as lead entity for the Unifour Consortium, received $951,716 allocated for Assistance to First Time Home Buyers, financing of Multi-Funding Family Housing Projects, and funding of Community Housing Development Organizations, (CHODO's) in 2024. Mr. Oxford stated they are required by regulations to have 15% of their budget allocated to (CHODO's) for housing related projects.

Mr. Oxford stated for tax credit projects for multi-family housing, the developer can apply for a $300,000 loan at 2% interest with 20 years to pay back the loan.

Additionally, Mr. Oxford read funding statistics for the previous four years and remarked that funding has decreased. However, he explained that DHUD uses a formula based on population in deciding funding amounts.

2021 $1.6 million
2022 $1.2 million
2023 $1.2 million
2024 $951,716

Mr. Oxford explained the Consortium was formed in 1995 and is comprised of the counties of Alexander, Burke, Caldwell and Catawba. The City of Lenoir distributes funding requests for the Consortium.

Next, Mr. Oxford reviewed the 2024 funding for the HOME Program, which assists first time homebuyers with down payment assistance. These funds may also be used to purchase existing homes. Mr. Oxford stated DHUD allows 8.8% of the purchase price capping at up to $166,000. He explained that homeowners have to meet DHUD's guidelines for individuals with low to moderate income. He pointed out that DHUD establishes the gross income limits and they are not allowed any input. Mr. Oxford further shared if an individual meets all the requirements, they can apply for financing through the North Carolina Financing Agency. He read the following income levels to qualify for down payment assistance:

- 1 Person $43,750
- 2 Persons $50,000
- 3 Persons $56,200
- 4 Persons $62,500

Mr. Oxford also stated half of the loan amount is forgiven at a ten-year period and, should a homeowner sell their property within a ten-year time frame, they are required to repay the down payment assistance funding which then goes back into program income to be used by DHUD.

Mr. Oxford will conduct his second public meeting in March and provide funding amounts for the four-County area including Alexander, Burke, Caldwell and Catawba to City Council at that time. DHUD typically releases these numbers if March or April.

In addition, Mayor Gibbons congratulated Mr. Oxford upon his upcoming retirement effective March 31, 2025.

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

A. Items of Information

BLACK HISTORY MONTH EVENTS:

1. In celebration of Black History Month, the following events are scheduled at the Martin Luther King, Jr. Center. All of the events are free to the public.
   a) Saturday, February 8 – the movie "The Six Triple Eight" will be shown at 4:00 p.m. The movie tells the story of the only US Women's Army Corps unit of color stationed overseas that takes on an impossible mission during WWII. The movie is based on a true story.
   b) Thursday, February 20 – the annual quiz Bowl & Essay Contest at 6:00 p.m.
   c) Monday, February 24 – American Red Cross Blood Drive from 2:00 p.m. – 6:30 p.m. Call (828) 757-2170 to schedule an appointment.

LTDA: 2. The Lenoir Tourism Development Authority (LTDA) will meet on Thursday, February 6 at 4:00 p.m. at City Hall, Third Floor Conference Room.

CITY/COUNTY SERVICES COMMITTEE:

3. The City/County Services Committee will meet on Monday, February 10 at noon at the J.E. Broyhill Civic Center.

ECONOMIC DEVELOPMENT ADVISORY COMMITTEE:

4. The Economic Development Advisory Committee will meet on Tuesday, February 11 at 8:15 a.m. at the J. E. Broyhill Civic Center

ABC BOARD: 5. The ABC Board will meet on Wednesday, February 12 at 2:00 p.m.

LENOIR BUSINESS ADV. BOARD: 6. The Lenoir Business Advisory Board will meet on Thursday, February 13 at 6:00 p.m. at City Hall, Third Floor Conference Room.

PARKS & RECREATION ADV. BOARD: 7. The Parks and Recreation Advisory Board will meet on Monday, February 17 at 6:00 p.m. at Mulberry Recreation Center.

B. Items for Council Action

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

CONGRATULATIONS; CITY ATTORNEY TIMOTHY ROHR:

A. On behalf of City Council, Mayor Gibbons congratulated City Attorney Timothy Rohr upon being selected to serve as a judicial counselor on the North Carolina Bar Council.

Attorney Rohr thanked City Council and stated it was an honor to serve. He stated that he would be working in the counties of Burke, Caldwell and Catawba.

IX. REPORT AND RECOMMENDATIONS OF COUNCILMEMBERS

X. ADJOURNMENT

A. There being no further business, the meeting was adjourned at 6:35 p.m.

_____ _____

Shirley M. Cannon, City Clerk Joseph L. Gibbons, Mayor

CITY MANAGER
SCOTT E. HILDEBRAN

CITY OF LENOIR
NORTH CAROLINA

MAYOR
JOSEPH L. GIBBONS

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

Black History Month Proclamation

WHEREAS, since 1976, every United States president has officially designated the month of February as national Black History Month to honor and affirm the importance of Black history throughout our American experience; and

WHEREAS, the United States joins other countries around the world in devoting a month to recognize Black history, including Canada and the United Kingdom; and

WHEREAS, the observance of Black History Month began in 1926, when Harvard-trained historian Carter G. Woodson and Minister Jesse Moorland sponsored the first national Negro History Week, which was celebrated the second week in February, and later in the 1960s as part of the Civil Rights Movement the observance evolved into Black History Month; and

WHEREAS, the 2025 Black History Month theme, "African Americans and Labor" focuses on the significant role that labor has played in shaping the Black experience throughout history; and

WHEREAS, much of the City of Lenoir's honor, strength, and success can be attributed to the diversity of cultures and traditions that are celebrated by the residents of this great City; and

WHEREAS, African Americans have played significant roles and made lasting contributions to our City's history and the history of North Carolina's economic, cultural, spiritual and political development, while working tirelessly to contribute to every aspect of American society including business, education, politics, science, and the arts; and

WHEREAS, Black History Month is a time for all Americans to remember the contributions and legacy of those who helped build our nation, fought against prejudice to secure lives of dignity and opportunity for all of our citizens, advanced the cause of civil rights for all Americans, and strengthened our families and communities.

NOW, THEREFORE, I, Joseph L. Gibbons, Mayor of the City of Lenoir and the City Council, do hereby encourage all residents to join me in honoring the many contributions made by African Americans to our City, State, and Nation, and to participate in the many educational and inspirational events celebrating February 2025 as "BLACK HISTORY MONTH."

IN WITNESS THEREOF, I have hereunto set my hand and caused the seal of the City of Lenoir to be affixed, this the 4th day of February in the year of our Lord two thousand and twenty-five.

SEAL

Joseph L. Gibbons, Mayor

RESOLUTION
ADOPTING UNIFOUR REGIONAL
HAZARD MITIGATION PLAN

WHEREAS, the citizens and property within the City of Lenoir are subject to the effects of natural hazards that pose threats to lives and cause damage to property, and with the knowledge and experience that certain areas of the county are particularly vulnerable to drought, extreme heat, hailstorm, hurricane and tropical storm, lightning, thunderstorm wind/high wind, tornado, winter storm and freeze, flood, hazardous material incident, and wildfire; and

WHEREAS, the City of Lenoir desires to seek ways to mitigate the impact of identified hazard risks; and

WHEREAS, the Legislature of the State of North Carolina has in Article 5, Section 160D-501 of Chapter 160D of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Legislature of the State of North Carolina has enacted General Statute Section 166A-19.41 (*State emergency assistance funds*) which provides that for a state of emergency declared pursuant to G.S. 166A-19.20(a) after the deadline established by the Federal Emergency Management Agency pursuant to the Disaster Mitigation Act of 2002, P.L. 106-390, the eligible entity shall have a hazard mitigation plan approved pursuant to the Stafford Act; and.

WHEREAS, Section 322 of the Federal Disaster Mitigation Act of 2000 states that local governments must develop an All-Hazards Mitigation Plan in order to be eligible to receive future Hazard Mitigation Grant Program Funds and other disaster-related assistance funding and that said Plan must be updated and adopted within a five-year cycle; and

WHEREAS, the City of Lenoir has performed a comprehensive review and evaluation of each section of the previously approved Hazard Mitigation Plan and has updated the said plan as required under regulations at 44 CFR Part 201 and according to guidance issued by the Federal Emergency Management Agency and the North Carolina Division of Emergency Management.

WHEREAS, it is the intent of the City Council of the City of Lenoir to fulfill this obligation in order that the County and City will be eligible for federal and state assistance in the event that a state of disaster is declared for a hazard event affecting the County/City;

NOW, THEREFORE, be it resolved that the City Council of the City of Lenoir hereby:

1. Adopts the Unifour Regional Hazard Mitigation Plan.

2. Vests the City of Lenoir Emergency Management with the responsibility, authority, and the means to:

(a) Inform all concerned parties of this action.
(b) Cooperate with Federal, State and local agencies and private firms which undertake to study, survey, map and identify floodplain areas, and cooperate with neighboring communities with respect to management of adjoining floodplain areas in order to prevent exacerbation of existing hazard impacts.

3. Appoints the City of Lenoir Emergency Management to assure that the Hazard Mitigation Plan is reviewed annually and every five years as specified in the Plan to assure that the Plan is in compliance with all State and Federal regulations and that any needed revisions or amendments to the Plan are developed and presented to the City of Lenoir City Council for consideration.

4. Agrees to take such other official action as may be reasonably necessary to carry out the objectives of the Hazard Mitigation Plan.

Adopted this the 4th day of February 2025.

Joseph L. Gibbons, Mayor
City of Lenoir

Attest:

Shirley M. Cannon, Clerk
City of Lenoir

Certified by: Shirley M. Cannon (SEAL)

Date: 2-4-2025

CITY OF LENOIR, NC
CHARTERED
JANUARY 28, 1851
SEAL

EXHIBIT B

TASK ORDER NO. 1

This **TASK ORDER NO. 1** dated the 4th day of February 2025 is a supplement to the **MASTER SERVICES AGREEMENT** between the City of Lenoir, North Carolina, dated **January 7, 2025**, hereinafter referred to as OWNER and McGill Associates, P.A., hereinafter referred to as "ENGINEER". The purpose of this Task Order is to authorize the ENGINEER to provide services for the "PROJECT" entitled:

Civil Engineering – 1129 West Harper Avenue

SECTION 1 - PROJECT DESCRIPTION:

The project can generally be described as:

Site improvements related to renovation of the existing building located at 1129 West Harper Avenue, including pedestrian access and addition of a covered pavilion.

SECTION 2 - SCOPE OF SERVICES:

The Engineer shall provide all professional services (the "Services") for the Project including, performance of the following:

1. Attend one (1) project kickoff meeting with the Owner, and Owner's design team.
   This meeting occurred on October 4, 2024.

2. Attend one (1) preliminary site visit.
   This meeting occurred on October 8, 2024.

3. Perform one (1) site survey verification site visit.

4. Prepare preliminary site plan based on existing conditions reflected in a topographic survey prepared by McGill Associates, and preliminary sketches prepared by the Owner's architect.

5. Prepare civil engineering plans with details required to construct exterior site improvements supporting the site development and proposed use. Drawings will be

based on the preliminary site plan and review comments issued by the Owner and the Owner's architect. Elements to be addressed by civil engineering plans include:

- Demolition, removal, and repair of existing site features to accommodate project construction.
- Final site layout identifying final location, orientation, and dimensions of paving, sidewalks, curbs, and other site-related improvements, based on preliminary site plan and sketches.
- Grading and drainage plan identifying existing and proposed grades, drainage collection, points, drainage piping, and routing of roof drains and downspouts to existing on-site storm drains. This item assumes permanent Stormwater Control Measures (SCM's) will not be required to comply with the City of Lenoir NPDES Phase II ordinance requirements due to this project disturbing less than 1 acre. This proposal does not include design of re-routing or upgrading existing offsite storm drains.
- Utility plan locating proposed domestic water, fire water, and sewer service lines. This item also includes identifying pathways for routing dry utilities including electrical, natural gas, and communication service conduits. Design of dry utility services is not included under this item.
- It is assumed water/sewer utilities are available at the property line with sufficient capacity to adequately serve the proposed development. Offsite utility extensions and/or improvements are not included under this proposal.
- Erosion and sediment control plan identifying temporary measures for controlling soil erosion during the construction process and permanent measures to provide ongoing stabilization. It is assumed this development will disturb less than 1 acre and erosion control permitting will not be required.
- Landscape plan for compliance with City of Lenoir landscape ordinance requirements. Total site landscaping is not included under this proposal, however, McGill Associates can provide total site landscaping as an additional service if desired by the Client.
- Construction details

6. Provide engineering drawing submission to the Owner for review at the Design Development (80%) and Construction Documents (100%) completion stages. Attend one (1) in-person review meeting with the Owner following the Design Development submission.

7. Attend two (2) online progress meetings during the design and permitting processes.

8. Prepare civil site-related technical specifications in MasterSpec format based on McGill Associates standard specifications for incorporation into the Architect's bidding documents.

9. Provide one (1) engineer's estimate of construction cost related to civil/site items.

10. Prepare one (1) application with supporting calculations and documentation for each of the following permits:

- Zoning/Development Ordinance Review – City of Lenoir

- Building Permit – Caldwell County

11. This Scope of Services is based on the following assumptions:

- All information provided to McGill Associates by the Owner will be deemed reliable for use as presented
- Drawings will be prepared on the Owner's Architect's title block, unless otherwise requested. For other formats, title block and appropriate fonts will be provided in AutoCAD format.
- Additional revisions to the preliminary plans, requested after the review meeting comments have been addressed can be provided as a additional services on an hourly basis.
- All grading will occur on the project site, therefore, design and permitting of borrow and/or waste sites is not included under this proposal.
- Design of structures and amenities including outbuildings, dumpster enclosures, retaining walls, and other structural/architectural elements will be provided by the Owner's structural engineer, and are not included under this proposal.
- Electrical design services for exterior elements such as site lighting will bel provided by the Owner's Architect's electrical engineer and are not included in this scope of services.
- Geotechnical engineering services are not included in this scope of services.
- It is anticipated that this project will not require a traffic impact study, or design of external roadway improvements, therefore, these items are not included under this proposal.
- As development of this site anticipates disturbing less than 1 acre, it is anticipated that permanent Stormwater Control Measures (SCM's) will not be required for this development.
- As development of this site anticipates disturbing less than 1 acre, erosion control permitting is not included under this proposal.
- Public water and sewer utilities are available at the project site, and extensions will not be required for this project, therefore, design of offsite utility extensions is not included under this proposal.
- The project property is within the Lenoir City Limits and properly zoned for the proposed use, therefore, annexation and/or re-zoning of the property is not necessary.
- This project will not result in disturbing any jurisdictional streams or wetlands which have not already been impacted, therefore, Army Corps of Engineers Section 404 and NCDEQ Section 401 permitting will not be necessary.
- This project will not result in disturbing any threatened or endangered species.
- Permit application and review fees will be paid by the Owner and are not included under this proposal.
- Construction contract documents will be prepared by the Owner's Architect and is therefore not included under this proposal.

SECTION 3 – COMPENSATION

The Owner shall pay the Engineer for services outlined in Task Order No. 1 the following Lump Sum amount:

$30,000.00 Lump Sum Fee

SECTION 4 - MISCELLANEOUS

Except as otherwise provided herein, this Task Order supersedes all prior written or oral understanding of the parties and may only be changed by a written amendment executed by both parties.

SECTION 5 – AUTHORIZATION TO PROCEED

IN WITNESS WHEREOF, and as AUTHORIZATION TO PROCEED the parties execute below this Task Order No. 1 in duplicate originals:

EXECUTED this 4th day of February, 2025.

McGill Associates, P.A.

Douglas Chapman, PE
Hickory Office Manager

City of Lenoir

By: _____
Scott Hildebran
City Manager

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

By: _____
Donna Bean
Finance Director

EXHIBIT B

TASK ORDER NO. 2

This **TASK ORDER NO. 2** dated the 4th, day of February 2025 is a supplement to the **MASTER SERVICES AGREEMENT** between the City of Lenoir, North Carolina, dated **January 7, 2025**, hereinafter referred to as OWNER and McGill Associates, P.A., hereinafter referred to as "ENGINEER". The purpose of this Task Order is to authorize the ENGINEER to provide services for the "PROJECT" entitled:

Civil Engineering – The Campus Auditorium and Gymnasium

SECTION 1 - PROJECT DESCRIPTION:

The project can generally be described as:

Site improvements related to renovation of the existing building Auditorium and Gymnasium buildings on the former Lenoir High School Campus located at 1114 and 1116 College Avenue Southwest.

SECTION 2 - SCOPE OF SERVICES:

The Engineer shall provide all professional services (the "Services") for the Project including, performance of the following:

1. Attend one (1) project kickoff meeting with the Owner, and Owner's design team. *This meeting occurred on October 4, 2024.*

2. Attend one (1) preliminary site visit. *This meeting occurred on October 8, 2024.*

3. Perform one (1) site survey verification site visit.

4. Prepare preliminary site plan based on existing conditions reflected in a topographic survey prepared by McGill Associates, and preliminary sketches prepared by the Owner's architect.

5. Prepare civil engineering plans with details required to construct exterior site improvements supporting the site development and proposed use. Drawings will be

based on the preliminary site plan and review comments issued by the Owner and the Owner's architect. Elements to be addressed by civil engineering plans include:

- Demolition, removal, and repair of existing site features to accommodate project construction.
- Final site layout identifying final location, orientation, and dimensions of paving, sidewalks, curbs, and other site-related improvements, based on preliminary site plan and sketches.
- Grading and drainage plan identifying existing and proposed grades, drainage collection, points, drainage piping, and routing of roof drains and downspouts to existing on-site storm drains. This item assumes permanent Stormwater Control Measures (SCM's) will not be required to comply with the City of Lenoir NPDES Phase II ordinance requirements due to this project disturbing less than 1 acre. This proposal does not include design of re-routing or upgrading existing offsite storm drains.
- Utility plan locating proposed domestic water, fire water, and sewer service lines. This item also includes identifying pathways for routing dry utilities including electrical, natural gas, and communication service conduits. Design of dry utility services is not included under this item.
- It is assumed water/sewer utilities are available at the property line with sufficient capacity to adequately serve the proposed development. Offsite utility extensions and/or improvements are not included under this proposal.
- Erosion and sediment control plan identifying temporary measures for controlling soil erosion during the construction process and permanent measures to provide ongoing stabilization. It is assumed this development will disturb less than 1 acre and erosion control permitting will not be required.
- Landscape plan for compliance with City of Lenoir landscape ordinance requirements. Total site landscaping is not included under this proposal, however, McGill Associates can provide total site landscaping as an additional service if desired by the Client.
- Construction details

6. Provide engineering drawing submission to the Owner for review at the Design Development (80%) and Construction Documents (100%) completion stages. Attend one (1) in-person review meeting with the Owner following the Design Development submission.

7. Attend two (2) online progress meetings during the design and permitting processes.

8. Prepare civil site-related technical specifications in MasterSpec format based on McGill Associates standard specifications for incorporation into the Architect's bidding documents.

9. Provide one (1) engineer's estimate of construction cost related to civil/site items.

10. Prepare one (1) application with supporting calculations and documentation for each of the following permits:

- Zoning/Development Ordinance Review – City of Lenoir

- Building Permit – Caldwell County

11. This Scope of Services is based on the following assumptions:

- All information provided to McGill Associates by the Owner will be deemed reliable for use as presented
- Drawings will be prepared on the Owner's Architect's title block, unless otherwise requested. For other formats, title block and appropriate fonts will be provided in AutoCAD format.
- Additional revisions to the preliminary plans, requested after the review meeting comments have been addressed can be provided as a additional services on an hourly basis.
- All grading will occur on the project site, therefore, design and permitting of borrow and/or waste sites is not included under this proposal.
- Design of structures and amenities including outbuildings, dumpster enclosures, retaining walls, and other structural/architectural elements will be provided by the Owner's structural engineer, and are not included under this proposal.
- Electrical design services for exterior elements such as site lighting will bel provided by the Owner's Architect's electrical engineer and are not included in this scope of services.
- Geotechnical engineering services are not included in this scope of services.
- It is anticipated that this project will not require a traffic impact study, or design of external roadway improvements, therefore, these items are not included under this proposal.
- As development of this site anticipates disturbing less than 1 acre, it is anticipated that permanent Stormwater Control Measures (SCM's) will not be required for this development.
- As development of this site anticipates disturbing less than 1 acre, erosion control permitting is not included under this proposal.
- Public water and sewer utilities are available at the project site, and extensions will not be required for this project, therefore, design of offsite utility extensions is not included under this proposal.
- The project property is within the Lenoir City Limits and properly zoned for the proposed use, therefore, annexation and/or re-zoning of the property is not necessary.
- This project will not result in disturbing any jurisdictional streams or wetlands which have not already been impacted, therefore, Army Corps of Engineers Section 404 and NCDEQ Section 401 permitting will not be necessary.
- This project will not result in disturbing any threatened or endangered species.
- Permit application and review fees will be paid by the Owner and are not included under this proposal.
- Construction contract documents will be prepared by the Owner's Architect and is therefore not included under this proposal.

SECTION 3 – COMPENSATION

The Owner shall pay the Engineer for services outlined in Task Order No. 1 the following maximum hourly amount:

$45,000.00 Hourly to a maximum

SECTION 4 - MISCELLANEOUS

Except as otherwise provided herein, this Task Order supersedes all prior written or oral understanding of the parties and may only be changed by a written amendment executed by both parties.

SECTION 5 – AUTHORIZATION TO PROCEED

IN WITNESS WHEREOF, and as AUTHORIZATION TO PROCEED the parties execute below this Task Order No. 2 in duplicate originals:

EXECUTED this 4th day of February, 2025.

McGill Associates, P.A.

Douglas Chapman, PE
Hickory Office Manager

City of Lenoir

By: _____
Scott Hildebran
City Manager

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

By: Donna Bean
Donna Bean
Finance Director

SKA
CONSULTING ENGINEERS

February 3, 2025

City of Lenoir
P.O. Box 958
Lenoir, NC 28645

Attention: Mr. Jeff Church | Director of Public Utilities – City of Lenoir
jeff.church@lenoirnc.gov

c/o Joel Whitford, PE | Project Manager – McGill and Associates
joel.whitford@mcgillengineers.com

Reference: Proposal: 2025 Concrete Condition Assessment of Exterior Treatment Basins
George L Bernhardt Sr. Rhodhiss Lake Water Treatment Facility
5474 Waterworks Road / Granite Falls, NC 28630
SKA Proposal No. 2025-012-011; SKA Project 180098

Dear Mr. Church:

SKA Consulting Engineers, Inc. (SKA) respectfully submits this proposal to the City of Lenoir (COL) to perform an updated concrete condition assessment of the exterior treatment basins at the referenced facility. This proposal includes Background Information, Scope Components, Scope of Work, Scheduled Proposed Consulting Fee, and Required Third Party Contractor Assistance.

Background Information

This proposal is based on the following information:

- Contract Drawings: Water Facilities Treatment Plant Expansions – O'Brien and Gere Engineers (February 1974). Schematic plans, elevations and details for the Exterior Basins (Basins) are illustrated on these drawings.
- Report of Limited Concrete Condition Assessment: Sedimentation/Flocculation Basins and Elevated Walkways – SKA Consulting Engineers (June 22, 2018).
- Conversation between Jeff Church (COL) and David Keatts (SKA) on December 9, 2024, following a construction progress meeting associated with the 2024 Flash Mixer Basin Repairs.
- Emails between COL and SKA between the weeks of January 21 and January 28, 2025. Basin drainage schedules were the subject of these emails.

Basins at the George L. Bernhardt Sr. Rhodhiss Lake Water Treatment Facility include two exterior primarily above ground reinforced concrete sedimentation/flocculation basins and two

reinforced concrete flash mixers (Figure 1). The exterior basins were constructed circa 1974. In 2018, SKA assessed outside surfaces of walls forming the perimeter of the Basins and approximately half of the interior walls that were drained and safely accessibly at that time. Reported concerns generally included surface erosion of cement paste along submerged wall surfaces and within zones of walls near water surface lines, lack of entrained air in concrete components, scaling and shallow delamination of concrete surfaces at bridges, and full penetration vertical and diagonal cracks in perimeter walls actively leaking water. Flash mixer concrete walls generally demonstrated heightened concrete deterioration and reinforcing steel corrosion relative to the rest of the Basins.

Rehabilitation of the Flash Mixers is currently in progress to address concerns identified during the 2018 assessment. The project generally includes repair of concrete wall surfaces, replacement of flash mixer beam frames, installation of new below-grade waterproofing and replacement of exterior guardrails. Following an on-site progress meeting for this project conducted on December 9, 2024, COL and SKA discussed concerns that were discovered for the rest of the Basins in 2018. COL indicated interest in exploring rehabilitation of the rest of the Basins to extend functional and structural serviceability for another 30 to 40 years. To update required rehabilitation objectives for this purpose, COL requested that SKA re-evaluate the Basins during spring maintenance planned in April 2025, during which the Basins will be drained for a few weeks. COL also requested opinions of budget and schedule for rehabilitation, assuming separate repair of the sedimentation basins over two (2) separate construction phases. This proposal has been submitted in response to this request.

Equipment repairs required treatment basins on the south side to be drained prior to the planned April maintenance. During this period, crack repairs along exterior Basin walls on this side are planned to be executed by Freyssinet. COL and McGill requested that this proposal be expedited to access the Basins during this scheduled period. See the section below for more details about this schedule.

Scope Components and Drainage Schedule

The scope area includes exposed above-grade portions of the outside perimeter concrete walls, accessible concrete bridge surfaces, and associated guardrails, and additionally includes accessible and exposed interior concrete surfaces of concrete basins that are drained and made safely accessible by COL at the time of evaluation. See Figure 1 for understood Basin designations assigned by the City. Basin "A" was drained on January 26, 2025 for equipment repair, and is planned to remain drained until approximately mid-February 2025. The City has indicated that Basin "B" can be drained for evaluation immediately following refilling of Basin "A" for approximately one (1) week. This proposal assumes that both Basins "A" and "B" can be safely accessed within this schedule.

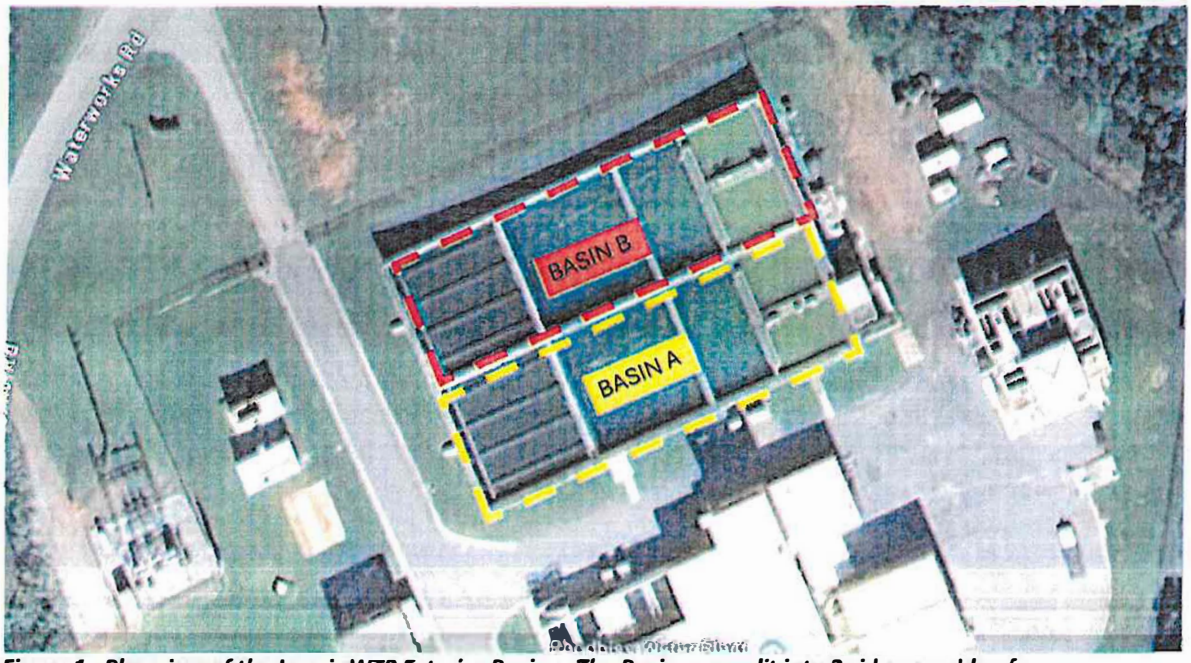


Figure 1. Plan view of the Lenoir WTP Exterior Basins. The Basins are split into 2 sides capable of independent operation. The south side, referenced as Basin "A", is outlined in yellow. The north side, referenced as Basin "B", is outlined in red. Basin "A" was evaluated in 2018 along with the Flash Mixer tanks currently under repair.

Proposed Scope of Services

SKA proposes to perform the following Scope of Services. Services will require the assistance of a Third-Party Contractor (TPC) procured by the Client or other entity. See Required Third-Party Contractor Assistance section of this proposal for details. This proposal assumes that the interior of both Basins can be accessed per the COL's communicated Drainage Schedule.

1. **Review**
   Review construction Documents, Record Drawings, Engineering Reports, Historic or Current Water Composition Reports, Repair Documents, Maintenance Documents or other information associated with the subject basins, as provided by the Client. SKA requests that access to documents be provided prior to our site visit.

2. **Collect Verbal Information**
   Meet with one or more people designated by the Client during the site visit to obtain information offered regarding current concerns, maintenance, distress, repair history, and other information about subject basins, as it pertains to concrete distress and corrosion.

3. **Visual Review Prior to Draining**
   Conduct a walking visual review of accessible exterior surfaces around the perimeter of the Basins and bridges (if access is safe) from accessible surfaces prior to draining. Note general types and magnitude of deterioration and distress in basins, as well as leak locations and characteristics.

4. **Visual Review**
   Conduct a general walking visual review of accessible interior basin concrete surfaces. Note general types and magnitude of deterioration and distress in basins, as well as leak locations and characteristics. SKA will conduct more focused review at limited, representative, selected areas from accessible walking surfaces and from rolling scaffold or other lift access (raised access) provided and operated by others for the purposes of additional visual review or for testing as described herein.

5. **Audible Delamination Survey**
   Conduct delamination with a masonry hammer, chain drag, rotary percussion device or other similar means at limited, selected, representative safely accessible representative areas from ground or raised access provided by the TPC to detect near-surface, sub-parallel separations detectible by this method.

6. **Rebar Cover Detection**
   Use commercial reinforcing cover meter at limited, selected, representative areas to estimate depth of embedment (concrete cover) of near-surface reinforcing steel bars in limited, selected, representative structural concrete components. Evaluate results along with other performed tests and visual observations.

7. **Ground Penetrating Radar**
   Perform Ground Penetrating Radar (GPR) testing at limited, selected, representative areas to estimate general depths and spacings of embedded steel reinforcement and component thicknesses, if deemed appropriate by SKA. Evaluate results along with other performed tests.

8. **Exploratory Excavations**
   Identify 15 to 20 locations for TPC retained by others to prepare excavations in concrete surfaces, clean exposed reinforcing steel of corrosion products and repair excavations. The TPC will be responsible for patching excavations after review. Excavations will be used to review reinforcing steel, evaluate corrosion, calibrate non-destructive testing results, conduct pH testing, evaluate reinforcing connectivity, and review interior conditions of concrete. Average excavation dimensions will be approximately 6" x 6" x 4" deep.

9. **Petrographic Evaluation**
   Identify 6 to 10 general locations while on-site for the TPC retained by COL to extract 4" diameter, partial-depth or full-depth cylindrical core specimens. SKA will collect, document and send a subset of these specimens to a third-party testing firm retained by SKA for petrographic evaluation in general accordance with ASTM C 856 and limited chemical testing via ion chromatography, titration or similar, to evaluate near surface characteristics. The testing will provide information regarding observed distress, internal materials-related distress (if any), depth of carbonation and general quality of concrete for making recommendations regarding repair and preservation. Samples may be taken from horizontal or vertical surfaces. Contractor will be required to provide access, locate steel to avoid cutting prior coring, core using surface mounted, water-cooled coring equipment with diamond-bit core barrels in working order, and patch core holes after extraction.

10. **Concrete Resistivity**
    Use a Four-Pin Wenner Probe to estimate concrete resistivity at limited, selected areas where determined feasible and useful. Concrete resistivity is a parameter heavily influenced by concrete quality and moisture content and impacts the ability of the concrete to sustain corrosion. This technique can provide a general relative comparison of concrete quality and helps to interpret corrosion potential results, if performed.

11. **Half-Cell Testing**
    If deemed acceptable and useful in the discretion of SKA based on reinforcing steel connectivity and other prevalent site conditions, conduct half-cell testing at 2 to 4 selected areas (approximately 10'x10') to evaluate potential for hidden corrosion. This work will require a third-party contractor to prepare excavations, clean steel to bare metal, and wet surfaces for a few hours. Surface areas tested at each location will be dictated by concrete conditions and extents of safe access.

12. **Report**
    Provide a written report with photographs that summarizes SKA's concerns, opinions, and prioritized recommendations for repair and preservation. Depending on findings, the report may include recommendations for additional testing, analysis, evaluation, or a combination of these.

13. **Meeting**
    If the City chooses to pursue opinions on pricing, scheduling and phasing based on SKA's conceptual recommendations, SKA will meet on-site with the third party engaged to provide this information to convey the conceptual recommendations provided in this report. This proposal assumes that the Contractor currently engaged in flash mixer repairs will be providing this service to the City.

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Proposed Compensation

SKA Consulting Engineers, Inc. proposes to provide the scope of services outlined above for a fee equal to the sum of our employees' hours expended multiplied by the employees' standard billing rates (2025 Billing Rate Schedule attached) plus normal reimbursable expenses (rate sheet attached). Reimbursable expenses will include travel and per diem, equipment and testing fees (cover testing, resistivity testing, half-cell testing, GPR testing, carbonation testing), and third-party testing fees (petrographic evaluation and chloride testing). SKA estimates that engineering fees may be $55,000 to $65,000. Note that this is not a guaranteed minimum or maximum. Fees will be billed based on required effort.

Note: Approximately $24,000 to $28,000 of this fee is associated with the prices of third party laboratory testing, non-destructive testing equipment and other associated reimbursables required to complete the Scope of Services.

Required Third-Party Contractor Assistance

Associated work may occur anywhere on the exterior or interior of the basins within the scope area as determined in the field during the assessment. The following assistance will be required by a third-party contractor retained by others or by COL personnel, as appropriate.

1. Draining and cleaning of one half of the total basin area.

2. Safe rolling scaffold or other lift access with operator for accessing wall surfaces.

3. Protection for process equipment as required by the Owner.

4. Excavate concrete in 15 to 20 locations at selected locations within horizontal and vertical concrete components. Average concrete excavation will be 6" x 6" x 4" deep. Excavation perimeters must be square cut at the surface and concrete removed with chipping hammers. Remove corrosion products from reinforcing steel in concrete with a power operated wire wheel, grinder or other suitable means to clean steel to bare metal.

5. Extraction of 10 to 12 cylindrical concrete cores 4" in diameter (partial depth or full depth, as determined during the assessment) through vertical or horizontal components. Approximately half of these cores will be 4" in diameter and half will be 3" in diameter. The contractor should assume that full-depth cores through the water retaining walls will be required. The contractor will be responsible for locating steel using a suitable non-destructive method to avoid drilling through steel. Cores are to be extracted using mechanically surface mounted, water-cooled drilling equipment with new or excellent condition diamond bit core barrels.

6. Necessary electricity at point of testing and water for coring and wetting surfaces.

7. If present, removal of surface coatings at selected areas of concrete surfaces. Replace coatings with like materials to satisfaction of Owner.

8. Wet 2_areas (10' x 10' each) selected by SKA for a period of 4 to 6 continuous hours when directed by SKA. Method of wetting must uniformly cover the chosen areas.

9. Conduct testing to locate embedments prior to excavations and coring to avoid damage to embedments. Repair concrete removed within excavations, core holes and drilled holes indicated in this proposal to meet the satisfaction of the Owner. Repair any damage to embedments made during excavations.

10. Review of hazardous materials test reports prepared by others and adherence to any requirements the Industrial Hygienist may have regarding treatment or abatement of the materials as necessary for testing prior to our work beginning.

11. Contractor is to provide safe access to areas of the structure under evaluation. Lift access will be required along with certified operators.

12. OSHA compliant assistance for SKA for all activities.

13. Coordinate with SKA to provide a budget and schedule for repairs. This will include options for phasing of the repairs as dictated by the City's needs to remain functional during the repairs.

Limitations of Services

The following limitations and exclusions apply to this agreement:

1. All services provided by SKA are subject to SKA's General Conditions of Service (attached to this proposal). If there is a conflict between SKA's General Conditions of Service and any other part of the Agreement, the provisions of SKA's General Conditions of Service shall take precedence.

2. SKA is not responsible for events or conditions beyond our control (such as: unsuitable weather, failure of access equipment or power supply, directives by the Client, stoppages required by operations or processing, etc.) that alter, delay, or extend the schedule or Engineering fees for the proposed services.

3. The review is limited to the identified components. No structural analysis, building code review (i.e. structural, fire, electrical, egress, etc.), ADA compliance review, or review of architectural, mechanical, electrical or plumbing components are included in this review. No review of other buildings or connecting components is included.

4. It is important to note that not all portions of the specified building components will be accessible

or visible during this condition survey. Conditions that were not visible or were not obvious during the performance of this assessment, or identified through testing, could exist that would alter SKA's opinions and recommendations. SKA specifically disclaims any responsibility for conditions that were not visible or obvious during this condition assessment, the effects of information not provided to SKA, and conditions located in areas outside the scope of this review.

5. In the event that additional services such as site visits, site meetings, design of repair alternatives, meetings with designers, attorneys, etc. are required, SKA will provide a proposal for additional services for your approval prior to proceeding.

6. As part of this work, SKA may provide conceptual scopes of work, schematics or recommendations for repair, remediation, maintenance or preservation. Recommendations provided as part of this work are conceptual in nature and will require design by a licensed design professional for successful implementation. Reports and opinions are not meant to be used as design documents or contract documents. SKA is not responsible for misuse of opinions or reports and specifically disclaims all responsibility for losses incurred if the product of this work (a report) is used as a contract document for construction at this facility.

7. One or more qualified contractors or qualified maintenance people are required to provide access, provide standard power/extension cord at the point of testing, extract samples and replace components removed. This proposal does not include the services of the qualified contractor(s). All qualified contractors are to be retained and compensated by others. All equipment and access provided by qualified contractors are to be provided and operated in a safe and OSHA compliant manner. All actions performed by the Contractor or maintenance personnel must comply with all OSHA requirements for construction sites.

8. The qualified contractor(s) or maintenance personnel will be responsible for making excavations in and repairing all coatings, holes and exploratory openings, and reinstalling all removed components in a manner that is agreeable to the Owners. SKA will not select or approve finish colors, textures, or other aesthetic aspects of repair of exploratory openings or reinstallation of removed components. Contractors are responsible for locating embedment(s) (ties, reinforcing steel, conduit, etc.) prior to removing components so that embedment(s) are not damaged or otherwise negatively impacted during sample extraction or excavations.

9. SKA is not qualified to perform any services necessary to identify, evaluate, handle or abate hazardous materials, including, but not limited to silica, lead and asbestos. During this work, coatings may be disturbed. SKA requests confirmation that no hazardous materials are contained in components that might be disturbed. If necessary for confirmation, the Client should retain a third-party industrial hygienist to conduct testing. SKA disclaims all liability related to or arising out of claims related to or arising out of hazardous materials, or any action taken or not taken by any party with respect to mold or hazardous materials. By executing this Agreement, the Owners, for itself and all associated persons and entities, releases SKA and its agents, employees, officers,

and insurers from any and all claims, or liability of any type in any way related to or associated with mold or hazardous materials.

10. ***Test methods used in this evaluation use copper sulfate and phenolphthalein. Trace amounts may contaminate the surface. The Client / Owner are to confirm this is acceptable. SKA disclaims all liability related to or arising out of claims related to contamination of the concrete surfaces if this agreement is executed. By executing this Agreement, the Owners, for itself and all associated persons and entities, release SKA and its agents, employees, officers, and insurers from any and all claims, or liability of any type in any way related to or associated with contamination. If this is a perceived issue, SKA shall be informed so the proposal can be modified.***

11. Deterioration of building components is an on-going process. SKA specifically disclaims all responsibility for damage, injury or loss of life that occurs due to failure to implement the recommendations of SKA.

12. SKA is not responsible for the accuracy of pricing submitted by a third-party contractor procured for this purpose by the City. Conceptual repair recommendations included in the SKA report will be provided to a third-party contractor for budgetary pricing. It will be the contractor's responsibility to interpret these recommendations and make the necessary assumptions and judgements required to provide their pricing opinions. SKA will not be responsible for rendering an opinion on the accuracy of any submitted pricing, phasing or scheduling submitted by this third party.

Project Authorization

SKA Consulting Engineers, Inc. appreciates this opportunity to submit a proposal for these services. We look forward to working with the City of Lenoir during this testing and evaluation. Please let us know if you have any questions regarding the proposed scope of work or the proposed fee.

You may indicate your acceptance of this proposal by signing below and returning a copy to us.

Sincerely,

SKA CONSULTING ENGINEERS, INC.

David Keatts

David Tepke

David Keatts, P.E.
Senior Project Engineer
Structural Repair Group

David G. Tepke, P.E.
Principal Engineer 3
Structural Repair Group

Enclosures: *2025 Billing Rate Schedule*
General Conditions of Service

cc: *DGT, JSM, WJB, LLR – SKA*

The Terms and Conditions of this Agreement (SKA Proposal No. 2025-012-011), and the attached General Conditions of Service are acceptable to the City of Lenoir.

Signature: _____

Printed Name: Scott E. Hildebrand

Title: City Manager

Date: 2/7/2025

Please return one executed copy of this Agreement to our office.

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2025 STANDARD CHARGE AND BILLING RATES

		Rate per Hour
PRINCIPAL ENGINEER	LEVEL 4	$ 267.00
PRINCIPAL ENGINEER	LEVEL 3	$ 251.00
PRINCIPAL ENGINEER	LEVEL 2	$ 236.00
PRINCIPAL ENGINEER	LEVEL 1	$ 223.00
SENIOR ENGINEER	LEVEL 3	$ 215.00
SENIOR ENGINEER	LEVEL 2	$ 203.00
SENIOR ENGINEER	LEVEL 1	$ 196.00
SENIOR PROJECT ENGINEER	LEVEL 3	$ 191.00
SENIOR PROJECT ENGINEER	LEVEL 2	$ 182.00
SENIOR PROJECT ENGINEER	LEVEL 1	$ 174.00
PROJECT ENGINEER	LEVEL 3	$ 170.00
PROJECT ENGINEER	LEVEL 2	$ 164.00
PROJECT ENGINEER	LEVEL 1	$ 155.00
ENGINEERING INTERN	LEVEL 4	$ 151.00
ENGINEERING INTERN	LEVEL 3	$ 139.00
ENGINEERING INTERN	LEVEL 2	$ 128.00
ENGINEERING INTERN	LEVEL 1	$ 117.00
SENIOR TECHNICAL SPECIALIST	LEVEL 6	$ 210.00
SENIOR TECHNICAL SPECIALIST	LEVEL 5	$ 197.00
SENIOR TECHNICAL SPECIALIST	LEVEL 4	$ 181.00
SENIOR TECHNICAL SPECIALIST	LEVEL 3	$ 172.00
SENIOR TECHNICAL SPECIALIST	LEVEL 2	$ 166.00
SENIOR TECHNICAL SPECIALIST	LEVEL 1	$ 160.00
TECHNICAL SPECIALIST	LEVEL 2	$ 156.00
TECHNICAL SPECIALIST	LEVEL 1	$ 148.00
SENIOR TECHNICIAN	LEVEL 2	$ 139.00
SENIOR TECHNICIAN	LEVEL 1	$ 126.00
TECHNICIAN	LEVEL 3	$ 110.00
TECHNICIAN	LEVEL 2	$ 96.00
TECHNICIAN	LEVEL 1	$ 83.00
INFORMATION SYSTEMS SPECIALIST		$ 150.00
STUDENT / GRADUATE INTERN		$ 85.00
CLERICAL		$ 85.00

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2025 REIMBURSABLE EXPENSES

Subconsultants and subcontractors	Cost + 10%
Lodging	Cost + 10%
Air travel fees (Airfare, baggage, etc.)	Cost + 10%
Ground travel fees (car rental, taxi, train, etc.)	Cost + 10%
Parking	Cost + 10%
Shipping	Cost + 10%
Purchased or rented equipment / supplies	Cost + 10%
Other fees incurred to perform services	Cost + 10%
Mileage	IRS Rate + 10%
Per Diem	$ 71.50 per day
Printing (beyond standard quantities)	$ 25.00 per copy per document

SKA EQUIPMENT / TESTING

Group 1 ($25): Items including Laser Level Survey (per day), M-Scope Metal Survey (per day), Use of On-Site Small Power Tools (per day), Wood or Concrete Surface Moisture Content Testing (per day), AAMA 501.2 Nozzle Testing (per day), Carbonation Testing (per project), and similar equipment

Group 2 ($50): Items including Borescope Testing (per day), Calcium Chloride Moisture Tests (each), Powder Extraction from Concrete (each), Manual 2-D Crack Monitors (each), and similar equipment.

Group 3 ($100): Items including Concrete Relative Humidity Testing (each), Tensile Bond Tests: ASTM D4541, ASTM D7234, ASTM C1583, AABA T0002 (each up to $500 maximum per day limit of 10 tests in a single day) and similar equipment.

Group 4 ($250 per day with weekly maximum of $500): Items including Concrete Resistivity Testing, Concrete Cover Testing, Window/Door Air Testing, Spray Rack Test (ASTM E1105), Blower Door Testing, Infrared Testing, Brick Chamber Test, Electronic Leak Detection (ELD), Masonry Wall Drainage Test (ASTM C1715), Bubble Gun Air Barrier Testing (ASTM E1186 7.8), Smoke Chamber Test (ASTM E1186 7.7), Ultrasonic Testing (for Steel, Coating, & Concrete except Pulse Echo), and similar equipment.

Group 5 ($500 per day with weekly maximum of $1,000): Items including Concrete Half-Cell Testing, and similar testing items and equipment.

Group 6 ($1,000 for single day with weekly maximum of $4,000): Items including Multi-Array Pulse Echo for Concrete, Ground-Penetrating Radar (GPR), and similar equipment.

Other Testing or Equipment: As Indicated in Proposal

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GENERAL CONDITIONS OF SERVICE

These General Conditions of Service are incorporated by reference into the foregoing Letter Proposal or Email proposal from SKA Consulting Engineers, Inc. ("SKA"), and shall be part of the Agreement under which services are to be performed by SKA for Client. The term "Agreement" shall mean the Letter Proposal or Email proposal from SKA, these General Conditions, any Fee Schedule and/or Schedule of Limitations/Exclusions that may be included in or attached to the Letter Proposal or Email proposal, and any other contract documents executed by SKA and Client.

Section 1: Scope of Services. The scope of services includes all services provided by SKA, in its discretion, which are reasonably necessary and appropriate for the effective and prompt fulfillment of SKA's obligations under the Agreement. SKA shall be solely responsible for the selection of employees and consultants who will provide services. The product of SKA's work shall be in a form developed and implemented by SKA, unless agreed upon in advance with Client. Any change in the scope of services will be agreed upon in advance in writing by SKA and Client, and may result in a change in the fees and expenses charged by SKA. It is understood that the scope of services and the schedule, if any, set forth in the Agreement are based on information provided by or on behalf of Client. In performing the scope of services, SKA may rely upon information supplied by or on behalf of Client, the contractors or consultants involved in the project upon which SKA's services are being provided ("the Project"), and information available from generally accepted reputable sources, without independent verification of this information by SKA. SKA disclaims any liability for damages resulting from such information being in any way incorrect. If this information is incomplete or inaccurate, or if unexpected conditions are discovered, the scope of services and the schedule and charges for performing the scope of services may change, even as the work progresses.

Section 2: Client's Duties / SKA's Right of Entry / Project Safety. To allow SKA to perform the scope of services, Client shall at no expense to SKA: (a) provide all information regarding Client's requirements and operations necessary for the orderly progress of SKA's work; (b) designate a representative with authority to transmit and receive instructions and information, and to interpret and define Client's policies and requests for services; (c) provide an environment that complies with and/or exceeds OSHA requirements for construction sites and is also free of significant hazards that might not be addressed by OSHA; (d) provide access to publicly and privately owned property as required for SKA to perform the work, including the use of scaffolds or similar mechanical contrivances; and (e) provide qualified and licensed contractors as needed to assist with SKA's provision of services. Client grants to SKA, its consultants and independent contractors the right to enter the Project and property owned by Client and/or others in order for SKA to perform its work on the Project. Client agrees to obtain all legal rights-of-entry required for SKA to perform its work on the Project, and to hold harmless, indemnify and defend SKA from any alleged damages as a result of any unauthorized entry. Client will compensate SKA for any safety or security measures required by hazardous or unsafe job conditions. SKA is not responsible for the safety of other persons or property. SKA reserves the right to stop work immediately upon discovery that any of these Client obligations has not been met.

Section 3: Deliverables. All information prepared and provided by SKA shall remain the property of SKA. This includes, but is not limited to, calculations, specifications, notes, photographs/images, drawings, models, reality capture, and other data. SKA will exercise reasonable care in safeguarding all data relating to SKA's services including data stored on SKA's or Client's systems under the Agreement for a minimum duration of time as required by the statute of repose for the applicable state after the completion of SKA's services but disclaims any liability for loss of or damage to the deliverables. Client agrees not to use SKA-generated deliverables for marketing purposes, nor to use such data for projects other than the Project, without SKA's express written authorization. Client agrees to waive any claim against SKA and to defend, indemnify and hold harmless SKA from any claim or liability for injury or loss or otherwise arising from any party's unauthorized reuse of deliverables provided by SKA.

Section 4: Samples. Soil, rock, water and/or other samples obtained from the Project are the property of Client. SKA will have no obligation to maintain or preserve such samples after the completion of SKA's services under the Agreement. SKA shall immediately dispose of all samples unless Client instructs SKA otherwise in writing. Client is responsible for charges for storage by SKA of samples requested by Client. If requested by Client to store samples, SKA will exercise reasonable care in such storage, but disclaims any liability for loss of or damage to samples. In any event, if any such samples are contaminated by hazardous substances or suspected hazardous substances, it shall be Client's sole responsibility to immediately arrange for the lawful disposal of such substances, including removing all contaminated samples from the custody of SKA and transporting them to a lawful disposal site. SKA is entitled to dispose of all samples if storage charges are not paid within 45 days of invoice date.

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Section 5: Hazardous Materials/Mold. "Hazardous materials" includes, but is not limited to, any substance, waste, oil, asbestos, lead, pollutant or contaminant, in whatever form, now or hereafter included with such terms under any federal, state or local statute, ordinance, code, rule or regulation now existing or hereinafter enacted or amended. "Mold" includes, but is not limited to, any micro-organisms or myco-toxins such as mold, mold spores or substances commonly referred to as mildew. The scope of services for this Agreement does not include, and expressly excludes, any responsibility for detection, remediation or accidental release of, or any services relating to, hazardous materials or mold. SKA disclaims any and all liability related to or arising out of claims related to or arising out of hazardous materials or mold. Client, for itself, its successors and assigns, releases SKA, its employees, consultants, independent contractors and agents from any and claims or liability of any type in any way associated with hazardous materials or mold. If SKA encounters, or reasonably suspects that it has encountered, hazardous materials or mold on the Project, SKA reserves the right to cease activity on the Project and promptly notify Client. Client shall initiate action, where appropriate, to identify and investigate the nature and extent of hazardous materials or mold on the Project, and to abate and/or remove the same as may be required by federal, state or local law now existing or hereinafter enacted or amended, or as otherwise necessary to ensure safety on the Project. Unless otherwise specifically provided in writing, the services to be provided by SKA do not include identification of hazardous materials or mold, and SKA has no duty to identify or attempt to identify the same on the Project. It is further understood and agreed that the services of SKA may be uninsurable as a result of the presence or potential presence of hazardous materials or mold on the Project. If such circumstances arise, Client agrees to hold harmless, indemnify and defend SKA, its employees, consultants, independent contractors and agents, from and against any and all claims, lawsuits, damages, liability and costs, including but not limited to, costs of defense, arising out of or in any way connected with the presence, discharge, release, or escape of hazardous materials or mold.

Section 6: Construction Observation Services. When construction observation services are included in the Agreement, SKA will provide personnel to make periodic observations to determine if construction is in general compliance with the contract documents. Client understands that SKA is not a guarantor or insurer of the work of the contractor or any of its subcontractors, and that SKA is not responsible for directing contractor's work. Client understands that the contractor is solely and exclusively responsible for the accuracy and adequacy of construction and for all other activities performed by the contractor and its subcontractors and suppliers, including the methods and means of construction; supervision of personnel and construction; control and operation of machinery; falsework, scaffolding and other temporary construction aids; safety in, on and about the site; and compliance with all OSHA and other applicable state and local governmental agency regulations. SKA's monitoring of the contractor's performance expressly excludes and specifically disclaims any responsibility for review or observation of the adequacy and sufficiency of the contractor's safety measures or of safety conditions on the Project. SKA is not responsible for preparing, revising or monitoring construction schedules. Client will provide SKA with updated construction schedules as they become available.

Section 7: Standard of Care. Services performed by SKA under this Agreement will be conducted in a manner consistent with that degree of care and skill ordinarily exercised by members of the engineering profession currently practicing in the same locality and under similar circumstances. No other representation, warranty or guaranty, expressed or implied, is included or intended in this Agreement, or in any report, opinion, document, or otherwise provided by SKA to Client.

Section 8: Suspension or Termination of Work. Client may, at any time and for any reason, suspend further services by SKA immediately upon SKA's receipt of written notice from Client. Client shall remain liable for and shall promptly pay SKA for all services rendered through the date upon which SKA receives the written notice of suspension, plus suspension charges. Suspension charges shall include, but not be limited to, costs associated with: assembling documents and other Project materials; rescheduling or reassigning personnel and equipment; and paying fees or expenses charged as a result of commitments made to others by SKA on Client's behalf. If Client suspends SKA's provision for services for a temporary period that exceeds 30 days, SKA reserves the right to increase its fees upon the resumption of SKA's services. If payment of SKA's invoices by Client is not made when due, SKA may, upon 7 days' written notice to Client, suspend performance of services under this Agreement. If payment in full is not received by SKA within 7 days of the date of the notice, the suspension shall take effect without further notice. SKA shall not resume services until payment of SKA's invoices are brought current. If SKA's invoices are not brought current within 30 days of the date of the notice, SKA may terminate this Agreement, under which circumstances Client will be liable to SKA for the amounts set forth above associated with Client's termination of the Agreement, plus the reasonable profit anticipated by SKA had SKA fully completed its work under the Agreement, and any other costs or expenses incurred as a result of SKA's cessation of work on the Project. SKA shall have no liability to Client or others for delay or damage

caused by any suspension of services. Client agrees to indemnify, hold harmless and defend SKA from and against any and all claims or liability arising or resulting from any suspension of services.

Section 9: Insurance / Liability. SKA carries workers compensation, general liability and professional liability insurance in amounts consistent with industry standards for firms our size with our average project sizes and annual billings. SKA will furnish appropriate insurance certificates to Client upon request. In the event Client requests that SKA acquire insurance coverage beyond SKA's normal levels of coverage, Client will pay SKA the costs associated with the acquisition of the additional coverage, plus a 10% administrative fee. If for whatever reason SKA cannot reasonably acquire the additional coverage requested by Client, Client agrees that SKA's normal coverage types and amounts are acceptable to Client. Client understands and agrees that SKA's total liability to Client for any and all injuries, claims, losses, expenses, or damages whatsoever, including attorneys' fees and legal expenses, arising out of or in any way related to the Project or this Agreement from any cause or causes, including, but not limited to, SKA's negligence, errors, omissions, breach of contract, or breach of warranty shall not exceed the total amount recoverable from SKA's available insurance coverage. Client also understands and agrees that SKA's total liability to Client for any and all injuries, claims, losses, expenses, or damages whatsoever, including attorneys' fees and expenses, as described above which are not covered by SKA's available insurance coverage, shall not exceed the total of SKA's fees for the services rendered to Client on the Project. SKA shall not be liable for any reason for special, indirect or consequential damages, including loss of use and lost profit. SKA shall take reasonable precautions to minimize damage to Client's property and/or to property owned by others during the conduct of any SKA field work and testing on the Project. Client understands that in the normal course of this type of work damage to Client's property and/or to property owned by others may occur, and that SKA shall not be liable for such damage.

Section 10: Conflicts of Interest: Client understands that SKA has a broad client base. This assignment may involve parties with adverse interests to clients with whom SKA has current or past relationships. It is SKA's policy to make reasonable attempts to identify such relationships prior to acceptance of a professional assignment, but SKA cannot assure that conflicts or perceived conflicts will not arise, and SKA does not accept and expressly disclaims any costs, expenses or damages claimed by Client for such occurrences.

Section 11: Consultants / Independent Contractors. SKA occasionally retains consultants as independent contractors to assist in the performance of SKA's work. If independent contractors are utilized by SKA on the Project, the charges for these independent contractors' work will be billed to Client at the cost charged by the independent contractor to SKA, plus 10% if the independent contractor has at least $1,000,000 of Professional / General Liability insurance, or 20% if the independent contractor has a lesser level of Professional / General Liability insurance. Such consultants shall be afforded the same rights and protections as SKA hereunder.

Section 12: Reimbursable Expenses. Except as set forth herein, SKA will bill direct non-payroll expenses at cost plus 10%. Direct expenses shall include, but shall not be limited to, the following:

a) Out-of-pocket expenses, such as travel, lodging, and costs for consultants and independent contractors (subject to the above) and costs of any other outside services SKA deems reasonably necessary for purposes of performing SKA's work under this Agreement.

b) Costs of providing copies of receipts or detailed back-up information concerning charges included in SKA's invoices.

c) Other costs reasonably incurred in the performance of SKA's work on the Project.

In addition to the above, charges for the use of SKA field and laboratory equipment, reproduction facilities, etc., will generally be billed consistent with SKA's current reimbursable rate schedule. Items not listed on SKA's current reimbursable rate schedule will be billed consistent with the value of the items used and charges for similar items on SKA's current reimbursable rate schedule, subject to adjustment for minimum or extended usage.

Section 13: SKA's Invoices / Payment Terms. If SKA's compensation for one or more aspects of the scope of services under the Agreement is based upon a lump sum, SKA's invoices will be based on the percentage of work completed on the lump sum aspect of the scope of service during the billing period. If SKA's compensation under the Agreement is based upon hourly rates or a time and materials basis, SKA's invoices will be based primarily upon the time spent by SKA's personnel involved with SKA's work on the Project during the billing period, with this time being billed at the rates set forth in SKA's current Fee Schedule. SKA's expenses, including costs associated with SKA's retention of consultants and SKA's reimbursable expenses, will be included in SKA's invoices.

Additional services beyond the original scope of services under a lump sum agreement will be billed consistent with SKA's billings on hourly rate or time and materials agreements, unless otherwise agreed to in advance by SKA and Client. SKA's time charges are accrued on an hourly basis, unless other arrangements are established. Hourly rates are not increased for overtime. Billing rates may be increased periodically or annually, with these increases usually becoming effective on January 1st.

Client understands and agrees that time is of the essence with respect to payment of SKA's invoices, and that timely payment is a material part of the consideration for services rendered by SKA under this Agreement. Client is responsible for payment of SKA's invoices, unless arrangements for another party to pay SKA's invoices are made in advance of SKA's performance of work, with said arrangements being made part of this Agreement. In the event that an agent for Client engages SKA on behalf of Client and Client fails to pay SKA's invoices on a timely basis, then Client's agent is also responsible for payment of SKA's invoices. Client shall pay all SKA's invoices, which will be submitted periodically or on a monthly basis unless otherwise agreed upon by SKA and Client.

SKA's invoices are due upon receipt by Client and are payable no later than 30 days after the date of receipt of the invoice. Interest and finance charges of 1.5% per month or 18% per annum will be assessed on all delinquent balances of principal past due, with interest and finance charges beginning to accrue on the 31st day after the date of the invoice. Any payments received by SKA thereafter shall be first applied to accrued interest and finance charges, and then to the principal balances of the oldest invoices first. If Client reasonably objects to all or any portion of any invoice, Client shall nevertheless timely pay the undisputed amount of such invoice and notify SKA of such objection in writing within 14 days of the date of the invoice; otherwise, such objections are expressly waived.

Client's receipt of funds from a third party is not a condition precedent to Client's obligation to pay SKA's invoices in a timely fashion as set forth herein.

Client shall pay all expenses and costs, including reasonable attorneys' fees, incurred by SKA in the enforcement of this Agreement, including expenses and costs incurred by SKA in the collection of amounts owing to SKA.

Fee estimates provided by SKA are not guarantees and are not binding.

A retainer may be required by SKA before commencing work. A retainer is not the total fee for SKA's work under the Agreement.

Payment to SKA is not contingent upon SKA reaching a certain result.

Section 14: Miscellaneous Provisions.

a. **Precedence:** These General Conditions take precedence over any inconsistent or contradictory provisions contained in any other document included in the Agreement.

b. **Entire Agreement**: The Agreement constitutes the entire agreement between Client and SKA, supersedes all prior discussions or communications between Client and SKA, and cannot be changed, amended or altered unless in writing and acknowledged by SKA.

c. **Governing Law:** The laws of the State of North Carolina shall govern the validity and interpretation of this Agreement.

d. **Mediation:** All claims, disputes or controversies arising out of this Agreement shall be submitted to mediation prior to commencement of any legal action to enforce any of the terms of this Agreement, unless otherwise agreed in writing by SKA and Client. This provision does not apply if a statute of limitations or a statute of repose may affect a claim of a party, in which event the party may commence legal action prior to submission of the dispute to mediation. If litigation is filed before mediation of the dispute, the mediation process shall begin within 30 days after service of the summons and complaint, unless otherwise agreed upon by SKA and Client.

e. **No Third Party Liability**: SKA's services are being performed solely for Client's benefit. No contractor, subcontractor, supplier, fabricator, manufacturer, tenant, occupant, consultant, or other third party shall have any claim against SKA as a result of SKA's services. Client shall defend, indemnify and hold harmless SKA from any third party claims arising from SKA's services for Client.

f. **Project-Specific Work:** SKA's work product, including its conclusions, relates only to the Project. Any use of SKA's work product, including but not limited to its conclusions, on any other project is not authorized by SKA, and SKA accepts no responsibility for any attempt to apply SKA's work product from the Project to any other project.

g. **Failure to Implement SKA's Recommendations / Changing Conditions.** If Client fails to implement SKA's recommendations under this Agreement or fails to implement SKA's recommendations in a timely or complete fashion, SKA is not responsible for any adverse effects caused by such failure, and Client releases SKA from any liability for any adverse effects caused by such failure. SKA is not responsible for any deterioration of building components or other changes in conditions on or relating to the Project while SKA is performing its work under this Agreement, and Client releases SKA from any liability arising from any such deterioration or other changes in conditions.

h. **Transmission of SKA's Work Product**: In the event that SKA's work product is stored on or transmitted by some form of electronic media, Client agrees that SKA shall not be held liable for the completeness, transmission, accuracy or longevity of these materials, nor for misuse thereof.

i. **Letter or Email Proposal Duration**: SKA's Letter or Email Proposal expires 120 days after transmission to Client, unless a different expiration date is included in the proposal. SKA may withdraw or modify its Letter or Email Proposal at any time prior to acceptance by Client.

j. **Legal Process**: Client is responsible, after notification from SKA, for payment of SKA's time charges, attorneys' fees and other expenses resulting from a required response by SKA to subpoenas or court orders issued at the request of any person or entity concerning any part of SKA's work associated with the Project. SKA's charges in this regard will be based on SKA's billing rates in effect at the time of SKA's receipt of the subpoena or court order.

k. **Events or Conditions Beyond SKA's Control.** SKA shall not be responsible for events or conditions beyond SKA's control affecting SKA's work, including adverse weather, directives from Client and/or government entities, equipment failures, lack of access, or Acts of God. SKA shall be compensated by Client consistent with the time and materials payment provisions set forth herein for additional time and expenses incurred by SKA as a result of events or conditions beyond SKA's control.

NOTICE OF PUBLIC HEARING
CITY OF LENOIR

Notice is hereby given that the City of Lenoir and the Unifour HOME Consortium will hold a public hearing to receive public input and comments for the FY 2025-2029 Consolidated Plan for the City of Lenoir and the Unifour HOME Consortium, and the FY 2025 Action Plan. This Consolidated Plan, as required by the U.S. Department of Housing and Urban Development (DHUD), identifies needs, outlines goals, develops action plans and prepares budgets for the City of Lenoir and the Unifour HOME Consortium, for the use of Community Development Block Grant (CDBG) funds and HOME funds for the next five years, beginning July 1, 2025 and ending June 30, 2029.

This public hearing will be held on Tuesday, February 04, 2025 at 6:00 pm before the Lenoir City Council in the City/Council Chambers on the bottom floor of the Caldwell County Office building located at 905 West Avenue, Lenoir, NC.

There will be a 30-day comment period beginning January 25, 2025 to obtain citizen input before the plan is adopted.

The meeting is open to the public. Any person with a disability needing special accommodations or non-English speaking persons needing translation services should contact the City of Lenoir at least 48 hours prior to the meeting. For more information contact Rick Oxford at the Western Piedmont Council of Governments at (828) 322-9191 Ext.245, or 1(800) 735-2962 TDD.

PUBLISH: January 25, 2025

****

Please run this ad on January 25, 2025.
Please run one time only.
Use Small Block Ad
Use HUD, Fair Housing, and EEO logos.
Affidavit Required
Send Bill & Affidavit to:
Attention: **Rick Oxford**
Unifour Consortium/Lenoir CDBG
1880 2nd Avenue NW
Hickory, NC 28601

If you need further information contact: Rick Oxford at (828) 485-4245.

COMMITTEE OF THE WHOLE
TUESDAY, JANUARY 28, 2025

8:30 A.M.

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

Staff Present: City Manager Scott Hildebran, City Clerk Shirley Cannon, Finance Director Donna Bean, Public Services Public Works Director Jon Hogan, Public Services Public Utilities Director Jeff Church, Planner Matt Duchan, Parks & Recreation Director Phil Harper, Fire Inspector, Chris Jacobs, Assistant Fire Chief, Tyrone Sturgis, Police Chief Brent Phelps, Police Major Andy Wilson, Director of Special Projects & Grants Jared Wright, and Communications Director Joshua Harris.

ABC Board: Jerry Brooks, Chair, Steven Stewart, Dr. John Tye and Mike Suddreth.

Absent: Councilmember Crissy Thomas, Main Street & Downtown Economic Development Director, Brenda Floyd, Fire Chief Norman Staines and Planning Director Hannah Williams.

CALL TO ORDER

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

II. CITIZEN COMMENT

A. Jennifer Indicott, Main Street, complimented the City on the beautiful Christmas decorations downtown and for keeping some of the displays up longer.

III. Audit Report; ABC Board:

A. Jerry Brooks, ABC Board Chairman introduced the Board's new auditors, Phillip Church, CPA and Rick Hammer, Manager with Lowdermilk Church & Company, L.L.P. due to the retirement of Steve Huntley. Steven Stewart ABC Board member stated the auditors did a great job with the audit.

Mr. Phillip Church reported the audit had gone well and the stores experienced a good year.

Mr. Rick Hammer reviewed the following financial highlights from the report:

1) Amount of cash invested	$ 467,483
2) Current assets	$1,070,573

3) Total assets	$1,546,389
4) Liability	$ 483,841
5) Operating Expenses	$ 727,639
6) Net sales	$4,234,308
7) Gross Profit	$1,363,045
8) Change in net position	$ 26,767
9) Number of bottles sold	496,832

The ABC Board made the following distributions in FY2024:

Law Enforcement	$ 24,324
Alcohol Education	$ 34,053
City of Lenoir	$500,000
Caldwell School System	$ 58,408

Chairman Brooks reported the ABC Board has purchased a delivery van and currently makes one delivery per day to their customers who purchase mixed beverages. He further shared a list of their ten top customers along with their total sales which equals to $302,629.02. Additionally, Chairman Brooks distributed a list of their sales and other relevant information about sales from 1978 through 2024.

Mr. Brooks further shared the ABC Board has funding for another property and that they have applied for additional funding.

A copy of the Audit Report is on file in the City Clerk's office.

IV. PUBLIC SAFETY

A. Update; Police Department: Chief of Police Brent Phelps reported that Staff was busy with various projects. He stated one of the department's new K-9's has been placed at Hibriten High School and pointed out he is a hard worker. Chief Phelps also thanked City Council for the purchase of the 43 in-car radios to keep the department in compliance with the state and mentioned that Staff was very appreciative.

Chief Phelps reported their lounge area is almost complete and thanked Building Maintenance staff for a job well done. Upon completion of the project, the Committee of the Whole will schedule a meeting there along with a tour of the new addition.

Next, he reported that 3 new employees are currently enrolled in the Basic Law Enforcement Program (BLET) at CCC&TI and 4 are in training at the Police Department. Additionally, other officers are attending college for bachelor degrees or other college programs. He said there will also be several retirements this year.

Chief Phelps reported the City allows employees $2,000 per year to continue their education. He mentioned that some officers apply for grants as well.

Chief Phelps also briefly discussed the top 5 crash locations which include the following:
1) Blowing Rock Blvd / Pennton Ave
2) Hickory Blvd / McLean Dr
3) Blowing Rock Blvd / ABC Ct
4) Harper Ave / Morganton Blvd
5) Blowing Rock Blvd / Commercial Ct

Following discussion regarding the crash locations, Chief Phelps stated he was not in favor of closing ABC Court.

In addition, Chief Phelps reviewed drug charges in the report and stated the numbers were consistent across the state and are also consistent with last quarter's report. There were 50 felony drug charges in the fourth quarter and 36 misdemeanor drug charges.

Chief Phelps stated the complete fourth quarter report was included in the agenda packet for Council's review.

B. Update; Fire Department: Fire Marshall Chris Jacobs presented the following report:

1. Fourth Quarter Report (October, November & December): Fire Marshall Jacobs stated the department has 2 new hires and 1 opening due to the retirement of Deputy Fire Chief Kenny Nelson. Staff is currently working on their Capital Improvements Projects list (CIP). He also stated their full fourth quarter report is included in the agenda packet as information.

   City Manager Hildebran is working with Blue Ridge Energy on financing a new fire truck at an expected cost up to $1.18 million. Blue Ridge can possibly loan up to $1.18 million at 0% interest over 7 years.

V. PUBLIC SERVICES

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

1. **Harper Avenue Streetscape:** Freese & Nichols has submitted a Scope of Design to complete Conceptual Design of a Streetscape Project from Morganton Boulevard to Ridge Street. This design will address future use of the 3-lane Street, sidewalks, landscaping etc. This project addresses a major gateway entrance into town and could set design standards for future streetscapes within the downtown business district. The grand total of the Streetscape Project proposal submitted by Freese and Nichols is $198,511.00.

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

   Motion
   Upon a motion by Councilmember Perkins, City Council voted 6 to 0 to approve the Urban Design Scope of Services submitted by Freeze and Nichols for the Harper

Avenue Streetscape Plan in the amount of $198,511.00.Freeze and Nichols will render professional design services for the City.

2. **Signal Analysis/ College Ave. /Mulberry:** Mattern & Craig have been tasked with providing a Signal Study/Signal Analysis on all City of Lenoir traffic Signals in downtown. Initially, there will be two project focus areas. One area will be the intersection of College Avenue & Mulberry Street and the second project will be the One Way Streets, Harper Avenue and West Avenue. This project should kickoff within the next few weeks.
3. **Veterans Memorial:** We have received two quotes for the Veterans Memorial concept design that was presented to City Council in October. These quotes ranged from $162,000 to $182,000. Due to the limited availability of custom bronze and the number of names to be placed on each monument, staff is struggling to create a turnkey project. Meetings are scheduled this week with monument companies to discuss options.
4. **LFD Sinkhole:** The Lenoir Fire Department Sinkhole Project was divided into a 2 Phase project. Phase 1 will be utility relocation with McGill Associates currently designing this portion of the project. Phase 2 is Stormwater repair and building stabilization, which is currently on hold. Once McGill has completed the utility project, we will adjust the Stormwater design accordingly. Staff was alerted to additional structural cracking within the fire station and we have contracted with Catawba Valley Engineering to provide a structural evaluation.
5. **Wayfinding Signage:** Sign locations were marked back in April of 2024 as well as encroachments and shop drawings. NCDOT provided review and comments which removed the majority of creative design and numerous locations based on new information received from FHA (Federal Highways) on Wayfinding regulations. Staff has met with NCDOT to discuss the review and address concerns of the ARC timeline, importance of the creative embellishments and the amount of time and money already spent in design. Staff has learned that NCDOT has possibly decided to allow some of those embellishments and will look at locations once more. Staff plans to re-stake all locations this week.
6. **Hospital Avenue Sidewalk:** The Project is currently out for rebid as staff did not receive any bids in January. The current bid opening date is Thursday, February 27th.

B. Public Services Public Utilities: Public Services Public Utilities Director Jeff Church presented the following report:

1. Finley Water Project: The Erosion Control approval has been received and responses to comments have been issued to the Public Water Supply.
2. Valdese Water Interconnection: Preliminary evaluation will be submitted in the next few weeks with pump station alternatives, lake crossing methods, and alternative water main routes through Caldwell County to the tie-in.
3. East Harper Sewer Replacement: The design plans will be reviewed with City staff on January 27, 2025 and the project could advertise for bids by mid-February.
4. West Avenue/Ridge Street Sewer: The proposed sewer route and profile was reviewed with City staff on January 17, 2025. McGill Associates was requested to finalize the bid documents, either to bid alone or potentially with the East Harper Sewer replacement. The project could advertise for bids by mid-February. The City is working on securing easements with the County.
5. Water and Sewer AIA: Inventory work on the project is now underway.

V1. COMMUNITY DEVELOPMENT

A. Lenoir Business Advisory Board: The Lenoir Business Advisory Board met on Thursday, January 16. Minutes of the November 14, 2024 meeting are submitted as information. Brenda Floyd, Economic & Main Street Director reported on current activities.

- Main Street Accreditation complete this month.
- Main Street Hill Day prep Capitol Hill next month representing NC and Lenoir.
- Downtown Lenoir ribbon cuttings for February include new tattoo shop 'Flash Bat' on Main Street, 'Pixel Planet' on Church Street. Dates TBD and Rhythm on Main after the addition of tumbling on street level soon.
- Several leases for new businesses are in process for a vintage store, coffee shop and a sandwich shop.
- Mayor Gibbons and potential buyers for the Center Theater met recently and agreed to move forward with plans to negotiate purchase to renovate the historical theater.
- Foothill Performing Arts plans to have office space at 117 Main Street.

B. Planning Board: The Planning Board met on Monday, January 27. Matt Duchan, Planner presented the following report:

Mr. Duchan stated the department reviewed one case and two rezoning requests. However, one of the rezoning applications was withdrawn.

1. Down-Zoning: Matt Duchan, Planner reviewed a power-point slide about Down-Zoning and Who Can Do It. He reported that Down-Zoning is when a government agency rezones a parcel of land once previously zoned for a more intense or more dense use to a more restrictive use (for example, changing the zoning designation of an undeveloped parcel of land to agricultural or open space.)

Next, he shared information about SB 382 – Omnibus Bill intended primarily to address disaster relief post-Helene. Mr. Duchan pointed out that this bill covers a host of other topics and downzoning was the last of many. He stated that Section 3k.1(A) G.S. 160D-601(d) reads as rewritten:
(a) Down-Zoning – No amendment to zoning regulations or a zoning map that down-zones the property shall be initiated, enacted, or enforced without the written consent of all property owners whose property is the subject of the down-zoning amendment.

C. Parks & Recreation Advisory Board: The Parks & Recreation Advisory Board did not meet in January. The next meeting is scheduled for Monday, February 17 at 6:00 p.m. Phil Harper, Parks and Recreation Director presented the following update of current activities and projects:

1) Jan. 2 – Mulberry Gym re-opened & the new floor & pickleball courts look great. Director Harper thanked City Council and Mr. Hildebran for all of their support.
2) Jan.19 – 120 attended the gospel singing at MLK.
3) Jan. 20 - 100 participated in the MLK, Jr. March.
4) Feb. 8 - The movie "The Six Triple Eight" will be shown at 4:00 p.m. at MLK Center.
5) Feb. 20 – Quiz Bowl & Essay Contest at MLK Center.
6) Feb. 24 – American Red Cross Blood Drive – 2:00 – 6:30 p.m. at MLK Center.
7) Youth Basketball – 209 signed up and there are 18 teams and 5 cheerleading teams.

D. Director of Special Projects and Grants Jared Wright gave the following report:

PROJECTS

1. **Mulberry Recreation Center; (2) projects remaining:** The pickleball court conversion has delayed due to weather. The temperature needs to be above 50 degrees with dry conditions. The work should be completed this week. The underground drainage replacement (phase 2 of the roof and drainage repairs project) will be performed by staff. The material is on-site, but we need better weather and some free time to begin the project. It will take around 1-week to perform the work.
2. **MLK Improvements** – The work is ongoing with exterior doors having been replaced and exterior wooden trim repair(s) are underway. The gutter replacement and exterior painting to follow and the floor replacement will be a priority in February.
3. **PARTF Project** – LAFC Design-Build: The National Occupational Standards (NOS) were sent last week and the next step(s) will be executing a formal contract with J.M. Cope and hosting a kickoff/scope review meeting. The PARTF contract time expires in October so the project will have an accelerated schedule when work begins. Other PARTF elements – *splash pad* and *picnic shelter* – were completed between November and December 2024.
4. **Campus Improvements Project** – The design plans are 50% complete and were reviewed in December. The design development has transitioned to construction drawings/documents which means the plans will include all details and notes necessary for the project to be "buildable". An update call with the project team is scheduled for Wednesday afternoon.
5. **UPCG Teaching and Learning Pavilion** – The project was complete in late December minus punch list items. A final walkthrough was held on January 7, 2025.
6. **TH Broyhill Walking Park Retaining Wall Replacement** – The work began in December and demolition is mostly complete. A boulder wall placement has begun, but the project has been significantly delayed in December and January due to weather. Work will resume as soon as possible, but the soils need to dry and the temperature needs to stay above freezing for an extended period.
7. **LFD Infrastructure Repair (Sinkhole**) – The design for the sewer line relocation is 90% complete. Staff met with McGill Associates a few weeks ago for a review of the project. We are considering bundling this project with the East Harper sewer replacement project in order to expedite bidding and take advantage of a simplified advertisement process.

GRANTS/FUNDING APPS

1. **Great Trails funding application** – A $497,994 funding application for OVT Connector was submitted on November 12, 2024 and the Notification of award is expected by March ("early 2025").
2. **SLCGP** (IT) – A State and Local Cybersecurity Program (SLCGP) grant will be submitted by January 31, 2025. FEMA pass through to North Carolina Emergency Management (NCEM) for cyber security (mostly hardware).
3. **Blue Ridge Energy/USDA REDLG** – A loan application is in development for loan funding to assist the Fire Department with acquisition of a new ladder engine. The application is due March 31, 2025 and will be for the maximum amount of $1,180,000. The loan term will be for 7-years.

City Manager Hildebran said the ladder will reach 107 feet and staff is compiling additional information for Blue Ridge Energy regarding the loan process. Their Board will review the application at their meeting in February.

V11. Finance and Administration: Finance Director Donna Bean presented the Financial Summary December 31, 2024.

The over/under balance in the General Fund is $4,254,167.87, Downtown District $134,459.94 and Water & Sewer Fund $1,139,970.46.

A copy of the December Financial Summary is attached to these minutes as information.

Director Bean stated all of the financials are on target and are where she anticipated them to be in the general fund budget at this time.

A. Update; Public Communications: Joshua Harris, Public Information Director referred to the December 2024 Communication Report. There were 3 new releases, 131 social posts, 745 photos, 5 videos, and 93 web updates. The website had a total of 39,037 views along with 6,411 video views. Social followers total 58,509 and there were 363 new followers this month. Director Harris asked Staff to send him any news/stories they would like to have published.

V111. OTHER

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

X1. ADJOURN

A. There being no further business, the meeting was adjourned at 10:00 a.m.

Attachments
Harper Avenue Streetscape Proposal
December Financial Summary

PROFESSIONAL SERVICES AGREEMENT

STATE OF NORTH CAROLINA §

COUNTY OF CALDWELL §

This Agreement is entered into by City of Lenoir, NC (City) and Freese and Nichols, Inc. (FNI). In consideration of FNI providing professional services for City and City utilizing these services, the parties hereby agree:

I. **EMPLOYMENT OF FNI:** In accordance with the terms of this Agreement, City agrees to employ and compensate FNI to perform professional services in connection with the Project. The Project is described as Harper Avenue Conceptual Streetscape Design.

II. **SCOPE OF SERVICES:** FNI shall render professional services in connection with the Project as set forth in Attachment SC – Scope of Services and Responsibilities of City which is attached to and made a part of this Agreement.

III. **COMPENSATION:** City agrees to pay FNI for all professional services rendered under this Agreement. FNI shall perform professional services under this Agreement for a lump sum fee of $198,511.00.

IV. **TERMS AND CONDITIONS OF AGREEMENT:** The Terms and Conditions of Agreement, as set forth in Attachment TC – Terms and Conditions of Agreement, shall govern the relationship between the City and FNI.

V. **GOVERNING LAW; VENUE:** This Agreement shall be administered and interpreted under the laws of the State of Texas. Venue of any legal proceeding involving this Agreement shall be in Tarrant County, Texas.

VI. **EFFECTIVE DATE:** The effective date of this Agreement is February 14, 2025.

Nothing in this Agreement shall be construed to give any rights or benefits under this Agreement to anyone other than the City and FNI. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the City and FNI and not for the benefit of any other party. This Agreement constitutes the entire agreement between the City and FNI and supersedes all prior written or oral understandings.

This Agreement is executed in two counterparts. IN TESTIMONY HEREOF, Agreement executed:

CITY OF LENOIR, NC		**FREESE AND NICHOLS, INC.**	
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____
Attest:	_____	Attest:	_____

URBAN DESIGN
SCOPE OF SERVICES

PROJECT DESCRIPTION

Freese and Nichols, Inc., (hereinafter referred to as ENGINEER) will render professional design services for the City of Lenior (hereinafter referred to as CITY). The project includes a conceptual streetscape plan for upgrading the Harper Avenue streetscape from NC-64 to Ridge Street NW that attracts and welcomes visitors from the highway into Downtown Lenoir. Harper's Ave is a city owned Street with two travel lanes and a center turn lane. The proposed study area is approximately 3,300 linear feet.

BASIC SERVICES

1. **Design Management**
   FNI will manage the work outlined in this scope for efficient and effective use of FNI and the City's time and resources. FNI will manage change, communication, coordinate internally and externally as needed, and address issues with the City's Project Manager and others as necessary to make progress on the work.

   A. FNI will conduct a project kickoff meeting with the City to confirm and clarify scope, understand City objectives, set communication protocol, establish frequency of status meetings, and review various administrative requirements.

   B. FNI will coordinate internally, track the progress of the project, and submit monthly status updates via e-mail. Items in the monthly updates may include project updates, upcoming activities, project schedule, upcoming deliverables, and outstanding issues or information requirements.

   C. Prepare a Project schedule and provide monthly updates including necessary revisions to bring the Project back on schedule if needed. The project schedule will not be resource loaded.

   D. Conceptual Design Meeting – Meeting to discuss general design concepts. FNI to provide figure outlining improvement extents, design details for City review and agreeance of design approach. FNI to provide agenda and minutes.

   E. Conduct bi-weekly (Up to 8) virtual coordination meetings with the City during the duration of the project.

2. Data Gathering/Base Mapping

A. FNI will conduct a walk-through of the site and general area with the City to visually evaluate the existing site features, both on-site and off-site.

B. The City will provide FNI a digital base map in Autocad including all readily available information required to perform this Scope of Services for on-site and off-site conditions including, but not limited to: necessary CAD files, GIS files, etc.; existing boundaries; above and below ground utilities; easements; property lines; right-of-ways, subdivision layouts, roadways, and existing vegetation.

C. Based upon the information provided by the City, FNI will summarize and prepare an existing condition base map(s) for use in the development of a Conceptual Streetscape Plan.

D. Based upon the site review documentation, FNI will prepare a Site Analysis exhibit that identifies the potential opportunities and constraints of the existing park site.

E. FNI will attend one (1) meeting with the City staff to review the site analysis exhibit and to discuss the park development program and specifically define the City's goals for the master plan development.

3. Conceptual Streetscape Design

A. Based on the City approved vision, goals and program from previous phases, FNI will initiate the conceptual streetscape design phase. During this, the design team will assess the corridor and opportunities for the following design improvements:

   a. Assessment of different roadway configurations to determine the maximum space for improvements.
   b. Access management strategies.
   c. Potential conflicts with existing utilities.
   d. Selection of site furnishings such as benches, bike racks, trash receptacles.
   e. Selection of decorative pavement systems and finishes.
   f. Opportunities for public art.
   g. Opportunities for traffic calming devices.
   h. Roadway and pedestrian level lighting.
   i. Landscape planting materials and strategies.

B. FNI will prepare one (1) Preliminary Streetscape Concept Plan for the proposed corridor improvements, and Three (3) Illustrative cross sections, and Two (2) Artist Renderings at selected locations. This concept streetscape plan will be prepared and provided to the City full size and to a measurable scale.

C. FNI will attend one (1) meeting with City representatives to review and discuss the preliminary streetscape concept plan. During this meeting, a consensus for the final streetscape plan will be agreed upon which satisfies the program goals of the City.

D. FNI will make any necessary changes to the Preliminary streetscape concept plan resulting from City and stakeholder review.

Deliverables (Both Preliminary and Final):

a. Overall Plan
b. Three (3) Illustrative cross sections
c. Two artist renderings
d. Image Boards
    i. Planting Pallet
    ii. Site Furnishings
    iii. Decorative Pavements
    iv. Potential Light Fixtures

4. Cost Estimating

FNI will provide two (2) opinions of probable cost. This will be at the preliminary streetscape concept and the final streetscape conceptual design milestones.

SPECIAL SERVICES

5. Site Survey

Survey includes boundary survey, topographic survey, and Level B SUE. (See Attachment A for full scope description.)

6. Traffic Analysis

FNI will conduct a traffic operations analysis for the primary alternative configurations: 3-lane (existing), 2- lane with median and turn lane at key intersection, and 3-lane typical sections. Include in the analysis an assessment of the improvements needed at intersections and other significant junctions. Collect peak period traffic turning volume data at the key intersections and other significant junctions. Compare the performance of the alternatives and recommend the alternative(s) for advancement to initial conceptual streetscape design. Assess the need for traffic signal modifications or additions for the alternatives. Review with City staff.

ASSUMPTIONS

A. The City will provide, as expeditiously as possible, all existing data and base information currently in its possession and as necessary to complete the scope of services described herein. This scope of services does not include any site topographic survey work for the project area. The City will provide any additional information that is necessary. All information provided by the City is assumed to be accurate and complete, unless otherwise indicated by the City. Any information required to complete this scope of services that cannot be readily provided by the City will remain the responsibility of the City.

B. This scope of services does not include any hydraulic or hydrology engineering modeling or design services including detailed hydrologic or hydraulic calculations, alternatives analysis to improve drainage conditions, design of stormwater improvements or FEMA map revisions including LOMR or CLOMR.

C. This scope of services does not include any environmental engineering services including delineation of waters of the U.S., mapping of waters of the U.S., Section 404 permitting evaluation memorandum, Section 404 permit application, or consultation with the USACE or any water agency permitting or regulatory coordination with such agencies as the U.S. Army Corps of Engineers, FEMA, TCEQ, or others.

D. This scope of services does not include any mass grading plans or studies.

E. FNI will attend the meetings and/or presentations as described within this scope of services. Any additional meetings and revisions required with project stakeholders, can be can provided as additional services. Additional meetings, workshops, public hearings, stakeholder meetings, focus groups, or presentations requested by the City will be considered as additional services as authorized by the City.

F. This scope of services does not include any schematic design, design development, construction documents, specifications or bid documents.

G. Additional services not included in this Scope of Services will be negotiated with the City as necessary. Compensation will be based upon either a mutually agreed lump sum fee or an hourly basis. Items which would be considered Additional Services include those listed in the Assumptions, as noted above, plus any other items beyond this scope of services. Additional Services must receive written authorization from the City before being performed.

BASIS OF COMPENSATION

The cost for performing these services set forth herein will be as follows:

Basic Services

Task 1 – Design Management (Lump Sum) $13,035.00

Task 2 – Data gathering/Base mapping (Lump Sum) $10,772.00

Task 3 – Conceptual Streetscape Design (Lump Sum) $53,729.00

Task 4 – Cost Estimating (Lump Sum)..... $6,902.00

Basic Services Total $84,438.00

Special Services

Task 5 – Site Survey (Lump Sum)..... $54,956.00

Task 6 – Traffic Analysis (Lump Sum)..... $57,617.00

Special Services Total $112,573.00

Reimbursable Expenses (Not-to-Exceed) $1,500.00

GRAND TOTAL – Design Services, & Reimbursable Fee (Lump Sum, Not-to-Exceed) $198,511.00

PROJECT SCHEDULE

All work described above will be performed over a duration of a **(6) Six Month** period. All work will commence after notice to proceed is provided by the city.

ATTACHMENT A

January 14, 2025

Freese and Nichols, Inc.
1017 Main Campus Dr. Suite 1200
Raleigh, NC 27606

Attn: Matthew L. Milano, PLA, LEED AP, CDT
Landscape Architecture
Urban Planning + Design Group

RE: Request for Geomatics Services – Design Survey & SUE Level B
Harper Avenue Streetscape
Lenoir, NC 28645
Stewart # GP25-0013

Dear Mr. Milano:

Stewart is pleased to submit this scope and fee proposal for Geomatics services as described herein for the Harper Avenue Streetscape Project, located in Lenoir, North Carolina. We look forward to working with you in this regard.

Please find below our project understanding, approach, scope of work and proposed compensation for your review. If, upon review, you have any questions, we would be happy to discuss them with you and make appropriate revisions prior to initiating the proposed Scope of Work.

PROJECT UNDERSTANDING

Stewart offers the following scope of services, fees and associated items on the survey areas delineated in red shown on the client provided sketch below. The survey corridor is approximately 3,300 linear feet and 40 feet wide (right-of-way to right-of-way) from NC-64 to Ridge Street NW.

SCOPE OF SERVICES

All survey services performed by Stewart will be completed by the standards as set forth by the Rules of Standard Practice as outlined by the North Carolina Board of Engineers and Land Surveyors and North Carolina General Statutes to include GS 47-30 and North Carolina Administrative Code - 21 NCAC 56.1606. The survey will be horizontally tied to the North Carolina State Plane Coordinate System under the North American Datum of 1983 (NAD83). Vertically, the project will be tied to the North American Vertical Datum of 1988 (NAVD88). The project's units will be the U.S. Survey Foot.

Design Survey

Stewart will survey the property boundaries of the subject parcels as well as for adjacent roadway rights-of-way and adjacent parcels in order to accurately depict existing property lines within the survey area. These measurements will be used to find property field boundary monumentation positions. Using this field data, the existing property record data acquired above will be analyzed with regard to associated field positions to determine property boundary and right of way locations throughout the project area. Record data will be acquired from sources to include the County Register of Deeds, the Owner, and other available sources that describe the Owner's parcel as well as adjacent parcels throughout the survey area. These documents will then be analyzed and where appropriate compared accordingly to illustrate property dimensions, descriptions and "called for" monumentation.

Stewart will perform an existing conditions survey to include existing improvements and surface features will be located by the survey inclusive of buildings, parking areas, sidewalks, concrete pads, curb/gutter, paving, pavement markings in parking lots and streets, roadways, driveways, street signage, walls, fences, ditches, and visible improvements within the project area. Stewart will field locate all trees with a diameter-at-breast height (DBH) of 8-inches and greater within the survey limits. Shrubs and bushes will be shown in outlined areas only and not individually located. Exterior of buildings within the project area will be dimensioned.

Visible above ground evidence of utilities to include power poles, fire hydrants, traffic control, valves, etc. will be located by the survey. Corresponding top, bottom and invert elevations of storm and sanitary structures that are accessible and without the need for confined space entry will also be recorded. Pipe sizes and types entering and exiting these structures will also be noted where accurately attainable. Storm drainage and sanitary systems will be traced and located to one structure beyond the survey limits of the project.

A topographic survey of the area will be performed within the survey area. Elevations will be shown to the nearest 0.1' on lawn or "soft" areas while on paved or "hard" surfaces elevations will be shown to the nearest 0.01'. Contours will be created at a one-foot interval. Building finish floor elevations that are accessible will be obtained at each entrance of any building within the survey area limits.

Subsurface Utility Engineering (SUE) – Level B

In order to locate non-gravity utilities in the project area, Stewart will perform a Subsurface Utility Engineering (SUE) investigation to include Quality Level B (utility designation) services. Radio-frequency Electromagnetic and Ground Penetrating Radar technology will be used to designate the approximate horizontal location of underground utility lines within the project area. These locations will be painted, field sketched and surveyed. All work will be performed in close coordination with utility owners, and available utility maps from these owners will be used for this project if available. Although SUE methods provide a high level of assurance for the location of subsurface utilities, the possibility exists that not all features can be identified. Therefore, due caution should be used when performing subsurface excavations where potential conflicts exist, and Stewart will not be liable for any damages that may occur.

DELIVERABLES

A final deliverable will include a drawing depicting the findings of the survey described above. This drawing will be provided in hardcopy and in AutoCAD 2023 Civil 3D. Drawing layering system will be provided based upon a system established by the National CAD Standards (NCS). The PDF drawing mentioned above will be signed and sealed by a Professional Land Surveyor licensed to practice in the State of North Carolina.

SCHEDULE

Stewart agrees to provide services to the Client in the most expeditious manner as is practical and will adhere to the project schedule as appropriate and realistic.

ASSUMPTIONS

Our scope and fee proposal is based on the following assumptions:

- No liability is assumed for the accuracy of other consultant's work (i.e. Planner, Architect, Testing Agency, Biologist, Surveyor, etc.) or information provided by others used in the production of our documents.

EXCLUSIONS

The following items are excluded from the Scope of Services (most of these, if not all, can be provided at a later date as an additional service):

- Boundary, Subdivision, Easement, Tree Conservation or Recombination Platting (except as specifically mentioned herein)
- As-Built Survey
- ALTA/NSPS Land Title Survey
- Construction Surveying/Staking Services
- Legal Descriptions
- Subsurface Utility Engineering (SUE) Services – Level A
- Wetland/Stream Delineation Services
- Tree Identification/Tagging and Associated Surveys (except as specifically mentioned herein)
- Any Environmental Phase I or II investigations
- Review and Recordation Fees

ADDITIONAL SERVICES

Any item not contained in the scope of services or items outlined as exclusions are available from Stewart but will be deemed as an Additional Service. Additional Services will be provided if requested by the Client for a negotiated lump sum fee or at our Standard Hourly Billing Rates.

CLIENT RESPONSIBILITIES

It shall be the responsibility of the Client to provide the following items:

- Access to the site. Delays to field activities that are beyond our control, such as right-of-entry, security measures (e.g., gates, locked areas), on-site traffic interference, etc. may result in additional fees
- Any other electronic information on the site to be used in the preparation of plans
- Reasonable advanced notice of scheduled meetings
- Assistance in obtaining information from all other consultants on the design team as needed to complete our tasks
- All necessary permit and review fees
- Documents that would be beneficial during our evaluation
- Decisions on critical design issues as necessary in a timely manner
- Payment of all invoices per Conditions of the Agreement

TERMS AND CONDITIONS OF AGREEMENT

1. **DEFINITIONS:** As used herein: (1) City refers to the party named as such in the Agreement between the City and FNI; (2) FNI refers to Freese and Nichols, Inc., its employees and agents, and its subcontractors and their employees and agents; and (3) Services refers to the professional services performed by FNI pursuant to the Agreement.

2. **INFORMATION FURNISHED BY CITY:** City will assist FNI by placing at FNI's disposal all available information pertinent to the project, including previous reports and any other data relative to design or construction of the project. FNI shall have no liability for defects or negligence in the Services attributable to FNI's reliance upon or use of data, design criteria, drawings, specifications, or other information furnished by City. To the fullest extent permitted by law, City agrees to indemnify and hold FNI harmless from any and all claims and judgments, and all losses, costs, and expenses arising therefrom. FNI shall disclose to City, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications, or other information furnished by City to FNI that FNI may reasonably discover in its review and inspection thereof.

3. **STANDARD OF CARE:** FNI will perform all professional services under this Agreement with the professional skill and care ordinarily provided by competent members of the subject profession practicing under the same or similar circumstances and professional license as expeditiously as is prudent considering the ordinary professional skill and care of a competent member of the subject profession. FNI makes no warranties, express or implied, under this Agreement or otherwise, in connection with any Services performed or furnished by FNI.

4. **INSURANCE:** FNI shall provide City with certificates of insurance with the following minimum coverage:

Commercial General Liability	Workers' Compensation
$2,000,000 General Aggregate	As required by Statute
Automobile Liability (Any Auto)	Professional Liability
$1,000,000 Combined Single Limit	$3,000,000 Annual Aggregate

5. **CHANGES:** City, without invalidating the Agreement, may order changes within the general scope of Services required by the Agreement by altering, adding, and/or deducting from the Services to be performed. If any such change under this clause causes an increase or decrease in FNI's cost or time required for the performance of any part of the Services, an equitable adjustment will be made by mutual agreement and the Agreement will be modified in writing accordingly.

   FNI will make changes to the drawings, specifications, reports, documents, or other deliverables as requested by City. However, when such changes differ from prior comments, directions, instructions, or approvals given by City or are due to causes not solely within the control of FNI, FNI shall be entitled to additional compensation and time required for performance of such changes to the Services authorized under this Agreement.

6. **OPINION OF PROBABLE CONSTRUCTION COSTS:** No fixed limit of project construction cost shall be established as a condition of the Agreement, unless agreed upon in writing and signed by the parties hereto. If a fixed limit is established, FNI shall be permitted to include contingencies for design, bidding, and price escalation in the construction contract documents to make reasonable adjustments in the scope of the project to adjust the project construction cost to the fixed limit. Such contingencies may include bid allowances, alternate bids, or other methods that allow FNI to

determine what materials, equipment, component systems, and types of construction are to be included in the construction contract documents. Fixed limits, if any, shall be increased by the same amount as any increase in the contract price after execution of the construction contract.

FNI will furnish an opinion of probable construction or program cost based on present day pricing, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by FNI hereunder will be made on the basis of FNI's experience and qualifications and represent FNI's judgment as an experienced and qualified design professional. It is recognized, however, that FNI does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices. Accordingly, FNI cannot and does not warrant or represent that bids or cost proposals will not vary from the City's project budget or from any estimate or opinion of probable construction or program cost prepared by or agreed to by FNI.

7. **PAYMENT:** Progress payments may be requested by FNI based on the amount of Services completed. Payment for Services shall be due and payable upon submission of a statement for Services to City and in acceptance of Services as satisfactory by City. Statements for Services shall not be submitted more frequently than monthly. Any applicable taxes imposed upon the Services, expenses, and charges by any governmental body after the execution of this Agreement will be added to FNI's compensation.

   If City fails to make any payment due FNI for Services, expenses, and charges within 30 days after receipt of FNI's statement for Services therefore, the amounts due FNI will be increased at the rate of 1 percent per month from said 30th day, and, in addition, FNI may, after giving 7 days' written notice to City, suspend Services under this Agreement until FNI has been paid in full for all amounts due for Services, expenses, and charges.

   If FNI's Services are delayed or suspended by City or are extended for more than 60 days through no fault of FNI, FNI shall be entitled to equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by FNI in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

8. **OWNERSHIP OF DOCUMENTS:** All drawings, reports, data, and other project information developed in the execution of Services provided under this Agreement shall be the property of City upon payment of FNI's fees for Services. FNI may retain copies for record purposes. City agrees such documents are not intended or represented to be suitable for reuse by City or others. Any reuse by City or by those who obtained said documents from City without written verification or adaptation by FNI, will be at the City's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants. To the fullest extent permitted by law, City shall indemnify and hold harmless FNI and FNI's independent associates and consultants from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle FNI to further reasonable compensation. FNI may reuse all drawings, report data, and other project information in the execution of Services provided under this Agreement in FNI's other activities. Any reuse by FNI will be at FNI's sole risk and without liability or legal exposure to City, and FNI shall indemnify and hold harmless City from all claims, damages, losses, and expenses including reasonable attorneys' fees arising out of or resulting therefrom.

9. **TERMINATION:** The obligation to provide Services under this Agreement may be terminated by either party upon 10 days' written notice. In the event of termination, FNI will be paid for all Services rendered and reimbursable expenses incurred to the date of termination and, in addition, all reimbursable expenses directly attributable to termination.

10. **CONSTRUCTION REPRESENTATION:** If required by the Agreement, FNI will furnish construction representation according to the defined scope for these Services. FNI will observe the progress and the quality of work to determine in general if the work is proceeding in accordance with the construction contract documents. In performing these Services, FNI will report any observed deficiencies to City, however, it is understood that FNI does not guarantee the contractor's performance, nor is FNI responsible for the supervision of the contractor's operation and employees. FNI shall not be responsible for the contractor's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident to the work of the contractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the project site or otherwise performing any of the work of the project. If City designates a resident project representative that is not an employee or agent of FNI, the duties, responsibilities, and limitations of authority of such resident project representative will be set forth in writing and made a part of this Agreement before the construction phase of the project begins.

11. **GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT:** City agrees to include provisions in the general conditions of the construction contract that name FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by the contractor for the project (except workers' compensation and professional liability policies); and (2) as an indemnified party in any indemnification provisions where City is named as an indemnified party.

12. **POLLUTANTS AND HAZARDOUS WASTES:** It is understood and agreed that FNI has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition at the project site, if any, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposures to such substances or conditions. The parties agree that in performing Services required by this Agreement, FNI does not take possession or control of the subject site, but acts as an invitee in performing Services, and is not therefore responsible for the existence of any pollutant present on or migrating from the site. Further, FNI shall have no responsibility for any pollutant during clean-up, transportation, storage or disposal activities.

13. **SUBCONTRACTS:** If, for any reason and at any time during the progress of providing Services, City determines that any subcontractor for FNI is incompetent or undesirable, City shall notify FNI accordingly and FNI shall take immediate steps for cancellation of such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in the Agreement shall create any contractual relation between any subcontractor and City.

14. **PURCHASE ORDERS:** If a purchase order is used to authorize FNI's Services, only the terms, conditions, and instructions typed on the face of the purchase order shall apply to this Agreement. Should there be any conflict between the purchase order and the terms of this Agreement, then this Agreement shall prevail and be determinative of the conflict.

15. **CONSEQUENTIAL DAMAGES:** In no event shall FNI be liable in contract, tort, strict liability, warranty, or otherwise for any special, indirect, incidental, or consequential damages (such as loss of product, loss of use of equipment or systems, loss of anticipated profits or revenue, non-operation or increased expense of operation), arising out of, resulting from, or in any way related to this Agreement or the project.

16. **ARBITRATION:** No arbitration, arising out of or relating to this Agreement, involving one party to this Agreement may include the other party to this Agreement without their approval.

17. **SUCCESSORS AND ASSIGNMENTS:** City and FNI and the partners, successors, executors, administrators, and legal representatives of each are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

    Neither City nor FNI shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent FNI from employing such independent associates and consultants as FNI may deem appropriate to assist in the performance of Services hereunder.

City of Lenoir
Financial Summary
As of 12/31/2024

General Fund

	2024-2025 Budget	12/31/2024	% of Budget	Change from Previous Year	12/31/2023
Total Revenue	$ 23,751,580.00	$ 15,437,898.77	65%	$ 757,742.95	$ 14,680,155.82
Expenditures	$ 23,751,580.00	$ 11,183,730.90	47%	$ 293,393.04	$ 10,890,337.86
Over/Under	$ -	$ 4,254,167.87		$ 464,349.91	$ 3,789,817.96

Downtown District

	2024-2025 Budget	12/31/2024	% of Budget	Change from Previous Year	12/31/2023
Revenues	$ 264,700.00	$ 36,699.17	14%	$ 938.85	$ 35,760.32
Expenditures	$ 264,700.00	$ 171,159.11	65%	$ 1,691.70	$ 169,467.41
Over/Under	$ -	$ (134,459.94)		$ (752.85)	$ (133,707.09)

Water/Sewer Fund

	2024-2025 Budget	12/31/2024	% of Budget	Change from Previous Year	12/31/2023
Revenues	$ 11,770,028.00	$ 6,071,375.40	52%	$ 456,269.24	$ 5,615,106.16
Expenditures	$ 11,770,028.00	$ 4,931,404.94	42%	$ 634,389.52	$ 4,297,015.42
Over/Under	$ -	$ 1,139,970.46		$ (178,120.28)	$ 1,318,090.74

CITY OF LENOIR

COUNCIL ACTION FORM

I. Agenda Item:

Execution of the contract agreement with J.M. Cope, Inc. for Design-Build services for the 2022 PARTF Project – Lenoir Aquatic and Fitness Center Improvements interior renovation

II. Background Information:

In October 2024, the City of Lenoir adopted use of the Design-Build project delivery method for the upcoming interior renovation of the Lenoir Aquatic and Fitness Center. A qualification-based selection process was used by the City to identify and select the most qualified firm to perform design and construction services for this project, and on January 21, 2025, following a thorough review of all received submittals, the City selected J.M. Cope, Inc., 346 9th Street SE, Hickory, North Carolina 28602.

J.M. Cope, Inc. has partnered with Ramsay Burgin Smith Architects, Inc. (RBSA), 225 N. Main Street, Suite 501, Salisbury, North Carolina 28144, to provide professional design services for the project. RBSA has significant experience with design and construction of public aquatic and water-based recreation facilities.

The attached contract agreement includes reference to the total project budget and fees for pre-construction services including but not limited to project scoping, design and construction document development, budget and schedule development, analysis, and value management, and subcontractor bid management. The total fee, as presented, for pre-construction services is **$25,000.00**, or **3.5%** of the total project budget of **$700,000.00**.

III. Staff Recommendation:

Staff recommends execution of the agreement, AIA Document A141-2014, with J.M. Cope, Inc., for Design-Build services for the 2022 PARTF Project – Lenoir Aquatic and Fitness Center Improvements interior renovation. The pre-construction services contract price will be **$25,000.00**. The remainder of the project budget will be allocated to construction.

IV. Reviewed by:

City Attorney: _____

Finance Director: _____

Director of Special Projects and Grants:_____

Attachments:

- **AIA Document A141-2014, *Standard Form of Agreement Between Owner and Design-Builder***
- **RBSA Fee Schedule, January 2025**

AIA® Document A141® – 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the 7th day of February in the year 2025
(In words, indicate day, month and year.)

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

City of Lenoir
801 West Avenue
Lenoir, NC 28645

and the Design-Builder:
(Name, legal status, address and other information)

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

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

2022 PARTF PROJECT – Lenoir Aquatic & Fitness Center Improvements
1031 Jim Barger Court NE
Lenoir, NC 28645
Provide design and construction services for Lenoir Aquatic & Fitness Center, including renovating / reconfiguring two (2) family-style restrooms, separate male and female locker rooms, and existing whirlpool room, and three (3) racquetball courts. In addition, reconfiguring, replacing, or relocating existing mechanical, electrical, and/or plumbing systems.

The Owner and Design-Builder agree as follows.

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

Provide design and construction services for Lenoir Aquatic & Fitness Center, to include renovating / reconfiguring two (2) family-style restrooms, separate male and female locker rooms, and existing whirlpool room, and three (3)

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racquetball courts. In addition, reconfiguring, replacing, or relocating existing mechanical, electrical, and/or plumbing systems.

§ 1.1.2 The Owner's design requirements for the Project and related documentation:
(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

See attached RFQ dated November 26, 2024

§ 1.1.3 The Project's physical characteristics:
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

See attached RFQ dated November 26, 2024

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:
(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™–2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

To be determined.

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:
(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

To be determined.

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:
(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

The project budget is approximately $700,000.00

§ 1.1.7 The Owner's design and construction milestone dates:

.1 Design phase milestone dates:

To be developed

.2 Submission of Design-Builder Proposal:

January 15th, 2025

.3 Phased completion dates:

N/A

.4 Substantial Completion date:

October 31, 2025

.5 Other milestone dates:

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Final Completion – 60 days after Substantial Completion

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:
(List name, legal status, address and other information.)

.1 Architect

Ramsay Burgin Smith Architects, Inc.
225 N. Main Street, Suite 501
Salisbury, NC 28144

.2 Consultants

SE Collins Consulting – Mechanical & Plumbing Engineering
1817 E. Innes Street, Suite 201
Salisbury, NC 28146

Design Engineering – Electrical Engineering
817 E. Innes Street, Suite 201
Salisbury, NC 28146

Ramsay Burgin Smith Architects, Inc – Structural Engineering
225 N. Main Street, Suite 501
Salisbury, NC 28144

.3 Contractors

N/A

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:
(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

Funding agency requirements and contracts mandate a completion of October 31, 2025.

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™–2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:
(List name, address and other information.)

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Jared Wright, Director of Special Projects and Grants
801 West Avenue
Lenoir, NC 28645
828.757.2153
jwright@CI.LENOIR.NC.US

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:
(List name, address and other information.)

N/A

§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

N/A

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

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

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 14.4

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 1.4 Definitions

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall

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not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 The Work. The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 The Project. The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

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ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

Preconstruction Services Lump Sum ($25,000.00)

- Develop a comprehensive understanding of program goals and requirements.
- Review and confirm programming requirements and goals are being met though the design phase.
- Participate in design meetings with Owner and design consultants.
- Prepare and coordinate Schematic Design, Design Development and Construction Documents in accordance to owner's program.
- Provide formal deliverable with budget analysis, schedule updates, constructability, and value management throughout the design phase.
- Manage bid procedures during the bid phase.
- Provide recommendations for each bid package.
- Open book approach with trade partners solicitation, budget reconciliation for final Guaranteed Maximum Price.

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

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

See attached hourly billing rate for RBSA dated January 2025

Individual or Position	Rate
N/A	

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

.1 Transportation and authorized out-of-town travel and subsistence;
.2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
.3 Fees paid for securing approval of authorities having jurisdiction over the Project;
.4 Printing, reproductions, plots, standard form documents;
.5 Postage, handling and delivery;
.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
.7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
.8 All taxes levied on professional services and on reimbursable expenses; and
.9 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of seven percent (7 %) of the expenses incurred.

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

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

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

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

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§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment
For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
§ 3.1 General
§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports
§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

.1 Work completed for the period;
.2 Project schedule status;
.3 Submittal schedule and status report, including a summary of outstanding Submittals;
.4 Responses to requests for information to be provided by the Owner;

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.5 Approved Change Orders and Change Directives;
.6 Pending Change Order and Change Directive status reports;
.7 Tests and inspection reports;
.8 Status report of Work rejected by the Owner;
.9 Status of Claims previously submitted in accordance with Article 14;
.10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
.11 Current Project cash-flow and forecast reports; and
.12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

.1 Design-Builder's work force report;
.2 Equipment utilization report; and
.3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 Certifications. Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing

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of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- **.1** assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- **.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1.The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

.1 allocations of program functions, detailing each function and their square foot areas;

.2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;

.3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and

.4 the following:
(List additional information, if any, to be included in the Design-Builder's written report.)

N/A

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

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§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- **.1** Confirmation of the allocations of program functions;
- **.2** Site plan;
- **.3** Building plans, sections and elevations;
- **.4** Structural system;
- **.5** Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- **.6** Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- **.1** A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- **.2** The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- **.3** The proposed date the Design-Builder shall achieve Substantial Completion;
- **.4** An enumeration of any qualifications and exclusions, if applicable;
- **.5** A list of the Design-Builder's key personnel, Contractors and suppliers; and
- **.6** The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.2 Construction

§ 5.2.1 Commencement. Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

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§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner

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but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- **.1** allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- **.3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

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§ 5.9 Use of Site
The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.10 Cutting and Patching
The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up
§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work
The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors
§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts
§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility
§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the

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Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

.1 The change in the Work;

.2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and

.3 The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

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.2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
.4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

.1 Additional costs of professional services;
.2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
.3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
.4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
.5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
.6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

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ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design

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services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner

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may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

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§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

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§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

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§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record

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copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- **.1** liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Design-Build Documents; or
- **.3** terms of special warranties required by the Design-Build Documents.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- **.1** employees on the Work and other persons who may be affected thereby;
- **.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- **.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

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§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property. If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be

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responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

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§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

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§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

.3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or

.4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

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§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

.1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;

.2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;

.3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;

.4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

.1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;

.2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or

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.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

OH&P is defined as 7%.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand

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fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such

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procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

.1 AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder
.2 AIA Document A141™–2014, Exhibit A, Design-Build Amendment, if executed
.3 AIA Document A141™–2014, Exhibit B, Insurance and Bonds
.4 AIA Document A141™–2014, Exhibit C, Sustainable Projects, if completed
.5

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N/A

.6 Other:

N/A

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

OWNER *(Signature)*	**DESIGN-BUILDER** *(Signature)*
	Gary C. Webb Vice President
(Printed name and title)	*(Printed name and title)*

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Additions and Deletions Report for

AIA® Document A141® – 2014

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PAGE 1

AGREEMENT made as of the 7th day of February in the year 2025

...

City of Lenoir
801 West Avenue
Lenoir, NC 28645

...

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

...

2022 PARTF PROJECT – Lenoir Aquatic & Fitness Center Improvements
1031 Jim Barger Court NE
Lenoir, NC 28645
Provide design and construction services for Lenoir Aquatic & Fitness Center, including renovating / reconfiguring two (2) family-style restrooms, separate male and female locker rooms, and existing whirlpool room, and three (3) racquetball courts. In addition, reconfiguring, replacing, or relocating existing mechanical, electrical, and/or plumbing systems.

PAGE 2

Provide design and construction services for Lenoir Aquatic & Fitness Center, to include renovating / reconfiguring two (2) family-style restrooms, separate male and female locker rooms, and existing whirlpool room, and three (3) racquetball courts. In addition, reconfiguring, replacing, or relocating existing mechanical, electrical, and/or plumbing systems.

PAGE 3

See attached RFQ dated November 26, 2024

...

See attached RFQ dated November 26, 2024

...

To be determined.

...

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User Notes: (925584218)

To be determined.

...

The project budget is approximately $700,000.00

...

To be developed

...

January 15th, 2025

...

N/A

...

October 31, 2025

PAGE 4

Final Completion – 60 days after Substantial Completion

...

Ramsay Burgin Smith Architects, Inc.
225 N. Main Street, Suite 501
Salisbury, NC 28144

.2 Consultants

SE Collins Consulting – Mechanical & Plumbing Engineering
1817 E. Innes Street, Suite 201
Salisbury, NC 28146

Design Engineering – Electrical Engineering
817 E. Innes Street, Suite 201
Salisbury, NC 28146

Ramsay Burgin Smith Architects, Inc – Structural Engineering
225 N. Main Street, Suite 501
Salisbury, NC 28144

N/A

...

Funding agency requirements and contracts mandate a completion of October 31, 2025.

...

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User Notes: (925584218)

§ 1.1.12 If the Owner and Design-Builder ~~and Contractor~~ intend to transmit Instruments of Service or any other information or documentation in digital form, ~~or utilize building information modeling, they shall endeavor to establish written protocols governing the development, use, transmission, reliance, and exchange of digital data, including~~ they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™–2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

PAGE 5

Jared Wright, Director of Special Projects and Grants
801 West Avenue
Lenoir, NC 28645
828.757.2153
jwright@CI.LENOIR.NC.US

...

N/A

...

N/A

...

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

...

[X] Arbitration pursuant to Section 14.4

PAGE 7

Preconstruction Services Lump Sum ($25,000.00)

- Develop a comprehensive understanding of program goals and requirements.
- Review and confirm programming requirements and goals are being met though the design phase.
- Participate in design meetings with Owner and design consultants.
- Prepare and coordinate Schematic Design, Design Development and Construction Documents in accordance to owner's program.
- Provide formal deliverable with budget analysis, schedule updates, constructability, and value management throughout the design phase.
- Manage bid procedures during the bid phase.
- Provide recommendations for each bid package.
- Open book approach with trade partners solicitation, budget reconciliation for final Guaranteed Maximum Price.

...

See attached hourly billing rate for RBSA dated January 2025

...

N/A

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...

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of seven percent (7 %) of the expenses incurred.

...

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

...

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

PAGE 11

N/A

PAGE 30

OH&P is defined as 7%.

PAGE 34

.5 ~~AIA Document E202™ 2022, BIM Exhibit for Sharing Models with Project Participants, Where Model Versions May Not be Enumerated as a Contract Document, if completed, or the following:~~

N/A

PAGE 35

N/A

...

Gary C. Webb Vice President

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User Notes: (925584218)

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Gary C. Webb, VP, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:58:24 ET on 02/13/2025 under Order No. 4104242339 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014, Standard Form of Agreement Between Owner and Design-Builder, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

(Signed)

_____

(Title)

_____

(Dated)

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User Notes: (925584218)

RAMSAY • BURGIN • SMITH ARCHITECTS, INC.
ARCHITECTURE • PLANNING • DEVELOPING
225 North Main Street – Suite 501, Salisbury, North Carolina 28144 704-633-3121

OFFICE STANDARD RATE SHEET

January 2025

For additional architectural services above basic fees for projects, change orders, expert witnessing, special circumstance problem solving or projects without a clearly-defined scope, we provide services at the following hourly rates:

Principal $ 190 per hour

The Partner in responsible charge of each project. The Principal has controlling authority to obligate the Firm in all contractual areas of design, production and finance.

Project Architect/Engineer $ 125 per hour

The Architect responsible for overall project management. Oversees all design, construction consultations, site evaluations and preliminary studies, the preparation of plans, specifications and contract documents, administration of construction contracts and related

Intern Architect $ 90 per hour

Graduate of an accredited School of Design working in the Intern Development Program towards partial satisfaction of the architectural licensing and certification requirements.

Technical Draftsperson $ 80 per hour

Design and production personnel qualified in the preparation of plans, specifications and construction documents.

Administration $ 60 per hour

All clerical, accounting and office management personnel.

Professional Consultants Cost plus 20%

Additional structural, mechanical and electrical engineering or other specialized consultant services.

Travel Time

Travel time is billed at 1/2 the hourly rate if more than 3 hours total travel time is required for any trip.

Reimbursables

Expenses of reproduction **Cost plus 20%**
Expenses of postage and handling of drawings, specifications, and other Documents. **Cost plus 20%**
Expenses of renderings, models, and mock-ups **Cost plus 20%**
Expense of any additional insurance coverage or limits including professional liability insurance requested by the owner in excess of that normally carried. **At Cost**
Living expenses in connection with out-of-town travel. **At Cost**
Long distance communications **At Cost**
Fees paid for securing approval of authorities having jurisdiction over the Project. **At Cost**
Transportation in connection with Project **.70 cents/mile**

City of Lenoir Police

Council Action Form

I. Agenda Item:

This agenda item calls for the Council to approve the surplus of ballistic vests and helmets at the request of Glen Alpine Police Department.

II. Background Information:

On January 16, 2025, Chief K. Penley of the Glen Alpine Police Department reached out to the Lenoir Police Department requesting surplus ballistic equipment to enhance officer protection during elevated threat responses. Specifically, the request included ballistic helmets, plate carriers, ballistic plates, and ballistic vests. In 2024, the Lenoir Police Department upgraded its inventory of assigned ballistic helmets and plate carriers for all sworn personnel and special response team members. These items are all past the manufacture's 5 year warranty dates. Glen Alpine personnel are aware of the status of the warranty dates for these specific items. As a result of this upgrade, we have the requested equipment available for the Glen Alpine Police Department.

III. Staff Recommendation:

Lenoir Police staff recommend transferring the listed surplus ballistic vests and helmets to the Glen Alpine Police Department for use in patrol and special response duties, enhancing officer protection and operational capabilities.

This request is in accordance with North Carolina General Statue § 160A-280. Donations of personal property to other governmental units.

IV. Reviewed by:

City Attorney:_____ Date:_____

City Manager:_____ Date:_____

Police Chief:_____ Date: 02/04/2025

Rev: 4/15/2019

REQUEST TO SURPLUS CITY PROPERTY

Department Requesting Disposal of Surplus Property	
Date of Request	2/4/2025
Department Name	Police Department
Contact Name	Maj. Andy Wilson
Phone	828-757-2100

ITEM	QTY	CODE*	SERIAL/VIN #	MAKE	MODEL YEAR	MILEAGE/ MACHINE HOURS	REASON FOR REQUEST	CURRENT LOCATION OF THE ITEM	ORIGINAL PURCHASE PRICE	DATE OF PURCHASE	ESTIMATED SALVAGE VALUE	ITEM IN WORKING ORDER Y/N	APPROVED TO LIST ON GOVDEALS
Black Patrol Plate Carriers	21	S1	N/A	Rothco	NA / 2015	N/A	Transfer to Requesting Agency	Lenoir PD	$57.00 ea.	8/16/15	$1.00	Y	☐
Ballistic Plates	42	S1	See Attatched Doc for Serial Numbers	United Shield Int.	ZETA-6H / 2015	N/A	Transfer to Requesting Agency	Lenoir PD	$200.00 ea.	8/16/15	$1.00	Y	☐
Black Helmets	21	S1	See Attatched Doc for Serial Numbers	Ceradyne	BA3A - 2015	N/A	Transfer to Requesting Agency	Lenoir PD	$200 ea.	7/1/15	$1.00	Y	☐
SRT Tactical Vests	8	S1	N/A	Protech	Titan / 2014	N/A	Transfer to Requesting Agency	Lenoir PD	$3500.00 ea.	7/1/14	$1.00	Y	☐
Ballistic Plates	16	S1	See Attatched Doc for Serial Numbers	Protech	Titan / 2014	N/A	Transfer to Requesting Agency	Lenoir PD	$500.00	6/28/19	$1.00	Y	
Green Ballistic Helmet	3	S1	See Attatched Doc for Serial Numbers	Protech	Delta LT -2015	N/A	Transfer to Requesting Agency	Lenoir PD	$550.00 ea.	7/1/15	$1.00	Y	☐
													☐

** Please enter one CODE per item: (S1) Obsolete (S2) Too Costly to Maintain (S3) Beyond Repair (S4) Cannibalized*

APPROVED BY	**DATE**

ITEM	DATE OF SALE	SELLING PRICE	DATE OF DEPOSIT	BUDGET CODE FOR DEPOSIT	DATE ITEM REMOVED FROM INVENTORY		BY WHOM - SIGNATURE	DATE ITEM REMOVED FROM INSURANCE	BY WHOM - SIGNATURE	DATE TAG CANCELLED OR TRANSFERRED	BY WHOM - SIGNATURE

ALL SURPLUS ITEMS ARE LISTED ON GOVDEALS IN ACCORDANCE WITH CITY OF LENOIR RESOLUTION NO. 6-2007, NC GENERAL STATUTES 160A-270 AND NCGS 160A-270 (c)

Black carriers (21)	Ballistic plates (42)	Black helmets (21)	SRT VEST (8)
ROTCHCO	UNITED SHIELD INT.	CERADYNE	PROTECH
	ZETA-6H	BA3A	TITAN
	00099466	225317	
	00099504	225308	
	00099483	225304	
	00099492	225310	
	00099470	225201	
	00099471	225312	
	00099474	225320	
	00099508	225256	
	00099511	225332	
	00099515	225253	
	00099501	225319	
	00099473	225322	
	00099495	225300	
	00099481	225284	
	00099498	225211	
	00099463	225309	
	00099469	225323	
	00099468	225313	
	00099490		
	00099461		
	00099506		
	00099464		
	00099465		
	00099487		
	00099462		
	00099477		
	00099513		
	00099516		
	00099505		
	00099512		
	00099485		
	00099484		
	00099479		
	00099499		
	00099467		
	00099480		
	00099497		
	00099460		
	00099502		
	00099486		
	00099489		
	00099507		

BALLISTIC PLATES (16)	GREEN HELMET (3)
PROTECH	PROTECH
2120-5	DELTA LT
10656	2407
10657	2404
10658	378
10659	
10636	
10637	
11046	
11045	
10655	
11004	
11040	
11039	
10638	
10639	
10640	
10641	

CITY OF LENOIR

COUNCIL ACTION FORM

I. Agenda Item:

Bid Award: Parking Lot and Driveway Paving at Unity Park & Community Gardens

II. Background Information:

The City of Lenoir solicited bids informally for the paving of the parking lot and driveway of the Unity Park & Community Gardens. The City of Lenoir Street Division will self-perform the initial grading and sit prep. Three bids were received for the installation of a 2" lift of B- Mix asphalt covering 30,000sq.ft. Bids were received as follows:

Asphalt Roads:	**$58,000.00**
M&K Enterprises LLC:	**$68,824.08**
Hoffman Paving & Grading Inc.:	**$87,000.00**

Attachments: Bid Sheets, Paving Map

III. Staff Recommendation:

Following the review of bids submitted, staff recommends awarding the bid to Asphalt Roads for the total sum of $58,000.00. Asphalt Roads is appropriately licensed in the state of North Carolina, is adequately equipped to perform work of this nature and has completed many paving jobs throughout Caldwell County.

IV. Reviewed by:

City Attorney: _____

Finance Director: _____

Public Works/Public Utilities Director: _____JAH_____

171A
1162
1430
COLLEGE AVE
40
(455)
(603)
1431
1747
RAILROAD
3967
60ft

Asphalt Roads

Residential • Commercial
Licensed Contractor
Serving the Tri-Cities Area

3497 Hickory Boulevard
Hudson, NC 28638
Office (828) 212-5300
(828) 260-3558

TRACY Huffman

PROPOSAL SUBMITTED TO	PHONE	DATE
UNITY PARK, Community Gardens		2-7-25
STREET	**JOB NAME**	
1431 College Ave SW	UNITY Park	
CITY, STATE AND ZIP CODE	**JOB LOCATION**	
Lenior, NC 28645	B-Mix Asphalt	

We hereby submit specifications and estimates for: 30,000 Sq. Ft.

- ✓ Hot Mix Topping
- ____ Base
- ____ Gravel
- ____ Tack Coat
- ____ Asphalt Sealer
- ____ Grading
- ____ Removal of Old Asphalt
- ____ Removal of Top Soil
- ____ Saw Cut and Removal
- ____ Other ____

(1) Pack Stone with 4 to 6 ton Roller
(2) Apply tack on Concrete
(3) Pave with 2" of B-Mix Asphalt

PAYMENT:
Check ✓
Credit Card ____
Cash ____
Other ____

NO GUARANTEE AGAINST:
Any kind of vehicle fluids, household and or vehicle cleaning fluids. Owner responsible to fill in sides of driveway after completion of job within 6 weeks. Owners Initial ____

I, as owner, understand that I have the right to rescind the contract within three (3) business days, but would prefer to have the proposed work done today. I understand that by doing so, I waive any and all rights that I may have to rescind this contract within three (3) business days. I have read and understand the waiver.

Owner ____

WE PROPOSE hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:
Flat Rate dollars ($ 58,000.00)

Payment to be made in full upon completion unless otherwise specified. All work guaranteed for ___ days 12 month.

All work is guaranteed to be as specified. All work is to be completed in workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders at additional cost. All agreements contingent upon strikes, accidents or delays beyond our control. We do not guarantee against any vegetation, grass, low spots or water damage, concrete ribbon, joints, tire marks, or power steering marks. Owner to carry fire, tornado and other necessary insurance upon above work. We cannot guarantee existing driveway from damage on any additions. In the event an attorney is employed to collect unpaid balance it will be the responsibility of the property owner for the attorney fees. The property owner will also be responsible for court costs and 18% interest on balances over 30 days.

Authorized Signature ____
Note: This proposal may be withdrawn by us if not accepted within N/A **days.**

ACCEPTANCE OF PROPOSAL. The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. Once contract is signed, you will have 0 days to back out of contract or will be responsible for payment even if job is not done.

Signature: ____ **Date of Acceptance:** ____

Witness: B. Yoder ____

Customer has inspected driveway and is satisfied. Signature: ____

Hoffman Paving & Grading, Inc.
711 Complex Place
Lenoir, NC 28645
(828) 754-5582

City of Lenoir
Unity Gardens
Lenoir, NC 28645

February 12, 2025

We propose to do the following work:

Pave the Unity Gardens as discussed. The City of Lenoir will provide any gravel & majority of grading. Hoffman will fine grade & pave 2" 95 B-mix Asphalt

Fine Grading	**$ 1,500.00**
Asphalt Paving	**$85,500.00**
Total	**$87,000.00**

Respectfully Submitted

Hoffman Paving & Grading

By_____

Representative:

By_____

M&K Enterprises LLC

PO Box 1616 | Lenoir, North Carolina 28645
828-217-1222 | office.mkentllc@gmail.com | www.mandkenterprises.com

RECIPIENT:

City of Lenoir
College Avenue Southwest
Lenoir, North Carolina 28645

Quote #291

Sent on	Feb 06, 2025
Total	**$68,824.08**

Product/Service	Description	Qty.	Unit Price	Total
Site Prep and Conditioning	We will prepare the site by placing the ABC Stone on grade to promote drainage, ensuring it is compacted and primed for the subsequent application of Asphalt. This process entails ripping the existing stone, hydrating it with precision using our tanker truck to achieve optimal moisture levels, and compacting it thoroughly with a stone compaction roller. Total Measured area is equal to 30,186 sq ft.	30186	$0.11	$3,320.46
Pave Standard Duty	Upon the successful preparation of the stone subgrade, we will proceed to apply a 2-inch layer of S9.5B Asphalt to the specified areas as per the request of the City of Lenoir. This scope includes two large parking areas, one smaller area surrounding the Community Garden Building on site, as well as the entrance and exit to be constructed on the lower level, which will utilize a third entrance located on College Avenue.	30186	$2.17	$65,503.62
Asphalt Escalation Clause and Disclaimers	Asphalt Escalation Clause: All Asphalt Concrete prices were developed based on the current terminal liquid asphalt price. Due to the high volatility of oil prices, adjustments to the asphalt concrete pricing may be required. M&K Enterprises shall have the sole option of any asphalt adjustments that may become necessary during the life of this contract. NOTE: We will provide all equipment, trucking, set-up and man-power to complete the project in the above quoted price. M&K Enterprises LLC will perform this work for the sum of (Not Including Index Adjustments for Asphalt and Stone as dictated by the Consumer Price Index or any increases associated with due to both the suppliers of Asphalt and Stone adjusted increase to meet the rise of fuel and or associated cost)	1	$0.00	$0.00
Contact	Contact Tim Looper at 828-764-3372 with any questions. I can also receive text or you can email me at: office.mkentllc@gmail.com	1	$0.00	$0.00*

* Non-taxable

M&K Enterprises LLC

PO Box 1616 | Lenoir, North Carolina 28645
828-217-1222 | office.mkentllc@gmail.com | www.mandkenterprises.com

Total	**$68,824.08**

This quote is valid for the next 15 days, after which values may be subject to change.

Signature: _____ Date: _____

CITY OF LENOIR

COUNCIL ACTION FORM: February 18, 2025

I. Agenda Item:

Renewal of the Side Street Pour House sidewalk café permit.

II. Background Information:

Sec. 13-3(C) allows for sidewalk cafes on city sidewalks within the Downtown District, subject to approval of a permit by City Council. The ordinance states such approval is good for one year. The Side Street Pour House sidewalk café, located at 128 Main Street NW, has been in use now for 8 years and continues to make a positive impact to the Downtown atmosphere. It was installed after initially being approved by Council on March 7, 2017, and has been renewed each year.

The requested permit is for the placement of the tables and chairs, as well as the support structures for string lights.

III. Staff Recommendation:

Renewal of the sidewalk café permit, with the following conditions (carried forward from the original approval):

1. The applicant must coordinate with the City's Public Works Director prior to modifying or installing any support structures for lights or awnings or modifying any enclosure fencing.
2. String lights installed over the sidewalk café are limited to white, non-blinking lights.
3. All provisions of Sec. 13-3(C) shall continue to apply to the use and operation of the sidewalk café area.
4. Current copy of Certificate of Liability Insurance naming the City as an additional insured must be provided to the Planning Department.

IV. Reviewed by:

City Attorney: _____
Finance Director: _____

Planning Director: Hannah Williams

SIDEWALK CAFE PERMIT APPLICATION

CITY OF LENOIR PLANNING DEPARTMENT

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

The City of Lenoir allows sidewalk cafes within the downtown Municipal Service District when a permit is approved by City Council, in accordance with Sec. 13-3 of the Lenoir City Code. For questions about this application form or the rules pertaining to sidewalk cafes in the City of Lenoir, please contact the Planning Department at 828.757.2200. PERMITS ARE GOOD FOR A PERIOD OF 1 YEAR AND MUST BE RENEWED ANNUALLY.

Submittal Checklist:

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

Permit Information:

Property Address: 128 Main St. NC PIN: _____

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

Business Name: Side Street Pour House & Grill

Will ABC permit include sidewalk café area? ☒ Yes ☐ No

Number of seats in Restaurant: 100 Number of seats* proposed for sidewalk café: 24

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

Contact Information:

Kevin Eller
Name of Restaurant Operator

2606 Keyes Pl
Street Address

Lenoir NC 28645
City State Zip

Phone Number: 828-234-4535

Fax Number: _____

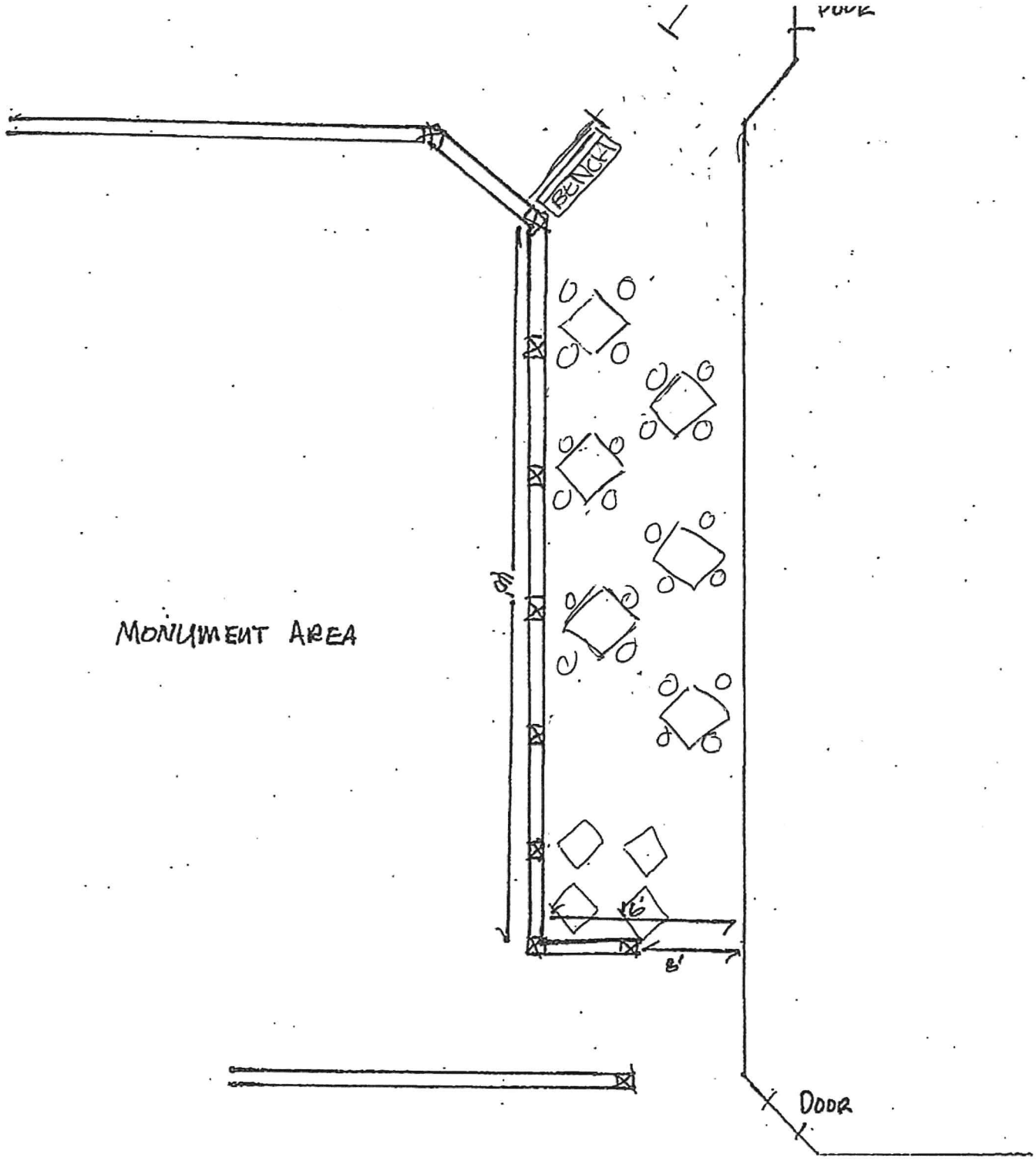
Email: kevin.eller@yahoo.com

Owner's Signature:

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

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

Form revised 3/3/2014


BENCH
MONUMENT AREA
16'
8'
DOOR