



AGENDA

**CITY OF LENOIR
CITY COUNCIL MEETING
905 WEST AVENUE
TUESDAY, MARCH 17, 2020
6:00 P.M.**



I. CALL TO ORDER

- A. Moment of Silence & Pledge of Allegiance

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

III. CONSENT AGENDA ITEMS

- A. Minutes: Approval of the minutes of the City Council meeting of Tuesday, March 3, 2020 as submitted.
- B. Minutes: Approval of the closed session minutes of the City Council meeting of Tuesday, March 3, 2020.
- C. Minutes: Approval of the minutes of the Committee of the Whole meeting of Tuesday, February 25, 2020 as submitted.
- D. Minutes: Approval of the closed session minutes of the Committee of the Whole meeting of Tuesday, February 25, 2020.
- E. Amendments; Baton Water Resale Purchase Agreement: Staff recommends City Council approval of the amendment to the Water Sales Agreement with Baton Water Corporation, Inc. to provide up to 600,000 gallons of drinking water per day maximum daily flow at the applicable wholesale water rate.

IV. REQUESTS AND PETITIONS OF CITIZENS

V. REPORTS OF BOARDS AND COMMISSIONS

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

B. Items of Information

- 1. The Planning Board, in their capacity as the Historic Preservation Commission, will meet on Monday, March 23 at 5:30 p.m. City Hall, Third Floor, former Council Chambers.
- 2. The Committee of the Whole will meet on Tuesday, March 24 at 8:30 a.m. at City Hall, Third Floor, former Council Chambers.
- 3. The Foothills Regional Airport Authority will meet on Wednesday, March 25 at noon at the Airport facility.

B. Items for Council Action

- 1. Engineering Services Agreement; Mattern and Craig Engineers: Staff recommends approval of the Engineering Services Agreement, Task Order Edition, with Mattern & Craig, Inc. and execution of Task Order No. 1 for

Mattern & Craig, Inc. to provide on-call traffic and traffic and transportation engineering services in accordance with terms contained in the Master Agreement.

2. Sidewalk Café Lease; Side House Pour House and Grill: Staff recommends renewal of the Side Street Pour House and Grill Sidewalk Café Permit with the following conditions:
 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.

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

- A. Board Announcements: Mayor Gibbons may announce a list of individuals for appointment/re-appointment to the City's Authorities/Boards/Commissions. **Note:** These individuals will be placed on the April 7 Agenda for Council's consideration of approval.

IX. REPORT AND RECOMMENDATIONS OF COUNCIL MEMBERS

X. ADJOURNMENT

**LENOIR CITY COUNCIL
TUESDAY, MARCH 3, 2020
6:00 P.M.**

PRESENT: Mayor Gibbons presiding. Councilmembers present were Beal, Perdue, Prestwood, Thomas and Willis. Also in attendance were City Manager Hildebran, City Clerk Cannon and City Attorney Rohr.

ABSENT: Councilmembers Ike Perkins and David Stevens.

I. CALL TO ORDER

- A. The meeting was opened by a moment of silence followed by the Pledge of Allegiance as led by Mayor Gibbons.
- B. On behalf of City Council, Mayor Gibbons asked everyone to keep Mrs. Pam Pilkenton in their thoughts and prayers during her recent illness.

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

III. CONSENT AGENDA ITEMS

- A. Upon a recommendation by City Manager Hildebran, the following Consent Agenda items were submitted for approval:
 - 1. Minutes: Approval of the minutes of the City Council meeting of Tuesday, February 18, 2020 as submitted.
 - 2. Minutes: Approval of the minutes of the City Council Strategic Planning Retreat of Friday, 21, 2020 as submitted.
 - 3. Agreement to Accept Sludge; Town of Blowing Rock: Staff recommends approval of the new agreement with the Town of Blowing Rock for the acceptance and treatment of the sludge from the Blowing Rock Wastewater Treatment Plant. The agreement will become effective upon approval by the City Council and acceptance by the Town of Blowing Rock. (A copy of the agreement is hereby incorporated into these minutes by reference. Refer to pages 28-33).

Upon a motion by Councilmember Willis, Council voted 5 to 0 to approve the above listed items on the Consent Agenda, as recommended by City Manager Hildebran.

IV. REQUESTS AND PETITIONS OF CITIZENS

V. REPORTS OF BOARDS AND COMMISSIONS

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

- A. Items of Information

**NATIONAL LEAGUE OF
CITIES CONFERENCE:**

1. The National League of Cities Annual Conference will be held on March 8 through March 11 in Washington, DC.

**CITY/COUNTY SERVICES
COMMITTEE:**

2. The City/County Services Committee will meet on Monday, March 9 at 11:45 a.m. at Caldwell Community College & Technical Institute.

**CALDWELL COUNTY ECONOMIC DEVELOPMENT
COMMISSION:**

3. The Caldwell County Economic Development Commission will meet on Tuesday, March 10 at 8:00 a.m. at the J.E. Broyhill Civic Center.

CANCELLED; LENOIR BUSINESS ADVISORY

- BOARD:** 4. The Lenoir Business Advisory Board cancelled its meeting of Thursday, March 12 in order to attend the Main Street Conference. The next meeting will be held on Thursday, April 9 at 6:00 p.m. at City Hall, Third Floor, former Council Chambers.

LEPRECHAUN LEAP 5K & 10K:

5. The annual Leprechaun Leap 5K & 10K will be held on Saturday, March 14 beginning at 9:00 a.m. at the Lenoir Soccer Complex.

ABC BOARD:

6. The ABC Board will meet on Tuesday, March 17 at 2:00 p.m. at Lenoir Store No. 1 located at 115 ABC Court.

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

CLOSED SESSION:

- A. Pursuant to N.C.G.S. §143-318.11(a), (3), (4), and upon a motion by Councilmember Willis, City Council entered into closed session to discuss attorney/client privilege and personnel.

OPEN SESSION:

- B. Upon a motion by Councilmember Willis, Council voted unanimously to re-enter into open session.

X. ADJOURNMENT

- A. There being no further business, the meeting was adjourned at 6:30 p.m.

Shirley M. Cannon, City Clerk

Joseph L. Gibbons, Mayor

STATE OF NORTH CAROLINA

COUNTY OF CALDWELL

**AGREEMENT TO ACCEPT AND TREAT MUNICIPAL WASTEWATER
TREATMENT FACILITY SLUDGE**

THIS CONTRACT is made and entered into this _____ day of _____, 20__
by and between the City of Lenoir, a North Carolina Municipal Corporation hereinafter
referred to as "Lenoir" and the TOWN of Blowing Rock, a North Carolina Municipal
Corporation hereinafter referred to as "Blowing Rock".

WITNESSETH

WHEREAS, Lenoir and Blowing Rock are political subdivisions of the State of
North Carolina, both having the power and authority to enter into this agreement, and the
signatories hereto have been authorized to execute this document on behalf of the Lenoir
City Council and the Blowing Rock Town Council; and

WHEREAS, Lenoir currently owns and operates the Lower Creek Wastewater
Treatment Facility (LCWWTF) and is engaged in the enterprise of managing, operating,
and maintaining said facility and the biosolid residuals generated by such operation; and

WHEREAS, Blowing Rock owns and operates a wastewater treatment facility,
and is also engaged in the enterprise of managing, operating, and maintaining the facility;
and

WHEREAS, Lenoir and Blowing Rock mutually desire to enter into an agreement
to provide for the acceptance and treatment of sludge generated by the Blowing Rock
wastewater treatment facility in accordance with the terms and provisions contained
herein; and

WHEREAS, Lenoir has determined that it has the capability to accept the
wastewater treatment sludge throughout the term of this agreement without impairing the
treatment capabilities of the Lower Creek Wastewater Treatment Facility; and

WHEREAS, Lenoir and Blowing Rock have or hold and will continue to have or
hold throughout the term of this agreement, all appropriate permits necessary to
effectuate their respective responsibilities under this agreement or will use their best
efforts to obtain such permits;

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

1. This agreement shall commence on the _____ day of _____, 20__,
and unless earlier terminated in accordance with the terms herein, shall expire

on the ___ day of ___, 20__ (Hereinafter referred to as the “Wastewater Service Period”).

2. Lenoir agrees to accept up to three (3) tanker loads (not to exceed 3,750 gallons per load) of sludge from the Blowing Rock Wastewater Treatment Facility per week (not to exceed 9,000 gallons per week) during the term of this agreement. The sludge will be received from Blowing Rock and discharged at the headworks of the LCWWTF.
3. Blowing Rock will not exceed the above gallons per tanker load (or 9,000 gallons per week) and a maximum of three (3) tanker loads per week provided for in Section 2 of this agreement, unless Lenoir expressly agrees in advance in writing that said maximum weekly loads and gallons per load may exceed the terms set forth for a specified period of time.
4. The wastewater sludge received from Blowing Rock shall be in liquid form and shall not have a concentration of more than 1.5% solids. The pH shall not be less than 5.5 or greater than 8.0.
5. Blowing Rock will perform annual testing, to be paid for by Blowing Rock, of the sludge being accepted by Lenoir at the LCWWTF for metals and perform an annual TCLP (Toxicity Characteristics Leachate Procedure) test. The testing will be performed according to acceptable industry standards and according to applicable guidelines of the North Carolina Department of Environmental Quality (NCDEQ). Blowing Rock will perform additional testing as may be necessary to evaluate the quality and constituents of the sludge being accepted at the LCWWTF.
6. Blowing Rock will timely pay Lenoir for the gallons of treated sludge on a monthly basis, in accordance with invoices, or by purchase of coupons from Lenoir for septic waste haulers, which shall be based upon the capacity of the tanker or the actual gallons disposed of at the LCWWTF. Blowing Rock will pay Lenoir the amounts of each such monthly invoice within 30 calendar days of the date of each invoice.
7. The initial per gallon rate to be charged to Blowing Rock for the acceptance of wastewater treatment sludge shall be 4.5 cents per gallon.

Over the term of this agreement or any extension thereof, Lenoir may, at its sole discretion after the first three years of this agreement, increase the initial per gallon rate as it deems necessary. Lenoir shall not increase said rates to Blowing Rock more than one time during any fiscal year of twelve (12) months ending on June 30 of each year. Lenoir agrees to notify Blowing Rock in writing of planned increases in rates at least ninety (90) days prior to June 30 of any fiscal year, with rate increases that are to become effective on July 1 of that same year.

8. Blowing Rock will provide a minimum of three months advance written notice to Lenoir prior to the expiration of this agreement or subsequent extensions of this agreement if Blowing Rock desires to extend the terms of this agreement. Upon timely receipt of such notice of Blowing Rock's desire to extend this agreement, Lenoir shall, within sixty (60) days after having received such notification, notify Blowing Rock in writing of its acceptance of the extension of this agreement.
9. In the event that Lenoir elects not to extend this agreement, Lenoir shall continue to accept and provide sludge treatment to Blowing Rock, under the same terms of the agreement, until Blowing Rock has had sufficient opportunity to secure an alternate source(s) of sludge disposal and treatment; however, Lenoir shall not be bound to continue to provide sludge acceptance and treatment to Blowing Rock beyond a period of twelve (12) months past the date of its written notification to Blowing Rock of its intention not to extend this agreement.
10. In the event of damage or destruction of Lenoir's LCWWTF or any emergency which, in the reasonable judgment of Lenoir, is likely to result in material loss or damage to the system or constitute a material threat to human health or safety, Lenoir may suspend operation of its wastewater treatment facility. Lenoir's response to emergencies and other such unusual circumstances will be in accordance with applicable policies, regulations, laws and requirements and with such personnel and equipment as necessary to maintain or restore the operations of its wastewater treatment facility in a timely manner with the least possible disruption or inconvenience.
11. Lenoir and Blowing Rock both represent that no litigation is pending or threatened against them which would impair their ability to perform their respective duties and obligations under the terms, covenants and provisions of this agreement.
12. Resolution of Disputes
Should any disputes arise under this agreement, including but not limited to disputes pertaining to services, rates, or invoices, said disputes shall be resolved, if at all possible, through good faith negotiations between the parties. It is the intent of Lenoir and Blowing Rock that pursuit of legal action will be a remedy of last resort and that a negotiated resolution, including the use of outside experts or mediators, will be the preferred means of resolving disputes hereunder.
13. Default and Termination
This agreement may be terminated prior to its stated expiration date by Lenoir or Blowing Rock in accordance with the terms and conditions set forth below.

A. Termination for cause by Lenoir. Upon the happening of any of the following events of default by Blowing Rock, Lenoir will have the right to terminate this agreement:

The failure of Blowing Rock to perform or observe any of its material covenants, agreements, obligations and/or duties created by this agreement including but not limited to paragraph 6 hereof.

B. Termination for cause by Blowing Rock. Upon the happening of any of the following events of default by Lenoir, Blowing Rock shall have the right to terminate this agreement:

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

14. **NOTICES:** For the purposes of this agreement, all notices required shall be deemed to have been properly served and shall be only served when posted by Certified United States Mail, Postage Prepaid, Return Receipt Requested, Addressed to the Party to whom directed at the address herein set forth or at such other address as may from time to time be designated in writing by either party:

To Lenoir:

To Blowing Rock:

City of Lenoir

Town of Blowing Rock

15. This agreement embodies the entire agreement between the parties in connection with this transaction, and there are no oral or parol agreements, representations or inducements existing between the parties relating to this transaction, which are not expressly set forth herein. This agreement may not be modified except by a written agreement signed by all parties to this agreement. Neither party shall be entitled to sell, convey or otherwise alienate the rights and obligations created herein without the prior written permission of the other party to this agreement. This agreement is non-assignable.

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

17. No written waiver by any party to this agreement at any time of any breach of any other provision of this agreement shall be deemed a waiver of a breach of any provision herein or consent to any subsequent breach of the same or any other provision.
18. The captions and article numbers appearing in this agreement are inserted only as a matter of convenience and do not define, limit, construe or describe the scope of such paragraphs or articles of this agreement or in any way affect this agreement.
19. This agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina.
20. Words of any gender used in this agreement shall be held to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires.
21. This agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this agreement to produce or account for more than one such fully executed counterpart.
22. Except as provided herein, the rights and remedies provided for in this agreement are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

CITY OF LENOIR, NORTH CAROLINA

By: _____

_____, Mayor

(SEAL)
Attest:

By: _____
_____, City Clerk

TOWN OF _____, NORTH CAROLINA

By: _____
_____, Mayor

(SEAL)
Attest:

By: _____
_____, Town Clerk

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

By: _____
_____, Finance Officer
City of Lenoir, North Carolina

by: _____
_____, Finance Director
Town of _____, North Carolina

**COMMITTEE OF THE WHOLE
 CITY HALL, THIRD FLOOR
 TUESDAY, FEBRUARY 25, 2020
 8:30 A.M.**

PRESENT: Mayor Pro-Tem Thomas presiding. Committee members, Gibbons, Perkins, Prestwood, Stevens and Willis.

City Manager Hildebran, City Clerk Cannon, Fire Chief Hair, Finance Director Bean, Police Chief Phelps, Recreation Director Story, Main Street Coordinator Case, Planning Director Wheelock, Public Utilities Director Thomas, Public Works Director Wright, and Public Information Officer Harris.

ABSENT: Councilmembers Beal and Perdue and Economic Development Director Horn.

OTHERS: Garrett Stell, *News-Topic*, ABC Board Members, Jerry Brooks, Betsy Wilson and John Tye. ABC Staff: Mike Suddreth, Manager and Steve Huntley, CPA.

I. CALL TO ORDER

A. Mayor Pro-Tem Thomas welcomed everyone and called the meeting to order.

B. Annual Audit Report; ABC Board: The members of the ABC Board met jointly with City Council to present their annual audit report. Jerry Brooks reported the City of Lenoir received a \$280,000 distribution which is the second highest distribution the City has ever received and mentioned the two stores also experienced their best sales year their history. Mr. Brooks commended all Staff members and stated they have added one additional full-time employee.

Steve Huntley, CPA, presented an overview of their annual audit report which was conducted by the firm of Benson, Blevins & Associates, P.L.L.C. (A copy of the audit report is on file in the City Clerk's office).

Mr. Huntley presented the following information:

- Net Sales \$2,807,226
- Gross Profit \$ 913,390
- Net Assets Ending \$ 906,476
- Net Position \$ 877,221

Next, Mr. Huntley presented the distribution of income:

- City of Lenoir \$ 280,000
- Caldwell Schools \$ 34,441
- Law Enforcement \$ 13,668
- Alcoholic Education \$ 19,049

In addition, Mr. Huntley reported as of June 30, 2019, the actual working capital position is more than the minimum required by the Alcoholic Beverage Control

Commission Rule .0902. Mr. Huntley also shared their operating expenses increased by \$12,000, but there were no budget issues for the Board.

On behalf of City Council, Mayor Pro-Tem Thomas thanked Mr. Huntley and the ABC Board for the good report.

II. CITIZEN COMMENT PERIOD

III. COMMITTEE ITEMS

A. Public Works

1. Public Utilities Director Radford Thomas presented information on the following items:
 - Several sewer lines in the Lower Creek area received minor damage due to all the rain our area has experienced recently. He stated Finance Director Bean and he have made a few adjustments on the Utility Fund's Capital Improvement Plan (CIP) to cover the cost of this repair project.
 - Biosolids project is currently underway and going well and Staff is preparing for the new Gryphon dryer to be installed plus working on removing the current dryer system. Director Thomas stated the dryer will be beneficial to the City and Gryphon will provide technical support. Their representatives will be on hand when the equipment is installed. The dryer includes a warranty and additional equipment that is required can be purchased locally.
 - Water Meter Project- Staff is currently working with Water Smart Software regarding the implementation of the City's metering project. City utility customers will soon have the option to monitor their accounts online and view their usage history.
 - Staff is currently using chlorine tablets at an expense of \$2,500 monthly at the wastewater treatment plant, but will be changing over to bleach which is more cost effective and a more stable product.

Director Thomas shared the remaining supply of chlorine tablets will be used at the Aquatic & Fitness Center.

- Brownfields – reported the Committee has identified the next property for assessment.

2. Update; Public Works: Director Jared Wright presented the following information:
 - a) Building & Maintenance staff are currently remodeling the first floor of City Hall.
 - b) The City is implementing the next phase of the Sanitation Study and will be submitting a solid waste amendment to the City's ordinance for Council's consideration of approval. Director Wright stated the pilot program will begin in late April or May and be fully implemented by July 1, 2020. Staff is also discussing this issue of how to collect bulk waste plus researching carts that have the most durability.
 - c) Director Wright stated the weather is currently affecting several projects such as sidewalks and trail construction. Staff continues to work on right-of-way acquisitions. He further reported Staff has cut brush along the Greenway in the Lower Creek area.

D. Planning Board: The Planning Board met on Monday, February 24. Planning Director Jenny Wheelock reported that Matt Underwood gave a presentation to the Board regarding Main Street. Director Wheelock further stated she will present an update on N.C.G.S. §160D Land Use Law to Council at the April Committee of the Whole meeting. Director Wheelock mentioned she is currently working with City Attorney T.J. Rohr to make some changes regarding the notification process to Board members for quasi-judicial items. In the future, the Planning Board will not be receiving a copy of the permit prior to it being submitted to City Council. This issue will be discussed further at a later date.

IV. COMMUNITY DEVELOPMENT

- A. The Lenoir Tourism Development Authority (LTDA) did not meet in February. Economic Development Director Kaylynn Horn reported that the Visit NC Conference will be held in Asheville this year and in the City of Hickory next year. City Staff will assist with the Hickory Conference.
- B. The Lenoir Business Advisory Board (LBAB) met on Thursday, February 13. Minutes of the January 9 meeting were submitted as information. Kaylynn Horn, Economic Development Director, presented a report of current activities.

Director Horn reported they are looking to renovate the metal façade on the former J.C. Penny building and mentioned the upcoming Farmers Market will be held in the City owned portion of the parking lot behind the County office building. She further shared the 10th Annual Google Gravity Game Fest is scheduled for Saturday, April 25 from 9:00 a.m. – 3:00 p.m. in downtown Lenoir. Also, a Cruise-In is scheduled for Saturday, April 4 beginning at 4:00 p.m. in downtown Lenoir. Director Horn further shared Planning Director Wheelock and she are continuing to work on the City's branding campaign which is going well.

C. Financial and Administration

1. January Financial Summary: Finance Director Donna Bean reviewed the Financial Summary as of January 31, 2020. The over/under balance in the General Fund is \$2,669,338.77, Downtown District (\$118,137.28), and Water & Sewer Fund \$2,085,824.03. (A copy of the January financial summary is attached to these minutes as information).

Director Bean stated revenues have increased in both the General Fund and the Downtown District fund. She reported the Utility Fund is on target and expenditures are down.

- D. Parks & Recreation Advisory Board: The Parks & Recreation Advisory Board met on Monday, January 17. Minutes of the meeting are submitted as information. Recreation Director Kenny Story presented the following information:
- Youth baseball and softball programs are going well.

- Black History Month events were well attended and the West Caldwell High School Team won the Quiz Bowl with a perfect score.
- The Leprechaun Leap 5K & 10K race is scheduled for Saturday, March 14 beginning at 9:00 a.m. at the Lenoir Soccer Complex.
- Two baseball All Star Teams will be playing in a tournament here in Lenoir this weekend. Flyers advertising the tournament will be placed in area hotel rooms to promote this event.
- The CCC&TI Girls Softball Team are using Optimist Park to practice and for their home games.
- The Optimist Park work is complete and was funded with a Parks & Recreation Trust Fund Grant.
- Funding has not yet been released for the renovations to the former Lenoir High School Auditorium. Foothills Performing Arts will soon be having their events held in the auditorium.
- Staff has cut brush along the Greenway in Lower Creek and will continue to monitor this situation.

E. Update; Public Communications: Joshua Harris, Public Information Officer, reviewed the different functions of the City's new website for the ABC Board members. He stated the new website was launched in July 2019 and pointed out the citizen question link was very popular. He also shared the statistics of the January 2020 Communications Report. (A copy of the report is attached to these minutes as information).

In January, there were 2 news releases, 29 photos, 4 videos, 210 social posts, 149 notify me requests, 19 questions & answers and 6 e-sign ups. The website experienced 32,981 views and reached 90,677 people via Facebook and Twitter.

V. PUBLIC SAFETY

A. Police Department

1. Update: Police Chief Brent Phelps reported their annual Citizens Academy begins on Thursday, March 5. Also, In Service Training for Staff will be held in March and April and Coffee with a Cop will be held at Starbucks quarterly. He reported the Department currently has several vacancies.

B. Fire Department

1. Update: Fire Chief Ken Hair reviewed the highlights of the Department's 2019 Annual Report. (A copy of the Annual Report is attached to these minutes as reference). He shared there was a 25% increase in medical calls and mentioned the general public can request a free smoke alarm, but the Department is required to install it for them. Also, each fire apparatus carries defibrillators for emergency use. In January 2019, a fire loss of \$1.1 million occurred. He further shared the roof has been replaced at Station No. 2 along with a new HVAC system.

In addition, Chief Hair reported the North Carolina Emergency Management Department has received a Homeland Security Grant and pointed out that Staff will be

conducting training exercises at the J. E. Broyhill Park. Also, he mentioned seven firefighters resigned to accept other positions in 2019 and two have resigned in 2020.

VI. OTHER

A. March Calendar: By consensus of the Council, the calendar for the month of March was approved listing various meetings and events.

VII. Adjourn:

There being no further business; the meeting was adjourned at 10:25 a.m.

Attachments

January Financial Summary

January Communications Report

2019 Fire Department Annual Report



**City of Lenoir
Financial Summary
As of 1/31/2020**



General Fund					
	2019-2020 Budget	1/31/2020	% of Budget	Change from Previous Year	1/31/2019
Total Revenue	\$ 17,362,391.00	\$ 13,613,767.94	78%	\$ 1,219,460.02	\$ 12,394,307.92
Expenditures	\$ 17,362,391.00	\$ 10,944,429.17	63%	\$ 1,250,584.73	\$ 9,693,844.44
Over/Under	\$ -	\$ 2,669,338.77		\$ (31,124.71)	\$ 2,700,463.48

Downtown District					
	2019-2020 Budget	1/31/2020	% of Budget	Change from Previous Year	1/31/2019
Revenues	\$ 183,736.00	\$ 9,792.42	5.3%	\$ 3,554.06	\$ 6,238.36
Expenditures	\$ 183,736.00	\$ 127,929.70	70%	\$ 24,267.15	\$ 103,662.55
Over/Under	\$ -	\$ (118,137.28)		\$ (20,713.09)	\$ (97,424.19)

Water/Sewer Fund					
	2019-2020 Budget	1/31/2020	% of Budget	Change from Previous Year	1/31/2019
Revenues	\$ 8,941,688.00	\$ 5,564,916.91	62%	\$ 143,959.99	\$ 5,420,956.92
Expenditures	\$ 8,941,688.00	\$ 3,479,092.88	39%	\$ (294,772.07)	\$ 3,773,864.95
Over/Under	\$ -	\$ 2,085,824.03		\$ 438,732.06	\$ 1,647,091.97

January 2020 Communication Report

By Joshua Harris, Director, Communication & Public Information Feb. 24, 2020



LENOIR
NORTH CAROLINA

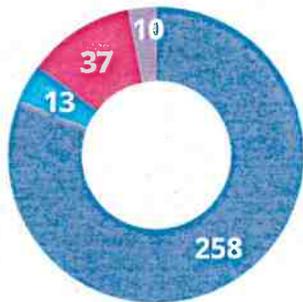
CONTENT CREATION

News Releases	Photos	Videos	Radio Spots	Social Posts	Notify Me	Q&A	eSign
2	29	4		210	149	19	6

PUBLIC ENGAGEMENT

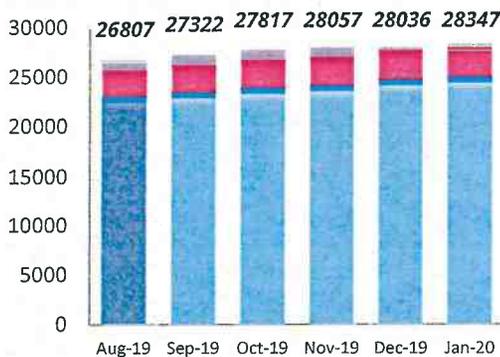
New Followers

318



Facebook Instagram Twitter City Alerts

Total Followers



Social Reach

90,677

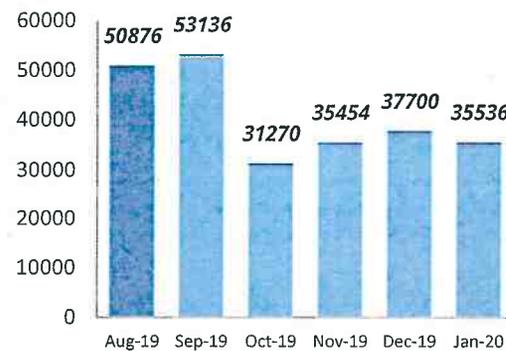
Facebook	79,798	
Twitter	10,399	

Video Views

3,804

Facebook	3,771
YouTube	33

Social Engagement

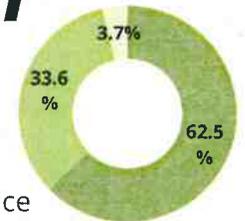


Website Views

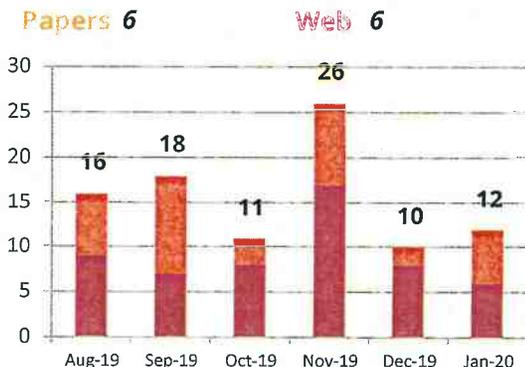
32,981

Top Pages

- 1 Payment Options
- 2 Jobs
- 3 Water & Sewer Service
- 4 Lenoir Aquatic & Fitness Center
- 5 Alert: Yokefellow closes private bridge
- 6 Branding Survey
- 7 Police



Media Coverage **12**





Top Facebook

Reach: The number of people who saw the post on their feed

Engagements: Reactions, comments, shares, photo/video views, and clicks

Total Facebook Followers

24,363

Last Month 24,105

Gain 258

19 Minutes-Committee of the Whole Meeting
Tuesday, February 25, 2020



City of Lenoir, NC Government

Published by Tucker Price on January 13

FYI, Yoketellow of Caldwell County closed the bridge on their property at 202 Harper Ave. NW. The bridge and street that connected the property to US 321 is private and owned by Yoketellow.



13,750
People Reached

5,614
Engagements

Boost Post

44 Comments 86 Shares

21 Comments 66 Shares



Lenoir Police Department

Published by G.D.W. on January 3

Like Page

The Lenoir Police Department is seeking the public's assistance to identify a suspect vehicle in reference to a larceny that occurred on the 900-Block of Wilkesboro Boulevard on 12/10/2019. The vehicle is pictured below. Please note the large dent on the rear driver's side of the vehicle. If you know where this vehicle is, or have information about the crime, contact us through one of the following ways:

1. Anonymous tip at Crime Stoppers: 828-758-8300.
2. Call the Investigator at 828-757-2172.
3. Send Private Message on Facebook.



12,057
People Reached

2,661
Engagements

Boost Post

12 Comments 32 Shares

12 Comments 154 Shares



City of Lenoir Fire Department

Published by Tucker Price on January 10

Like Page

Be advised the road/intersection at Wilkesboro Boulevard and Taylorsville Road is closed until further notice due to a gas leak. Please plan your route ahead of time and avoid this area. Use caution as crews are out working to mitigate the situation.



15,101
People Reached

2,595
Engagements

Boost Post

You and 61 others

44 Comments 205 Shares

	Paid	Organic	Rate
Reach		15,101	
Engagements		2,595	17%
> Comments		44	
> Shares		205	

	Paid	Organic	Rate
Reach		13,750	
Engagements		5,614	41%
> Comments		71	
> Shares		86	

	Paid	Organic	Rate
Reach		12,057	
Engagements		2,661	22%
> Comments		12	
> Shares		154	

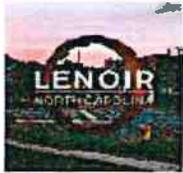


Top Tweets

Impressions: Times people saw this Tweet on Twitter
Engagements: Times people interacted with this Tweet



City of Lenoir, NC @CityofLenoir
Wilkesboro Blvd is currently closed at Taylorsville Rd due to a gas leak. It could be several hours before the road is opened. Piedmont Natural Gas is on scene working to repair the issue. Please avoid this intersection if possible.
<https://www.cityoflenoir.com/AlertCenter.aspx> ... pic.twitter.com/7ZAy9F0Ar



City of Lenoir, NC @CityofLenoir
Guess what? We're working on a city-wide brand and we want your input! Find out more information at
<https://www.cityoflenoir.com/survey> .
pic.twitter.com/T3yFE1dB28



Reach a bigger audience
Get more engagements by promoting this Tweet

[Get started](#)

Downtown Lenoir, NC @DowntownLenoir
Visit the Henkel Opera House for an open house today until 6:30pm! What would you love to see in this gorgeous building?
@ Downtown Lenoir
https://www.instagram.com/p/B7W1qD_tUd/?igshid=1bmp43wusmjn ...

Total Twitter Followers

669

Last Month 656 Gain 13

Impressions	474
Total engagements	13
Link clicks	8
Retweets	2
Detail expands	2
Profile clicks	1

Impressions	432
Total engagements	27
Link clicks	13
Detail expands	5
Media engagements	3
Retweets	2
Likes	2
Profile clicks	2

Impressions	242
Total engagements	8
Link clicks	6
Likes	1
Detail expands	1



Top Instagram

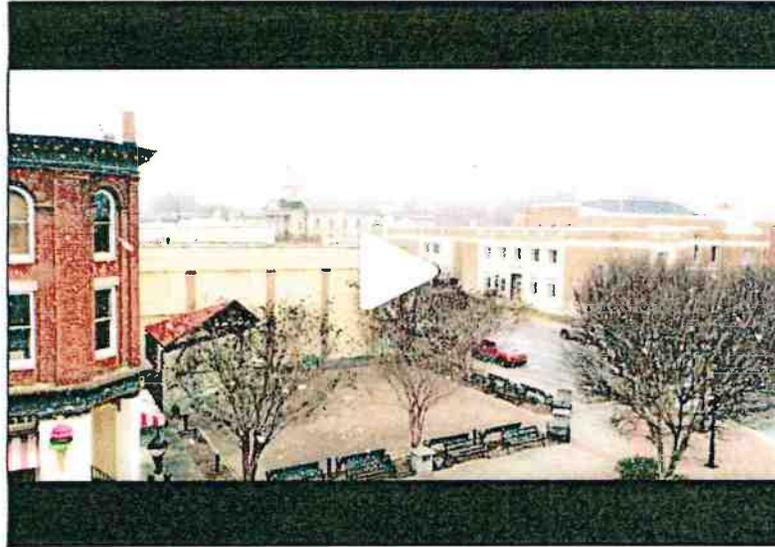
Likes: The number of people who liked the post on their feed

Total Instagram Followers

3,031

Last Month 2,994 Gain **37**

Likes **96**
Comments **1**



downtownlenoir • Following
Downtown Lenoir

downtownlenoir The first snow of the season is finally falling in Downtown Lenoir!

dianereeves336 Beautiful

345 views

Add a comment



cityoflenoirnc
Lenoir, North Carolina

cityoflenoirnc Guess what? We're working on a city-wide brand and we want your input! Find out more information at <https://cityoflenoir.com/survey>.

oshlarts Live love lenoir

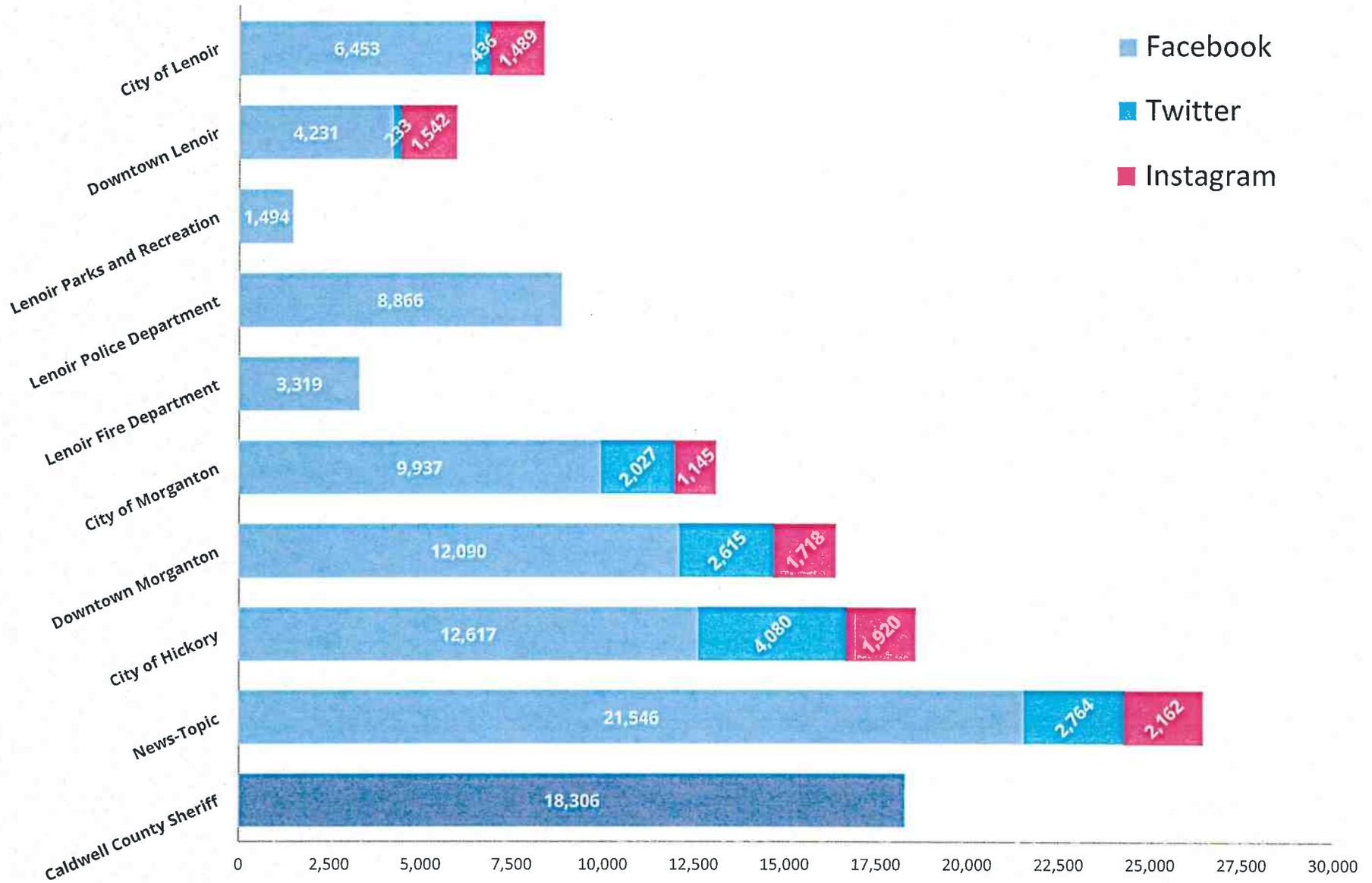
65 likes

Likes **65**
Comments **1**



Social Comparison

The chart below compares Lenoir's social accounts with surrounding organizations.





Questions from the public

19

Hi, could I get contact information for the person handling booking for the Summer Concert Series?

When is open house (818 Harper Ave)?

I was trying to get in contact with someone over the visitor center in Lenoir.

Neptco is looking for volunteer opportunities and I was curious if the city had anything they needed some help with?

I need a assisted living that accepts service dogs

No one slows down for pedestrians at the Davenport school cross walk after school let's out.

Is there a department in the City that trims trees, that are getting into power lines?

Could you please consider adding Do not litter with the fine amount specialli in gamewell?

My neighbor's and I would like to know who we can call to have the stop lights at Westview st/Morganton Blvd. and Mulberry st/Morganton Blvd fixed

Can you please tell me who paid for and owns the bridge that was closed between Yokefellow and First Citizens Bank

They say I need a green sticker on my truck to come throw my household waste At the Hudson site. Where do I get one?

The Martin Luther King Events.

We're opening a couple stores in Lenoir, checking to see if we needed to obtain a business license?

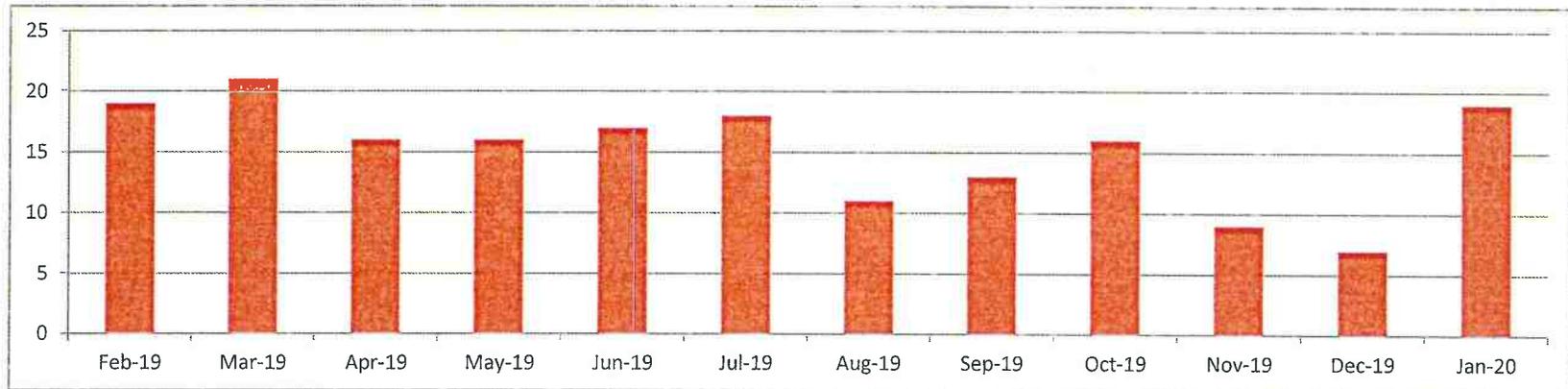
Street light is out on Pennell Street NE

There is a house right across from mine who has be abandoned the entire time i have lived here.

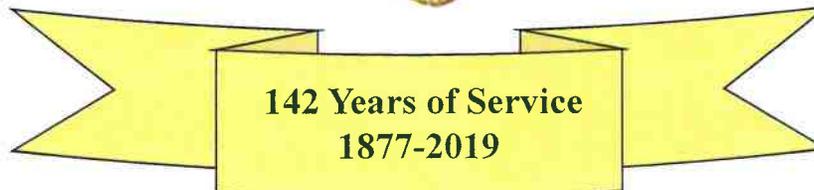
I am the property manager for 1009 Blowing Rock Blvd and am concerned about some sinking concrete around the water meters.

Would it be possible to obtain a copy of the 2018 & 2019 real estate tax bill for tis property?

I understand that you have live bands on Friday nights in downtown Lenoir and we have a Dave Matthews tribute band based in Winston-Salem



2019 Annual Report



22 OFFICERS
 15 DRIVERS
 21 FIREFIGHTERS
 4 FIREFIGHTERS P/T

62 TOTAL STAFF

AS OF AUGUST 22, 2019

FIRE CHIEF

DEPUTY FIRE CHIEF

4 FF'S P/T

ASSISTANT CHIEF
 LOGISTICS

TRAINING
 FIRE EDUCATION
 PROCUREMENT
 MAINTENANCE

ASSISTANT CHIEF
 PREVENTION

FIRE PREVENTION
 CODE ENFORCEMENT
 DEPARTMENT I/T

BATTALION CHIEF

BATTALION CHIEF

BATTALION CHIEF

A-SHIFT HQ'S	A-SHIFT STA. 2
CAPTAIN	CAPTAIN
LIEUTENANT	LIEUTENANT
2 DRIVERS	2 DRIVERS
3 FF'S	2 FF'S

A-SHIFT STA. 3
CAPTAIN
1 DRIVER
2 FF'S

B-SHIFT HQ'S	B-SHIFT STA. 2
CAPTAIN	CAPTAIN
LIEUTENANT	LIEUTENANT
2 DRIVERS	2 DRIVERS
3 FF'S	2 FF'S

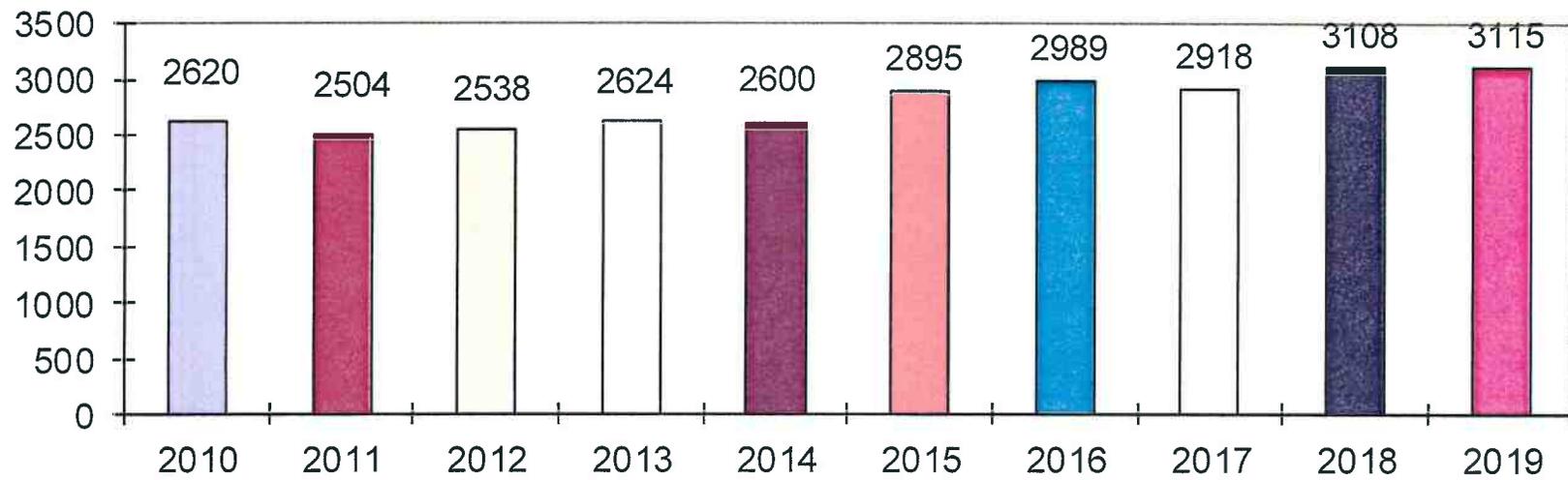
B-SHIFT STA. 3
CAPTAIN
1 DRIVER
2 FF'S

C-SHIFT HQ'S	C-SHIFT STA. 2
CAPTAIN	CAPTAIN
LIEUTENANT	LIEUTENANT
2 DRIVERS	2 DRIVERS
3 FF'S	2 FF'S

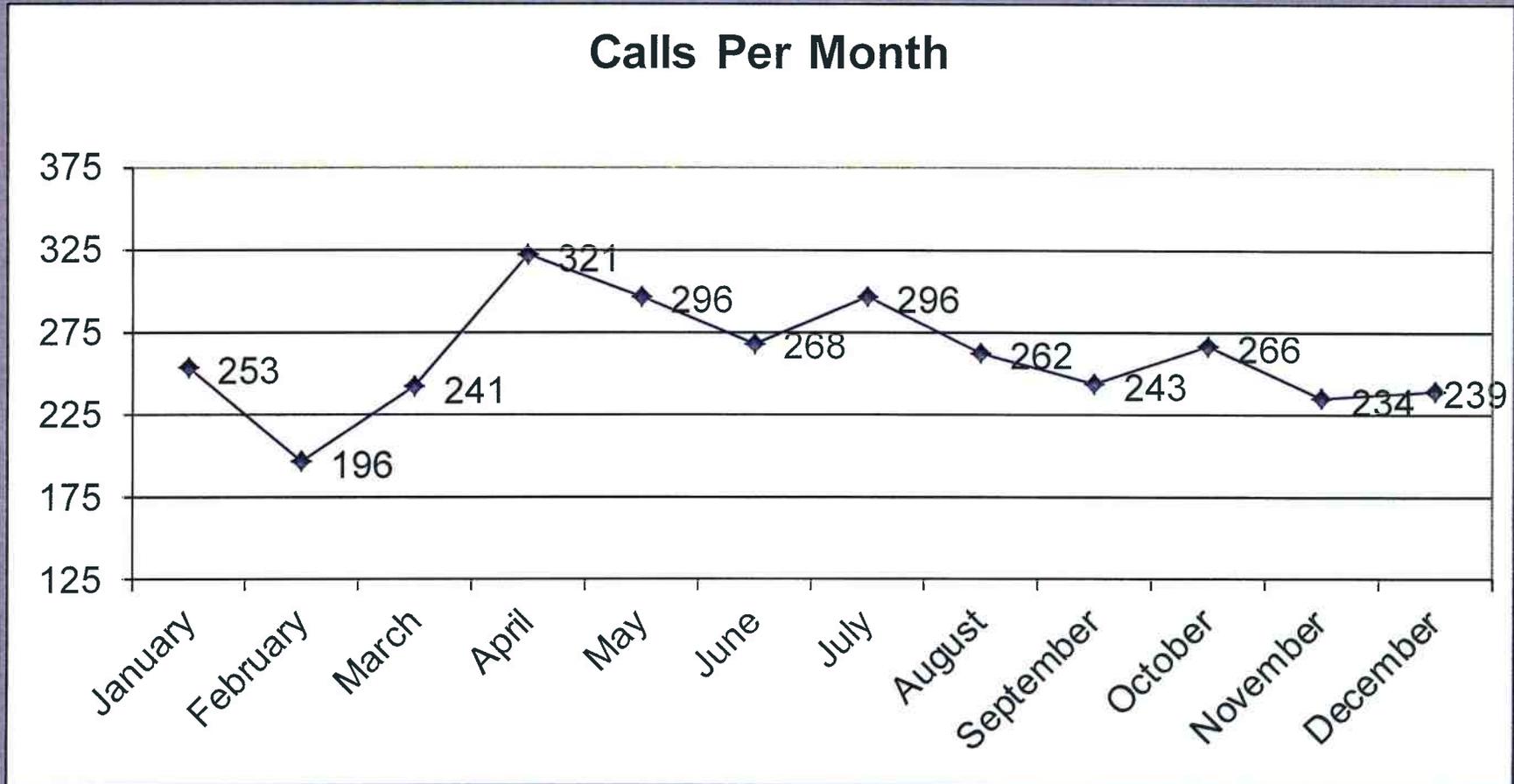
C-SHIFT STA. 3
CAPTAIN
1 DRIVER
2 FF'S

LENOIR FIRE DEPARTMENT
2019 ANNUAL REPORT
Incident Reports

TEN YEAR COMPARISON OF INCIDENT CALLS



LENOIR FIRE DEPARTMENT
2019 ANNUAL REPORT
Calls per month



LENOIR FIRE DEPARTMENT
2019 ANNUAL REPORT
Responses by Districts

3,115 Total Calls for Service in 2019

Station #1 – 2,189 Responses, 70.3% of total calls

Station #2 – 799 Responses, 25.6% of total calls

Station #3 – 127 Responses, 4.1% of total calls

NOTE: Station #3 became operational on August 22, 2019.
A more accurate percentage should be available in 2020.

LENOIR FIRE DEPARTMENT
2019 ANNUAL REPORT
Suppression Report

<u>Fires</u>	2019	2018
Building fires	27	25
Vehicle fires	11	14
Brush or grass fires	66	45
Trash or dumpster fires	16	8
Other fires	9	11
Total Fire calls	129	103
<u>False Alarms</u>		
Alarm system sounded, no fire	86	83
Smoke detector activation due to malfunction	166	138
Sprinkler activation due to malfunction	43	47
False alarm, other & Bomb Threats	173	122
Total suppression calls	468	390

Average Response Time for 2019 Calls – 3:58 Minutes

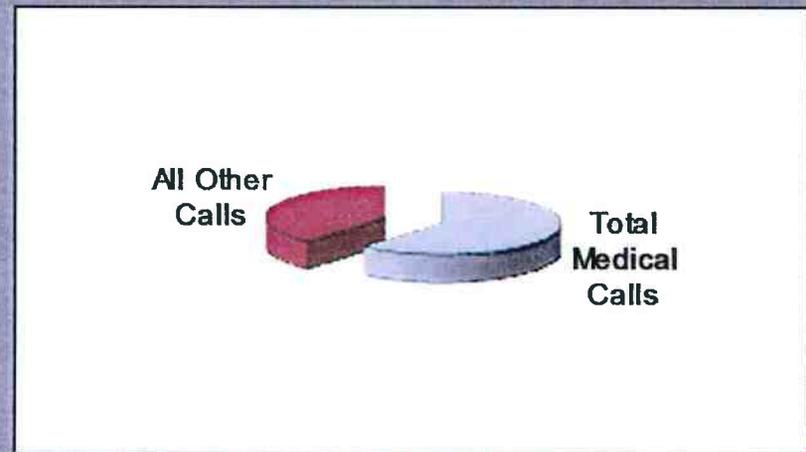
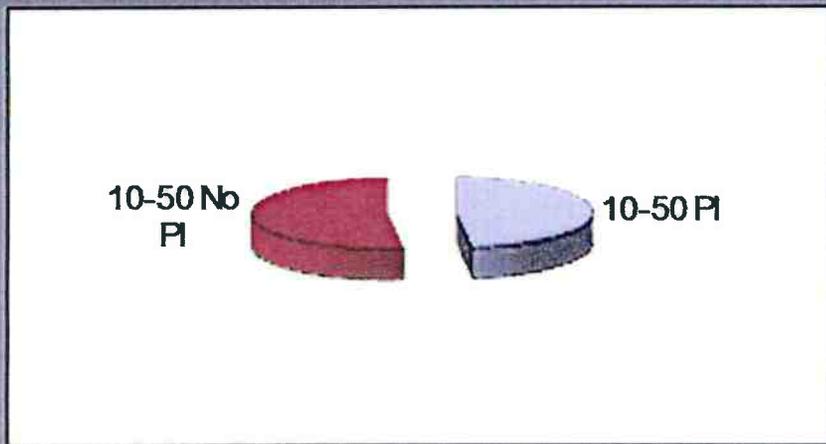
***After we have been dispatched**

LENOIR FIRE DEPARTMENT

2019 ANNUAL REPORT

EMS Calls

	2019	2018
Medical calls	1,641	1,617
EMS Lift Assistance*	75	
Assist Invalid*	6	
10-50 Personal Injury	91	109
10-50 No Personal Injury	98	116
Total Medical Calls	1,911	1,842



LENOIR FIRE DEPARTMENT
2019 ANNUAL REPORT
Miscellaneous Call Report

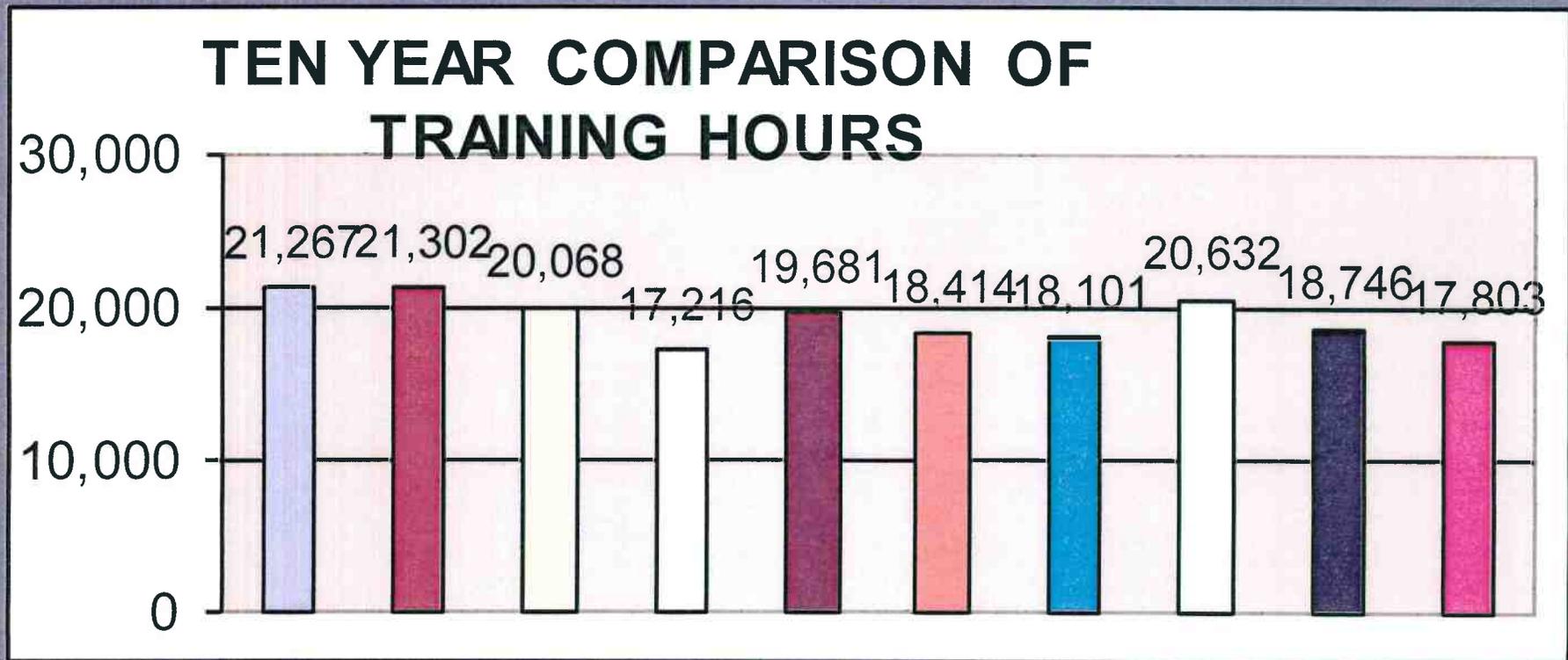
	<u>2019</u>	<u>2018</u>
Hazardous Condition/Materials Spills or Leaks	84	77
Public Service Calls	347	496
Rescue Calls	96	110
Cover Assignment/Stand-by	80	100
Total Miscellaneous Calls	607	783

LENOIR FIRE DEPARTMENT

2019 ANNUAL REPORT

Training

	Hours
Total Training In-House	15,120
Total Training Taken Away From Lenoir Fire Department	2,683
Total Training for 2019	17,803



LENOIR FIRE DEPARTMENT

2019 ANNUAL REPORT

Training, Special Classes Firefighters Attended

- National Fire Academy: Six firefighters attended this school
- Breathing Equipment School (Spring): Two firefighters attended this school
- F.D.I.C.: Six firefighters attended this conference
- Mid-winter Fire Chief's Conference: Seven Officers attended this conference
- Breathing Equipment School (Fall): Two firefighters attended this school
- NCSFA Conference: Five firefighters attended this conference
- NC Fire Prevention School: One firefighter attended this school
- High Angle Rescue Schools (Spring): Two firefighters attended this school
- High Angle Rescue School (Fall): One firefighter attended this school
- NC/SC IAAI Conference: Four firefighters attended this school
- UTV (ATV): All 58 firefighters attended this annual in-house training
- Burke, McDowell, Wilkes, and Cleveland County Schools: Five firefighters attended these regional county schools

LENOIR FIRE DEPARTMENT

2019 ANNUAL REPORT

Fire Prevention and Inspections

Inspections

Occupancy group-A (*Assembly*)

A-1	Assembly with fix setting for Performing arts or motion pictures.	5
A-2	Assembly uses intended for food and drink consumption.	30
A-3	Assembly uses intended for worship.	18
A-4	Assembly uses skating rinks and pools.	1
A-5	Ballfields/Stadium/Bleacher Seating	2

Occupancy Group B (*Business*)

B		61
---	--	----

Occupancy Group E (*Educational*)

E		35
---	--	----

Occupancy Group F (*Factory/Industrial*)

F-1	Factory Industrial with moderate-Hazard Occupancy	15
-----	---	----

Occupancy Group H

H-3	Hazardous	2
-----	-----------	---

Occupancy Group I (*Institutional*)

I-1	Building with more than 16 people on a 24 hours basis with disabilities .	2
-----	---	---

LENOIR FIRE DEPARTMENT
2019 ANNUAL REPORT
Fire Prevention and Inspections

Occupancy Group I (*Institutional*)

I-2 Structures used for medical, nursing or custodial care on a 24 hour basis	16
I-3 Building and structures which are inhabited by 5 or more under restraints.	1

Occupancy Group M (Mercantile) 35

Occupancy Group R (Residential)

R-1 Boarding house or Hotels	8
R-2 Apartment houses	16
R-3 Other Residential	10
R-4 Assisted Living Facilities	3

Occupancy Group U (Tents) 2

Total Inspections 262

LENOIR FIRE DEPARTMENT
2019 ANNUAL REPORT
Fire Prevention and Education

Classes/Presentation	43
Schools	
Number in attendance	1,801
Day Care	
Number in attendance	685
Senior Center	
Number in attendance	270
Church, Public Housing, etc...	
Number in attendance	963
Smoke Detectors Issued	82
CO Detectors Issued	2

LENOIR FIRE DEPARTMENT
2019 ANNUAL REPORT
Fire Loss vs. Save Report

- Total estimated value of property and contents for 2017 pre-fire responses:
\$24,448,710 (**total value**)
- In 2016, Lenoir Fire Department responded to 104 fires. Of these 104 fires, we had 35 structure fires and 15 vehicle fires, an estimated total monetary fire loss of property and contents equaled to:
\$1,130,460 (**fire loss**)
- However of these same 104 fires, we were able to show that we potentially saved, of the same property and contents, an estimated monetary total equaled to:
\$23,318,250 (**saved**)

NC FIRE INSURANCE RATING

- In the state of North Carolina there are 1,500 rated fire districts. 365 of these are rated as municipal fire districts. The City of Lenoir is rated as a **Class 3** fire district. The classification scale rates 1 to be the best protected and 9S to be the worst protected. Including all 1,500 fire districts, only 34 cities have a better fire rating than the City of Lenoir.
- What does this mean to our citizens in dollars and cents? If you live in Caldwell County, outside the City of Lenoir in a 9S fire district, and live in a \$100,000.00 home, you will pay approximately \$565.00 a year for homeowners insurance. If you live in the City of Lenoir which has a **Class 3** fire insurance rating and live in a \$100,000.00 home, you will pay approximately \$401.00 a year for home owners insurance. This translates into a savings of approximately \$164.00 each year. If you live in a \$200,000.00 home in the City of Lenoir you will pay approximately \$669.00 a year for home owners insurance, saving approximately \$251.00 each year.

CITY OF LENOIR
COUNCIL ACTION FORM

- I. Agenda Item:** Consideration Of A Request To Modify The Water Sales With Baton Water Corporation - Agreement Dated January 16, 2018

Background Information: The City of Lenoir has been selling water to Baton Water Corporation, Inc. as a wholesale customer under an agreement that was entered into on January 16, 2018. Baton Water Corp. has approached the City of Lenoir with a request to modify the maximum daily flow of 500,000 GALLONS in the current agreement (based on a 30 day average) to better reflect Baton's current usage and anticipated growth.

In reviewing the current monthly billings for Baton for purchases made under the current agreement, Baton is consistently purchased between 550,000 gallons and 600,000 gallons per day maximum daily flow (on a thirty day average). Baton has requested 1,000,000 gallons per day (on a thirty day average). We have reviewed the other water sales agreements and projected system growth to determine current and future obligations the City must meet to adequately serve all of the City's customers. The City could amend the agreement to provide Baton up to 600,000 gallons per day maximum daily flow (on a 30 day average) to meet their current usage while still maintaining an adequate surplus of the 12 MGD treatment plant capability for the City's future needs. In my opinion, an additional 100,000 gallons per day maximum daily flow is reasonable to consider. However, in considering any amount in excess of 600,000 gallons per day it is my opinion that the City should require Baton to make a capital contribution to the City to secure availability of water beyond 600,000 gallons per day maximum daily flow (on a thirty day average).

A modification to the maximum daily flow would result in a change to Paragraph 2 and Paragraph 6 of the agreement from 500,000 gallons to 600,000 gallons. Copies of the sections from the agreement are attached.

- II. Staff Recommendation:** Staff recommends City Council approval of the amendment to the water sales agreement with Baton Water Corporation, Inc. to provide up to 600,000 gallons of drinking water per day maximum daily flow at the applicable wholesale water rate.

III. Reviewed by:

City Attorney: _____

Finance Director: _____

Public Works/Public Utilities Director: _____

City of Lenoir – Baton Water Corporation Water Sales Agreement

(Prepared for City Council Meeting on March 17, 2020)

Agreement Approved by Lenoir City Council on January 16, 2018

Current Item 2, Page 2 -

Lenoir agrees to provide and sell to Baton up to 500,000 GALLONS (FIVE HUNDRED THOUSAND GALLONS) of potable water maximum daily flow, measured through metered connections which are located, prescribed and maintained by Lenoir, at or above minimum State of North Carolina and Federal Standards for Public Water. Such maximum daily flow shall be based on a thirty (30) day average daily flow. Such maximum daily flow to be reviewed every five (5) years.

Proposed Item 2, Page 2 -

Lenoir agrees to provide and sell to Baton up to 600,000 GALLONS (SIX HUNDRED THOUSAND GALLONS) of potable water maximum daily flow, measured through metered connections which are located, prescribed and maintained by Lenoir, at or above minimum State of North Carolina and Federal Standards for Public Water. Such maximum daily flow shall be based on a thirty (30) day average daily flow. Such maximum daily flow to be reviewed every five (5) years.

Current Item 6, Page 2 -

The initial Base Water Rate charged to Baton for water purchases shall be \$2.17 per one thousand gallons of water provided by Lenoir to Baton. In the event the average daily flow during any monthly billing period exceeds the maximum daily flow of 500,000 gallons, the following surcharges (The “Surcharge Rate”) will apply to the overage:

- (500,001) to (550,000) gallons – \$2.39/1000 gallons
- (550,001) to (600,000) gallons – \$2.63/1000 gallons
- (600,001) gallons or more – \$2.89/1000 gallons

Over the term of this agreement or any extension thereof, Lenoir may, at its sole discretion, increase the Base Water Rate and /or the Surcharge Rate as it deems necessary. Lenoir shall not increase said rates to Baton more than one time during any fiscal year of twelve (12) months ending on June 30 of each year. Lenoir agrees to notify Baton in writing of planned increases with an explanation of the factors used to determine set increase in rates at least ninety (90) days prior to June 30 of any fiscal year, with rate increases that are to become effective on July 1 of that same year.

Proposed Item 6, Page 2 –

The initial Base Water Rate charged to Baton for water purchases shall be \$2.22 per one thousand gallons of water provided by Lenoir to Baton. In the event the average daily flow during any monthly billing period exceeds the maximum daily flow of 600,000 gallons, the following surcharges (The “Surcharge Rate”) will apply to the overage:

(600,001) to (650,000) gallons – \$2.45/1000 gallons
(650,001) to (700,000) gallons – \$2.70/1000 gallons
(700,001) gallons or more – \$2.97/1000 gallon

Over the term of this agreement or any extension thereof, Lenoir may, at its sole discretion, increase the Base Water Rate and /or the Surcharge Rate as it deems necessary. Lenoir shall not increase said rates to Baton more than one time during any fiscal year of twelve (12) months ending on June 30 of each year. Lenoir agrees to notify Baton in writing of planned increases with an explanation of the factors used to determine set increase in rates at least ninety (90) days prior to June 30 of any fiscal year, with rate increases that are to become effective on July 1 of that same year.

STATE OF NORTH CAROLINA
 COUNTY OF CALDWELL

AGREEMENT TO PURCHASE WATER

THIS CONTRACT is made and entered into this 16th day of January, 2018 by and between the City of Lenoir, a North Carolina Municipal Corporation hereinafter referred to as "Lenoir" and the Baton Water Corporation, hereinafter referred to as "Baton".

WITNESSETH

WHEREAS, Lenoir and Baton, both having the power and authority to enter into this agreement, and the signatories hereto have been authorized to execute this document on behalf of the Lenoir City Council and Baton; and

WHEREAS, Lenoir currently owns and operates a water treatment and distribution system, and is engaged in the enterprise of managing, operating, and maintaining said system and selling potable water to the public within its service area; and

WHEREAS, Baton owns and operates a water distribution system, and is also engaged in the enterprise of managing, operating, and maintaining the system and selling potable water to the public within its service area; and

WHEREAS, Lenoir and Baton mutually desire to enter into an agreement to sell and purchase water in accordance with the terms and provisions contained herein; and

WHEREAS, Lenoir has determined that it has the capability to sell water to Baton throughout the term of this agreement without impairing services to the users connected to its water system; and

WHEREAS, Lenoir and Baton each has or holds and will continue to have or hold throughout the term of this agreement, all appropriate permits necessary to effectuate their respective responsibilities under this agreement or will use their best efforts to obtain such permits;

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

1. This agreement shall commence on the 16th day of Jan., 2018, and unless earlier terminated in accordance with the terms herein, shall expire on

the 15th day of Jan., 2033 (Hereinafter referred to as the "Water Service Period".)

2. Lenoir agrees to provide and sell to Baton up to 500,000 GALLONS (FIVE HUNDRED THOUSAND GALLONS) of potable water maximum daily flow, measured through metered connections which are located, prescribed and maintained by Lenoir, at or above minimum State of North Carolina and Federal Standards for Public Water. Such maximum daily flow shall be based on a thirty (30) day average daily flow. Such maximum daily flow to be reviewed every five (5) years.
3. Baton agrees to use best efforts not to exceed the above maximum daily flow provided for in Section 2 of this agreement, unless Lenoir expressly agrees that said maximum daily purchase(s) may exceed 500,000 gallons for a specified period of time.
4. The water purchased by Baton from Lenoir shall be transmitted on a continuous basis unless there is an unforeseen break, outage or interruption of Lenoir's water supply or water distribution system. In which case, Lenoir shall notify Baton of the circumstances and provide timely updates so as to keep Baton informed of the status of repairs or remedy(ies) for any such interruption.
5. Baton agrees to timely pay Lenoir for water purchased on a monthly basis, in accordance with invoices, which shall be based upon meter readings conducted by Lenoir at all metered connections between the Lenoir and Baton water systems. Lenoir agrees to read said water meters monthly and deliver to Baton a written report summarizing said meter readings within fifteen (15) working days of each monthly meter reading. Lenoir will submit to Baton a written invoice based on such meter readings by the 20th day of the following month. Baton agrees to pay Lenoir the amounts of each such monthly invoice within 30 calendar days of the date of each invoice.
6. The initial Base Water Rate charged to Baton for water purchases shall be \$2.17 per one thousand gallons of water provided by Lenoir to Baton. In the event the average daily flow during any monthly billing period exceeds the maximum daily flow of 500,000 gallons, the following surcharges (The "Surcharge Rate") will apply to the overage:

(500,001) to (550,000) gallons – \$2.39/1000 gallons
 (550,001) to (600,000) gallons – \$2.63/1000 gallons
 (600,001) gallons or more – \$2.89/1000 gallons

Over the term of this agreement or any extension thereof, Lenoir may, at its sole discretion, increase the Base Water Rate and /or the Surcharge Rate as it deems necessary. Lenoir shall not increase said rates to Baton more than one time during any fiscal year of twelve (12) months ending on June 30 of each year. Lenoir agrees to notify Baton in writing of planned increases with an explanation of the factors used to determine set increase in rates at least ninety (90) days prior to June 30 of any fiscal year, with rate increases that are to become effective on July 1 of that same year.

7. Lenoir agrees to maintain /repair /replace existing Lenoir water meters at the connection point(s) between the Lenoir and the Baton water system as may be necessary to accurately measure the flow of water through the meter(s) to Baton under this agreement.
8. Baton shall to provide a minimum of six-months advance written notice to Lenoir prior to the expiration of this agreement or subsequent extensions of this agreement if Baton desires to extend the terms of this agreement. Upon timely receipt of such notice of Baton desire to extend this agreement, Lenoir shall, within sixty (60) days after having received such notification, notify Baton in writing of its agreement to such extension of this agreement.
9. In the event that Lenoir elects not to extend this agreement, Lenoir shall continue to provide and sell water to Baton, under the same terms of the agreement, until Baton has had sufficient opportunity to secure an alternate source(s) of potable water; however, Lenoir shall not be bound to continue to provide and sell water to Baton beyond a period of twenty-four (24) months past the date of its written notification to Baton of its intention not to extend this agreement.
10. Baton agrees that Baton and its water customers shall, during the period of this agreement, abide by and adhere to all water use policies, restrictions, and ordinances adopted now or subsequently adopted by Lenoir, of which they are subsequently notified, which impose water use restrictions, water conservation requirements, moratoriums, and other such limitations on the use of water during times of emergency or drought conditions or during other situations which for public health or financial reasons justify said policies, restrictions, and ordinances.
11. Lenoir shall promptly notify Baton upon becoming aware of any activity, problem or circumstance within the Lenoir system that might present a danger to the health, safety and welfare of Baton water users. Further, Lenoir shall take appropriate action to remedy such activity, problem or circumstance within the Lenoir system and to avoid or minimize disruptions in service.
12. In the event of damage or destruction of Lenoir's key water facilities or any emergency which, in the reasonable judgment of Lenoir, is likely to result in material loss or damage to the system or constitute a material threat to human

health or safety, Lenoir may suspend operation of its water system, after thirty (30) days written notice to Baton of such actions unless in the event of an emergency. Lenoir's response to emergencies and other such unusual circumstances shall be in accordance with applicable policies, regulations, laws and requirements and with such personnel and equipment as necessary to maintain or restore the operations of its water system in a timely manner with the least possible disruption or inconvenience to the users connected to both the Lenoir and Baton water systems.

13. Baton shall not resell, give away, transfer or otherwise dispose of water purchased from Lenoir to third-party water systems without the prior written permission of Lenoir.
14. Baton agrees to permit Lenoir to pass water through Baton water distribution system to destinations and/or to other third-party water systems beyond Baton system, provided that Lenoir:
 - a) Submits a written notice to Baton outlining the agreed-upon purposes, quantities and conditions of said pass through of water.
 - b) That said request does not significantly diminish Baton capacity to provide services to its water customers.
 - c) Lenoir subsequently pays to Baton a Pass Through charge of \$0.03 cents per 1000 gallons of pass through water. Baton may request a modification of such charge by with ninety (90) days advance written notice during the period of this agreement.
 - d) Lenoir agrees to install metering equipment to measure and determine the quantities or such Pass Through water passing through Baton water system and report monthly to Baton such amounts and meter readings.
15. Lenoir and Baton both represent that no litigation is pending or threatened against either party which would impair their ability to perform their respective duties and obligations under the terms, covenants and provisions of this agreement.
16. Resolution of Disputes
 The Parties agree that should any disputes arise under this agreement, including but not limited to disputes pertaining to services, rates, or invoices, said disputes shall be resolved, if at all possible, through good faith negotiations between the parties. It is the intent of Lenoir and Baton that pursuit of legal action shall be a remedy of last resort and that a negotiated resolution, including the use of outside experts or mediators, shall be the preferred means of resolving disputes hereunder.

17. Default and Termination

This agreement may be terminated prior to its stated expiration date by Lenoir or Baton in accordance with the terms and conditions set forth below.

A. Termination for cause by Lenoir. Upon the happening of any of the following events of default by Baton, Lenoir shall have the right to terminate this agreement:

- a) The failure of Baton to perform or observe and initiate a cure after thirty (30) days advance written notice any of its material covenants, agreements, obligations and/or duties created by this agreement.
- b) The failure of Baton to make any payment required pursuant to the terms of this agreement within sixty (60) days of its receipt of notice from Lenoir that any such payment is overdue.

B. Termination for cause by Baton. Upon the happening of any of the following events of default by Lenoir, Baton shall have the right to terminate this agreement:

- a) The failure of Lenoir to perform or observe any of its material covenants, agreements, obligations and/or duties created by this agreement.
- b) The failure of Lenoir to provide Baton with the amounts of water in accordance with the terms of this agreement, or to provide adequate water quality for Baton within standards established by the North Carolina Department of Environmental Quality or any other governmental agency with designated jurisdiction over said water quality parameters as provided in this agreement.

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

19. **NOTICES:** For the purposes of this agreement, all notices required shall be deemed to have been properly served and shall be only served when posted by Certified United States Mail, Postage Prepaid, Return Receipt Requested, Addressed to the Party to whom directed at the address herein set forth or at such other address as may from time to time be designated in writing by either party:

To Lenoir:

City of Lenoir
 Scott E. Hildebran, City Manager
 PO Box 958
 Lenoir, North Carolina 28645

To Baton:

Baton Water Corporation

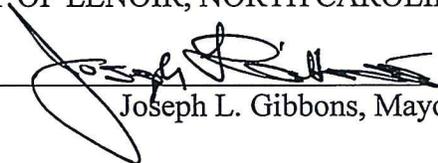
20. This agreement embodies the entire agreement between the parties in connection with this transaction, and there are no oral or parole agreements, representations or inducements existing between the parties relating to this transaction, which are not expressly set forth herein. This agreement may not be modified except by a written agreement signed by all parties to this agreement. Neither party shall be entitled to sell, convey or otherwise alienate the rights and obligations created herein without the prior written permission of the other party to this agreement. This agreement is non-assignable.
21. Nothing contained herein shall be construed to place the parties in the relationship of partners or joint venturers, and neither party shall have the power to obligate or bind the other party in any manner whatsoever. No joint agency is established by this Agreement pursuant to Article 20, Part 1 of Chapter 160A of the North Carolina General Statutes, by other similar statutory authority authorizing interlocal cooperation between units of local government, or otherwise.
22. No written waiver by any party to this agreement at any time of any breach of any other provision of this agreement shall be deemed a waiver of a breach of any provision herein or consent to any subsequent breach of the same or any other provision.
23. The captions and article numbers appearing in this agreement are inserted only as a matter of convenience and do not define, limit, construe or describe the scope of such paragraphs or articles of this agreement or in any way affect this agreement.
24. This agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina.
25. Words of any gender used in this agreement shall be held to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires.
26. If any provision under this agreement or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of this agreement or its application that can be given effect without the invalid provision or application.

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

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

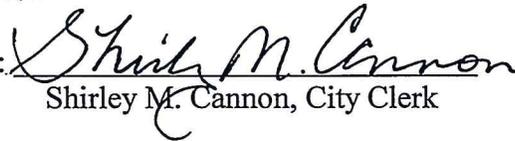
IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

CITY OF LENOIR, NORTH CAROLINA

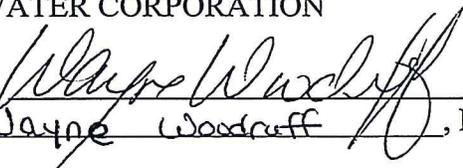
By: 
Joseph L. Gibbons, Mayor

(SEAL)

Attest:

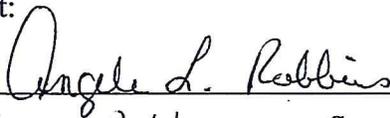
By: 
Shirley M. Cannon, City Clerk

BATON WATER CORPORATION

By: 
Wayne Woodruff, Board Chair

(SEAL)

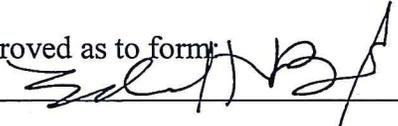
Attest:

By: 
Angela L. Robbins, Secretary

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

By: 
_____, Finance Officer
City of Lenoir, North Carolina

By: 
Tanya Crawley Yearick, Finance Director
Baton Water Corporation

Approved as to form:
By: 
Edward H. Blair, Jr., City Attorney
City of Lenoir, North Carolina

Approved as to form:
By: _____
_____, Attorney
Baton Water Corporation

**CITY OF LENOIR
COUNCIL ACTION FORM**

I. Agenda Item: Service Agreement; Engineering Services: Staff recommends approval to enter into an Agreement for Engineering Services, *Task Order Edition* (Master Agreement), between the City of Lenoir and Mattern & Craig, Inc. for traffic and transportation consultant services; *and* Execution of Task Order No. 1 between the City of Lenoir and Mattern & Craig, Inc. for on-call services related to traffic and transportation consultant services

II. Background Information: The City of Lenoir Public Works Department is often engaged in roadway and traffic improvement projects, including street design and construction, sidewalk construction, greenway construction, and right-of-way acquisition associated with any of these types of projects. Given the current goals of the department, including the Morganton Boulevard greenway crossing and the potential two-way traffic conversion of Harper and West Avenue, staff felt that the City needed an on-call consultant that specializes in transportation and traffic-related projects to expedite design phases of these types of projects. Mattern & Craig has demonstrated expertise in these fields, has expressed interest in filling this role for the City, and has submitted a portfolio of relevant, comparable projects that include coordination with NCDOT, roadway, sidewalk, and greenway design, and construction administration.

The nature of this agreement will allow the City of Lenoir to contract with Mattern & Craig for on-call engineering services, with hourly billing rates as provided in the current rate schedule. Additionally, larger project scope and deliverables can be clarified in subsequent task orders to be billed hourly or on a lump sum, to-be-determined basis. This arrangement benefits the City by expediting the design process and also allows us the opportunity to plan for expenses on more complex projects through execution of additional task orders with clearly defined terms.

III. Staff Recommendation: Staff recommends execution of the Agreement for Engineering Services, Task Order Edition, with Mattern & Craig, Inc.

Staff also recommends execution of Task Order No. 1 for Mattern & Craig, Inc. to provide on-call traffic and traffic and transportation engineering services in accordance with terms contained in the Master Agreement.

IV. Reviewed by:

V.

City Attorney: _____

Finance Director: _____

Public Works/Public Utilities Director: _____



This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated project and the controlling laws and regulations.

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

TASK ORDER EDITION

Prepared by



Issued and Published Jointly by



This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

TASK ORDER EDITION

THIS IS AN AGREEMENT effective as of March 17, 2020 (“Effective Date of the Agreement”) between
City of Lenoir (“Owner”) and
Mattern & Craig, Inc. (“Engineer”).

Other terms used in this Agreement are defined in Article 7.

From time to time Owner may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer’s services will be detailed in a duly executed Task Order for each Specific Project. The general format of a Task Order is shown in Attachment 1 to this Agreement. Each Task Order will indicate the specific services to be performed and deliverables to be provided.
- B. This Agreement is not a commitment by Owner to Engineer to issue any Task Orders.
- C. Engineer shall not be obligated to perform any prospective Task Order unless and until Owner and Engineer agree as to the particulars of the Specific Project, including the scope of Engineer's services, time for performance, Engineer's compensation, and all other appropriate matters.

1.02 *Task Order Procedure*

- A. Owner and Engineer shall agree on the scope, time for performance, and basis of compensation for each Task Order. With respect to the scope of Engineer’s services, each specific Task Order shall either (1) be accompanied by and incorporate a customized Exhibit A, “Engineer’s Services for Task Order,” prepared for the Specific Project, (2) state the scope of services in the Task Order document itself, or (3) incorporate by reference all or portions of Exhibit A, “Engineer’s Services for Task Order,” as attached to this Agreement. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.
- B. Engineer will commence performance as set forth in the Task Order.
- C. Engineer shall provide, or cause to be provided, the services set forth in the Task Order.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth in this Agreement; in Exhibit B, "Owner's Responsibilities"; and in each Task Order.
- B. Owner shall pay Engineer as set forth in each Task Order, pursuant to the applicable terms of Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement; such responsibility extends to requirements, instructions, programs, reports, data, and other information furnished by Owner pursuant to any Task Order. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of: (1) any development that affects the scope or time of performance of Engineer’s services; (2) the presence at the Site of any Constituent of Concern; or (3) any relevant, material defect or nonconformance in Engineer’s services, the Work, the performance of any Constructor, or in Owner’s performance of its responsibilities under this Agreement.

ARTICLE 3 – TERM; TIMES FOR RENDERING SERVICES

3.01 *Term*

- A. This Agreement shall be effective and applicable to Task Orders issued hereunder for Two (2) years from the Effective Date of the Agreement.
- B. The parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term.

3.02 *Times for Rendering Services*

- A. The Effective Date of the Task Order and the times for completing services or providing deliverables will be stated in each Task Order. Engineer is authorized to begin rendering services under a Task Order as of the Effective Date of the Task Order.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer’s services is impaired, or Engineer’s services are delayed or suspended, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Specific Project, or Engineer’s services, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.

- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.
- F. With respect to each Task Order, the number of Construction Contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established shall be identified in the Task Order. If the Work designed or specified by Engineer under a Task Order is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), then the Task Order will state the schedule for performance of Engineer's services in order to sequence and properly coordinate such services as are applicable to the Work under the Construction Contracts. If the Task Order does not address such sequencing and coordination, then Owner and Engineer shall jointly develop a schedule for sequencing and coordination of services prior to commencement of final design services; this schedule is to be prepared and included in or become an amendment to the authorizing Task Order whether or not the work under such contracts is to proceed concurrently.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices, the terms of Exhibit C, and the specific Task Order. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 2. Engineer may, after giving seven days written notice to Owner, suspend services under any Task Order issued until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date of a Task Order any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under the Task Order, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse

Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C and the specific Task Order.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit for a Specific Project is established between Owner and Engineer in a Task Order, then such Construction Cost limit and Engineer's rights and responsibilities with respect thereto will be governed by Exhibit F, "Construction Cost Limit," which shall be attached to and incorporated in the Task Order. If no Construction Cost limit is established in a Task Order, then Exhibit F does not apply.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs for a Specific Project shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

- E. *Compliance with Laws and Regulations, and Policies and Procedures*
1. Engineer and Owner shall comply with applicable Laws and Regulations.
 2. Engineer shall comply with the policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 3. Each Task Order is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date of the Task Order. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date of the Task Order to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of the Task Order of Owner-provided written policies and procedures;
 - c. changes after the Effective Date of the Task Order to Owner-provided policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain within its services for that Specific Project. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to the Engineer in any way contingent upon Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or in the specific Task Order.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or for enforcement of construction insurance or surety bonding requirements.

- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at a Site, Engineer, its Consultant, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. For each design performed or furnished, Engineer shall be responsible only for those Construction Phase services that have been expressly required of Engineer in the authorizing Task Order. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against Engineer that may be in any way connected to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in the authorizing Task Order.

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Specific Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under the specific Task Order, then Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Specific Project. Engineer grants Owner a limited license to use the Documents on the Specific Project, extensions of the Specific Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and its Consultants from all claims, damages, losses, and expenses, including attorneys' fees,

arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Specific Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Specific Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Specific Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement or a Task Order does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Commencing with the Effective Date of the Agreement, Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer that is applicable to a Specific Project.
- B. Commencing with the Effective Date of the Agreement, Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability insurance policies carried by Owner, which are applicable to the Specific Project.
- C. Owner shall require Contractors to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Specific Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished promptly after the Effective Date of the Agreement and at renewals thereafter during the life of this Agreement.
- E. All policies of property insurance relating to a Specific Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting

from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Specific Project. Owner and Engineer shall take appropriate measures in other Specific Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.

- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. Under the terms of any Task Order, or after commencement of performance of a Task Order, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner.

6.06 *Suspension and Termination*

A. *Suspension*

- 1. By Owner: Owner may suspend a Task Order for up to 90 days upon seven days written notice to Engineer.
- 2. By Engineer: Engineer may suspend services under a Task Order (a) if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or (b) in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.A.4.
- 3. A suspension on a specific Task Order, whether by Owner or Engineer, shall not affect the duty of the two parties to proceed with their obligations under other Task Orders.

B. *Termination for Cause—Task Order:* The obligation to provide further services under a specific Task Order may be terminated for cause:

- 1. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of the specific Task Order or this Agreement, whose terms govern the specific Task Order, through no fault of the terminating party.
- 2. By Engineer:
 - a. upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - b. upon seven days written notice if the Engineer's services under a Task Order are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.A.5.
 - c. Engineer shall have no liability to Owner on account of such termination.
 - d. Notwithstanding the foregoing, neither this Agreement nor the Task Order will terminate under Paragraph 6.06.B.1 if the party receiving such notice begins, within seven days of receipt of such

notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

- C. *Termination for Cause—Agreement:* In the case of a default by Owner in its obligation to pay Engineer for its services under more than one specific Task Order, Engineer may request immediate payment of all amounts invoiced on other Task Orders, and may invoice Owner for continued services on such Task Orders on a two-week billing cycle, with payment due within one week of an invoice. If Owner fails to make such payments, then upon seven days notice Engineer may terminate this Agreement, including Engineer’s services under all Task Orders.
- D. *Termination for Convenience by Owner:* Owner may terminate a Task Order or this Agreement for Owner’s convenience, effective upon Engineer’s receipt of notice from Owner.
- E. *Effective Date of Termination:* The terminating party under Paragraphs 6.06.B, C, and D may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Task Order materials in orderly files.
- F. *Payments Upon Termination:*
 - 1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with the specific Task Order and this Agreement, and for all expenses incurred through the effective date of termination, to the extent that the specific Task Order (or Task Orders) allows reimbursement for such expenses. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner’s sole risk, subject to the provisions of Paragraph 6.03.
 - 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.F.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer’s Consultants, and other related close-out costs, using the basis of compensation for Additional Services, as indicated in the specific Task Order.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Specific Project is located.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors,

executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated or 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.
- C. Unless expressly provided otherwise in this Agreement:
 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 3. The Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in any Construction Contract Documents prepared for any Specific Project under this Agreement.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. With respect to each specific Task Order, Specific Project, and Site (unless indicated otherwise in a specific Task Order):
 1. Owner represents to Engineer that as of the Effective Date of the Task Order, to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
 2. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (a) Owner and (b) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
 3. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.

4. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, immediately suspend performance of services on the portion of the Specific Project affected thereby until such portion of the Specific Project is no longer affected.
5. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under the specific Task Order, then the Engineer shall have the option of (a) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (b) terminating the specific Task Order for cause on seven days notice.
6. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under a specific Task Order or this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to this Agreement, any Task Order, or any Specific Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, Limitations of Liability.**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys' fees) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under any Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this Paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or

damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

- F. *Mutual Waiver*: To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement, any Task Order, or a Specific Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services under each Task Order, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under the Task Order. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices*: Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival*: All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability*: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims*: To the fullest extent permitted by Laws and Regulations, all causes of action arising under a Specific Project shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion of such Specific Project.
- F. *Applicability to Task Orders*: The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.
- G. *Non-Exclusive Agreement*: Nothing herein shall establish an exclusive relationship between Owner and Engineer. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with other project owners for the same or different services contemplated hereunder.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits or Task Order, or in the following definitions:
1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 2. *Additional Services*—Services to be performed for or furnished to Owner by Engineer in accordance with a Task Order, but which are not included in Basic Services for that Task Order.
 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Article 8.
 4. *Application for Payment*—The form acceptable to Engineer which is to be used by a Contractor in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with a specific Task Order, as specified in the Task Order (but not including Additional Services performed or furnished pursuant to an amendment to the specific Task Order).
 6. *Change Order*—A document which is signed by a Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
 7. *Change Proposal*—A written request by a Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
 8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
 9. *Construction Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.

10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The numbers of days or the dates by which a Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion, and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of an entire Specific Project designed or specified by or for Engineer under this Agreement and the specific Task Order, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damage to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with a Specific Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Specific Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and their employees, agents, and representatives.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer's independent professional associates, consultants, subcontractors, or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by a Contractor.
19. *Effective Date of the Agreement*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
20. *Effective Date of the Task Order*—The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.
21. *Engineer*—The individual or entity named as such in this Agreement.

22. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
24. *Owner*—The individual or entity with which Engineer has entered into this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning Specific Projects.
25. *Record Drawings*—Drawings depicting the completed Specific Project, or a specific portion of the completed Specific Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Resident Project Representative*—The authorized representative, if any, of Engineer assigned to assist Engineer at the Site of a Specific Project during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of the RPR. The duties and responsibilities of the RPR will be as set forth in each Task Order.
27. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
28. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
29. *Site*—Lands or areas indicated in the Construction Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for use of a Contractor.
30. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
31. *Specific Project*—The total specific undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under a specific Task Order are a part.
32. *Subcontractor*—An individual or entity having a direct contract with a Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently

complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with a Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Task Order*—A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.
36. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Specific Project, including Construction Cost and all other Specific Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, the total costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Specific Project, and the cost of other services to be provided by others to Owner.
37. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents for a Specific Project. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning; all as required by such Construction Contract Documents.
38. *Work Change Directive*—A written directive to a Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Suggested Form of Task Order*

- A. The Suggested Form of Task Order is attached as Attachment 1, and shall be used as the basis for preparing a specific Task Order for each Specific Project under this Agreement.

8.02 *Exhibits Included*:

- A. Exhibit A, Engineer’s Services for Task Order. Services, tasks, and terms in Exhibit A as included with this Agreement are for reference in preparing the scope of services for specific Task Orders, and are contractually binding only to the extent expressly incorporated in a specific Task Order.
- B. Exhibit B, Owner’s Responsibilities. This Exhibit applies to all Task Orders.

- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses. The terms of Exhibit C that will be applicable to and govern compensation under a specific Task Order will be determined by the selection of compensation methods made in Paragraph 6, "Payments to Engineer," of the specific Task Order.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. This Exhibit is not contractually binding except when expressly incorporated in a specific Task Order.
- E. Exhibit E, Notice of Acceptability of Work. Engineer shall use this Notice of Acceptability of Work form at the conclusion of construction on a Specific Project if (1) the form is expressly incorporated by reference in a specific Task Order, and Engineer's scope of services in the specific Task Order includes providing such a notice to Owner and Contractor, and (2) the Work is in fact acceptable pursuant to applicable requirements, subject to the terms of the notice.
- F. Exhibit F, Construction Cost Limit. This Exhibit is contractually binding only with respect to those specific Task Orders that (1) expressly incorporate Exhibit F by reference in the Task Order, Paragraph 2, "Services of Engineer," and (2) expressly state a specific Construction Cost Limit and contingency for the Specific Project in Paragraph 2, "Services of Engineer," of the specific Task Order. **NOT USED**
- G. Exhibit G, Insurance. This Exhibit is applicable to all Task Orders.
- H. Exhibit H, Dispute Resolution. This Exhibit is applicable to all Task Orders.
- I. Exhibit I, Limitations of Liability. This Exhibit is applicable to all Task Orders.
- J. Exhibit J, Special Provisions. This Exhibit is applicable to all Task Orders.
- K. Exhibit K, Amendment to Task Order. Owner and Engineer may use this form during a Specific Project to modify the specific Task Order.

8.03 *Total Agreement*

- A. This Agreement (together with the Exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties.
- B. An executed Task Order under this Agreement (including any incorporated exhibits or attachments) constitutes the entire agreement between Owner and Engineer with respect to the Specific Project, and supersedes all prior written or oral understandings. Such a Task Order may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments to such a Task Order should be based whenever possible on the format of Exhibit K to this Agreement.

8.04 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party that the individual represents. Each Task Order shall likewise designate representatives of the two parties with respect to that Task Order.

8.05 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on Page 1.

OWNER: City of Lenoir

ENGINEER: Mattern & Craig, Inc.

By: _____

By: _____

Print Name: Scott Hildebran

Print Name: Randy W. Beckner, PE

Title: City Manager

Title: Principal – Chairman of the Board

Date Signed: March 17, 2020

Date Signed: March 17, 2020

Firm's Certificate No. : C-1154

State of : North Carolina

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

City of Lenoir

Mattern & Craig

PO Box 958

231 16th Avenue NE

Lenoir, NC 28645

Hickory, North Carolina 28601

DESIGNATED REPRESENTATIVE
(Paragraph 8.04):

DESIGNATED REPRESENTATIVE
(Paragraph 8.04):

Jared Wright

Brian Newman, PE

Title: Director of Public Works

Title: Office Manager

Phone Number: (828) 757-2183

Phone Number: (828) 838-4139

E-Mail Address: jwright@ci.lenoir.nc.us

E-Mail Address: brnewman@matternandcraig.com

This is Task Order No. 001
consisting of 2 pages.

Task Order

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated **March 17, 2020** ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- a. Effective Date of Task Order: **March 17, 2020**
- b. Owner: **City of Lenoir**
- c. Engineer: **Mattern & Craig, Inc.**
- d. Specific Project (title): **General Engineering Services (GES)**
- e. Specific Project (description): **Transportation & Traffic Engineering Services On-Call**

2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are:

Provide engineering assistance to the Planning & Public Works Departments for Transportation & Traffic Engineering related services as requested. These services shall be defined by City staff on an hourly basis to be reported and invoiced monthly in accordance with the Fee Schedule attached as Exhibit C. Or, by lump sum as defined by subsequent Task Order defining a specific project scope of service and contract fee amount.

- B. Other Services

Engineer shall also provide the following services, if requested in conjunction with projects identified under this GES contract: General Civil Engineering, Stormwater & Drainage, Field Survey, and Structural Engineering.

- C. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

3. Additional Services – *Not Used*

4. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 of the Agreement.

5. Task Order Schedule – *Not Used*

6. Payments to Engineer

- A. Owner shall pay Engineer for hourly services rendered under this Task Order per Fee Schedule attached as Exhibit A.

7. Consultants retained as of the Effective Date of the Task Order: Mattern & Craig, Inc.

8. Other Modifications to Agreement and Exhibits: *None*

9. Attachments: *None*

10. Other Documents Incorporated by Reference: *None*

11. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is **March 17, 2020**.

OWNER: City of Lenoir

ENGINEER: Mattern & Craig, Inc.

By: _____

By: _____

Print Name: Scott Hildebran

Print Name: Randy W. Beckner, PE

Title: City Manager

Title: Principal

Date Signed: March 17, 2020

Date Signed: March 17, 2020

Firm's Certificate No. : C-1154

State of : North Carolina

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

City of Lenoir

Mattern & Craig

PO Box 958

231 16th Avenue NE

Lenoir, NC 28645

Hickory, North Carolina 28601

DESIGNATED REPRESENTATIVE
(Paragraph 8.04):

DESIGNATED REPRESENTATIVE
(Paragraph 8.04):

Jared Wright

Brian Newman, PE

Title: Director of Public Works

Title: Office Manager

Phone Number: (828) 757-2183

Phone Number: (828) 838-4139

E-Mail Address: jwright@ci.lenoir.nc.us

E-Mail Address: brnewman@matternandcraig.com

Task Order Form

EJCDC® E-505, Agreement Between Owner and Engineer for Professional Services – Task Order Edition.
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and American Society of Civil Engineers. All rights reserved.

This is **EXHIBIT A**, consisting of **1** pages, referred to in and part of the **Task Order No. 001** dated **March 17, 2020**.

Engineer's Services for Task Order

PART 1—BASIC SERVICES

A1.01 *Study and Report Phase Services*

- A. As Basic Services, Engineer shall perform the following as directed:
1. Consult with Owner to define and clarify Owner's requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
 - a. If Owner has already identified one or more potential solutions to meet its Specific Project requirements, then proceed with the study and evaluation of such potential solutions.
 - b. If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.
 - c. If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify three alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.
 2. Identify potential solution(s) to meet Owner's Specific Project requirements, as needed.
 3. Study and evaluate the potential solution(s) to meet Owner's Specific Project requirements.
 4. Visit the Site, or potential Specific Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
 5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Specific Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Specific Project requirements, and preparation of a related report.
 6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Specific Project.
 7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Specific Project to be designed or specified by Engineer, including but

- not limited to mitigating measures identified in an environmental assessment for the Specific Project.
8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.
 9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
 10. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Specific Project Strategies, Technologies, and Techniques."
 11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Specific Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.
 12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.
 13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
 14. Pursuant to the Task Order schedule, furnish the required number of review copies of the Report and any other Study and Report Phase deliverables to Owner, and review it with Owner. Owner shall submit to Engineer any comments regarding the furnished items within the time established in the Task Order schedule.
 15. Pursuant to the Task Order schedule, revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish the required number of copies of the revised Report and any other Study and Report Phase deliverables to the Owner.
- B. Engineer's services under the General Engineering Services will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other General Engineering Services deliverables.

A1.02 Preliminary Design Phase

A. As Basic Services, Engineer shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Specific Project.
2. In preparing the Preliminary Design Phase documents, use any specific applicable Specific Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
6. Continue to assist Owner with Specific Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.
9. Pursuant to the Task Order schedule, furnish the required number of review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner, and review them with Owner. Within the time established in the Task Order schedule, Owner shall submit to Engineer any comments regarding the furnished items.

10. Pursuant to the Task Order schedule, revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner the required number of copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Final Design Phase*

- A. As Basic Services, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
 4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
 5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
 6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
 7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
 8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
 9. Pursuant to the Task Order schedule, furnish for review by Owner, its legal counsel, and other advisors, the required number of copies of the final Drawings and Specifications, assembled drafts

of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, and review them with Owner. Within the time required by the Task Order schedule, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.

10. Pursuant to the Task Order schedule, revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit the required number of final copies of such documents to Owner after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
 - C. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Task Order is one. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Task Order.

A1.04 *Bidding or Negotiating Phase*

- A. As Basic Services, Engineer shall:
 1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
 4. Consult with Owner as to the qualifications of prospective contractors.
 5. Consult with Owner as to the qualifications of Subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or

other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.01.B.2 of this Exhibit A.

7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Task Order).

A1.05 Construction Phase

A. As Basic Services, Engineer shall:

1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in the Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the testing services identified in Exhibit B, Paragraph B2.01.A.
4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols

for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.

6. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Agreement, this Task Order, and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees

the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
13. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
14. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
15. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews, obtain information, and prepare findings, conclusions, and recommendations for Owner's use, subject to the limitations and responsibilities under the Agreement and the Construction Contract.
16. *Non-reviewable matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
17. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not

extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

18. *Substitutes and "or-equal"*: Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.01.B.2 of this Exhibit A.
19. *Inspections and Tests*:
 - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
 - b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
 - c. Pursuant to the terms of the Construction Contract, require additional inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
20. *Change Proposals and Claims*: (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
21. *Applications for Payment*: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so

far as it is Engineer's responsibility to observe the Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).

- b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Agreement or this Task Order. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.
 23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
 24. *Final Notice of Acceptability of the Work:* Conduct a final visit to the specific Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") (also available as a construction form, EJCDC® C-626 (2013)) that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under the Agreement and this Task Order.

25. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the specific Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the specific Project involves more than one prime contract as indicated in Paragraph A1.03.C, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the final Construction Contract under the Task Order.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, as Basic Services, Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

A1.07 *Commissioning Phase*

- A. As Basic Services, Engineer shall:
1. Assist Owner in connection with the adjusting of Specific Project equipment and systems.
 2. Assist Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.
 3. Prepare operation and maintenance manuals.

4. Assist Owner in developing procedures for (a) control of the operation and maintenance of Specific Project equipment and systems, and (b) related record-keeping.
5. Prepare and furnish to Owner, in the format agreed to, Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

A1.08 *Other Services:* Each specific Task Order may include Basic Services that do not fit into the categories above. Such services should be expressly stated in the specific Task Order itself.

PART 2—ADDITIONAL SERVICES

A2.01 Additional Services Requiring an Amendment to Task Order

- A. *Advance Written Authorization Required:* During performance under a Task Order, Owner may authorize Engineer in writing to furnish or obtain from others Additional Services of the types listed below. Unless expressly indicated above or in the specific Task Order to be included Basic Services, the following services are not included as part of Basic Services and will be paid for by Owner as Additional Services, using the basis of compensation for Additional Services, as indicated in the specific Task Order.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Specific Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Specific Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Specific Project.
 2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Specific Project designed or specified by Engineer, or the Specific Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of the Task Order or are due to any other causes beyond Engineer's control.
 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2.
 5. Services required as a result of Owner's providing incomplete or incorrect Specific Project information to Engineer.
 6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
 7. Undertaking investigations and studies including, but not limited to:

- a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. based on the engineering and technical aspects of the Project, the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
 9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
 10. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.C or the specific Task Order.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
 11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services.
 12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
 13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
 14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
 15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.

Exhibit A – Engineer's Services

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16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
17. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Preparation of operation, maintenance, and staffing manuals.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, mediation, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Excessive services during any correction period, or with respect to guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Provide assistance in responding to the presence of any Constituent of Concern at any Site, in compliance with current Laws and Regulations.
30. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

Exhibit A – Engineer's Services

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- B. *Advance Written Authorization Not Required:* Engineer shall advise Owner in advance that Engineer will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner. Unless expressly indicated above or in the specific Task Order to be included Basic Services, the following services are not included as part of Basic Services and will be paid for by Owner as Additional Services, using the basis of compensation for Additional Services, as indicated in the specific Task Order.
1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
 5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
 6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
 7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
 8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

This is **EXHIBIT B**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated March 17, 2020.

Owner's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following responsibilities unless expressly stated otherwise in a Task Order.

B2.01 Specific Responsibilities

C. Owner shall:

1. Provide Engineer with all criteria and full information as to Owner's requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
2. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
3. Furnish to Engineer any other available information pertinent to the Specific Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
4. Following Engineer's assessment of initially-available Specific Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - a. Property descriptions.
 - b. Zoning, deed, and other land use restrictions.

Exhibit B– Owner's Responsibilities

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- c. Utility and topographic mapping and surveys.
 - d. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - e. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 - f. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Specific Project, the Site, and adjacent areas.
 - g. Data or consultations as required for the Project but not otherwise identified in this Agreement.
5. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
 6. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
 - a. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 - b. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 - c. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
 7. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
 8. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

Exhibit B– Owner's Responsibilities

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9. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
10. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
11. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
12. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
13. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
14. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
15. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
16. Place and pay for advertisement for Bids in appropriate publications.
17. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
18. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
19. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.

Exhibit B– Owner's Responsibilities

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This is **EXHIBIT C**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated March 17, 2020.

Payments to Engineer for Services and Reimbursable Expenses

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER'S RESPONSIBILITIES

C2.01 Basis of Compensation

- A. The bases of compensation (compensation methods) for Basic Services (including if applicable the bases of compensation for individual phases of Basic Services) and for Additional Services shall be identified in each specific Task Order (see Suggested Form of Task Order, Paragraph 6). Owner shall pay Engineer for services in accordance with the applicable basis of compensation.

- A. The two following bases of compensation are used for services under the Task Orders, as identified in each specific Task Order:
 - 1. Lump Sum (plus any expenses expressly eligible for reimbursement)
 - 2. Standard Hourly Rates (plus any expenses expressly eligible for reimbursement)

C2.02 Explanation of Compensation Methods

A. Lump Sum

- 1. Owner shall pay Engineer a Lump Sum amount for the specified category of services.
- 2. The Lump Sum will include compensation for Engineer's services and services of Consultants, if any. The Lump Sum constitutes full and complete compensation for Engineer's services in the specified category, including labor costs, overhead, profit, expenses (other than those expenses expressly eligible for reimbursement, if any), and Consultant charges.
- 3. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following expenses reasonably and necessarily incurred by Engineer in connection with the performing or furnishing of the services in the specified category (see Appendix 1 for rates or charges): Only items expressly identified as reimbursable expenses and itemized in the details of an individual Task Order, if any.
- 4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

B. *Standard Hourly Rates*

1. For the specified category of services, the Owner shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class. Under this method, Engineer shall also be entitled to reimbursement from Owner for the expenses identified in Paragraph C2.03 below, and Appendix 1.
2. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit as Appendices 1 and 2.
4. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation will incorporate all labor at Standard Hourly Rates, and reimbursable expenses (including Consultants' charges, if any).
5. The amounts billed will be based on the cumulative hours charged to the specified category of services on the Specific Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus reimbursable expenses (including Consultant's charges, if any).
6. The Standard Hourly Rates and Reimbursable Expenses Schedule shall be adjusted annually (as of May 1) to reflect equitable changes in the compensation payable to Engineer.

C2.03 *Reimbursable Expenses*

- A. Under the Lump Sum method basis of compensation to Engineer, unless expressly indicated otherwise the Lump Sum amount **includes** the following categories of expenses: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone services, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Specific Project-related items; and Consultant charges. These expenses are not reimbursable under the Lump Sum method, unless expressly indicated otherwise in C2.02.A.3 above.
- B. Expenses eligible for reimbursement under the Standard Hourly Rate methods of compensation include the following expenses reasonably and necessarily incurred by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Task Order: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone services, and courier services; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Specific Project-related items; Consultant charges; and any other expenses identified in Appendix 1.

- C. Reimbursable expenses reasonably and necessarily incurred in connection with services provided under the Standard Hourly Rate methods shall be paid at the rates set forth in Appendix 1, Reimbursable Expenses Schedule, subject to the factors set forth below.
- D. The amounts payable to Engineer for reimbursable expenses will be the Project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external reimbursable expenses allocable to the Specific Project, the latter multiplied by a factor of 1.1.
- E. Whenever Engineer is entitled to compensation for the charges of its Consultants, those charges shall be the amount billed by such Consultants to Engineer times a factor of 1.2.
- F. The external reimbursable expenses and Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C2.04 *Serving as a Witness*

- G. For services performed by Engineer's employees as witnesses giving testimony in any litigation, arbitration or other legal or administrative proceeding under Paragraph A2.01.A.20, at a rate of 1.5 times the witness's standard hourly rate. Compensation for Consultants for such services will be by reimbursement of Consultants' reasonable charges to Engineer for such services.

C2.05 *Other Provisions Concerning Payment*

- A. *Extended Contract Times:* Should the Contract Times to complete the Work be extended beyond the period stated in the Task Order, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.
- B. *Estimated Compensation Amounts*
 1. Engineer's estimate of the amounts that will become payable for services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 2. When estimated compensation amounts have been stated in a Task Order and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall give written notice thereof to Owner and shall be paid for all services rendered thereafter.

This is **Appendix 1 to EXHIBIT C**, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition**, dated March 17, 2020.

Reimbursable Expenses Schedule

Expenses eligible for reimbursement are subject to review and adjustment per Exhibit C. Rates and charges for reimbursable expenses as of the date of the Agreement are:

8"x11" Copies/Impressions	\$0.10/page
Copies of Drawings	\$3.00/sheet
Mileage (auto)	\$0.58/mile
Air Transportation	at cost
Laboratory Testing	at cost
Meals and Lodging	at cost

This is **Appendix 2 to EXHIBIT C**, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated **March 17, 2020**.

Standard Hourly Rates Schedule

The following standard hourly rates are subject to review and adjustment per Exhibit C. Hourly rates for services as of the Effective Date of the Task Order are:

Sr. Principal	\$ 200.00
Principal	\$ 175.00
Associate Principal	\$ 165.00
Sr. Engineering Specialist	\$ 165.00
Sr. Project Manager	\$ 145.00
Project Manager	\$ 135.00
Sr. Construction Manager	\$ 135.00
Engineering Specialist	\$ 130.00
Sr. Survey Manager	\$ 125.00
Lead Project Engineer	\$ 120.00
Survey Manager	\$ 110.00
Project Engineer	\$ 100.00
Sr. Engineering Technician	\$ 100.00
Construction Manager	\$ 95.00
Survey Supervisor	\$ 95.00
Sr. Design Technician	\$ 90.00
Associate Engineer	\$ 85.00
Sr. Resident Project Representative	\$ 85.00
Sr. Administrative Assistant	\$ 75.00
Survey Crew Chief	\$ 75.00
Accounting Coordinator	\$ 70.00
Design Technician	\$ 70.00
Resident Project Representative (RPR)	\$ 70.00
Marketing Office Assistant	\$ 65.00
Assistant RPR	\$ 60.00
Survey Field Technician II	\$ 60.00
Survey CAD Technician	\$ 55.00
Administrative Assistant	\$ 55.00
Survey Field Technician I	\$ 45.00

Exhibit C – Appendix 2 – Standard Hourly Rates Schedule

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This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated March 17, 2020.

Schedule of Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

The following duties, responsibilities, and limitations of authority may be incorporated in the Task Order for a Specific Project:

D1.01 Resident Project Representative –

- A. Engineer shall furnish a Resident Project Representative (“RPR”), assistants, and other field staff to assist Engineer in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Exhibit D shall provide full time representation unless representation to a lesser degree is approved by Agency.
- B. Through such additional observations of Contractor’s work in progress and field checks of materials and equipment by the RPR and assistants, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such visits or as a result of such observations of Contractor’s work in progress, supervise, direct, or have control over the Contractor’s work nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor’s work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor’s performing and furnishing the Work, or responsibility for Contractor’s failure to furnish and perform the Work in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, as incorporated in this Task Order, are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 1. *General:* RPR is Engineer’s agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions. RPR’s dealings in matters pertaining to the Contractor’s work in progress shall in general be with Engineer and Contractor, keeping Owner advised as necessary. RPR’s dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner with the knowledge of and under the direction of Engineer.
 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
 4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR’s own personal safety while at the Site.

5. *Liaison:*

- a. Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Contract Documents.
- b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-site operations.
- c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor.

7. *Shop Drawings and Samples:*

- a. Record date of receipt of Samples and approved Shop Drawings.
- b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
- c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.

8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.

9. *Review of Work; Defective Work*

- a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
- b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work; and
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. Inspections, Tests, and System Start-ups

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. Records

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request from Owner to Engineer, photograph or video work in progress or Site conditions.
- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Specific Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

12. Reports

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
 - c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
 - d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.
13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
15. *Completion:*
- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion, submit a punch list of observed items requiring completion or correction.
 - b. Participate in Engineer's visit to the Site in the company of, Owner, and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
 - c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).
- D. Resident Project Representative shall not:
- 1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
 - 2. Exceed limitations of Engineer's authority as set forth in this Agreement.
 - 3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
 - 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
 - 5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.

6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Specific Project in whole or in part.

This is **EXHIBIT E**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated March 17, 2020.



NOTICE OF ACCEPTABILITY OF WORK

SPECIFIC PROJECT:

OWNER:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____
OWNER

And To: _____
CONTRACTOR

From: _____
ENGINEER

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, _____, and the following terms and conditions of this Notice.

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Specific Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

This is **EXHIBIT F**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated March 17, 2020.

Construction Cost Limit

Paragraph 5.02 of the Agreement is amended and supplemented to include the following when incorporated in the Task Order for a Specific Project:

F5.02 *Designing to Construction Cost Limit*

- A. A Construction Cost limit may be set forth in the Task Order.
- B. If a Construction Cost limit is set forth in a Task Order, then the Task Order will also specify bidding or negotiating contingency to be added to such Construction Cost limit.
- C. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.
- D. Engineer will be permitted to determine what types of materials, equipment and component systems, and the types and quality thereof are to be included in the Drawings and Specifications and to make reasonable adjustments in the scope, extent, and character of a Specific Project to the extent consistent with the project requirements and sound engineering practices to bring the project within the Construction Cost limit.
- E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer, and Owner shall consent to an adjustment in such Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.
- F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Specific Project within a reasonable time, or (3) cooperate in revising the Specific Project's scope, extent, or character to the extent consistent with the Specific Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Construction Contract Documents as necessary to bring the Construction Cost within the Construction Cost limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The providing of such services will be the limit of its responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.

Exhibit F – Construction Cost Limit

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This is **EXHIBIT G**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated March 17, 2020.

Insurance

Paragraph 6.05 of the Agreement is amended and supplemented to include the following agreement of the parties.

G6.05 Insurance

- A. The limits of liability for the insurance required by Paragraphs 6.05.A and 6.05.B of the Agreement are as follows, unless and except as specifically modified by a specific Task Order:
1. By Engineer:
 - a. Workers' Compensation: Statutory
 - b. Employer's Liability –
 - 1) Bodily injury, each accident: \$500,000
 - 2) Bodily injury by disease, each employee: \$500,000
 - 3) Bodily injury/disease, aggregate: \$500,000
 - c. General Liability –
 - 1) Each Occurrence
(Bodily Injury and Property Damage): \$1,000,000
 - 2) General Aggregate: \$2,000,000
 - d. Excess or Umbrella Liability –
 - 1) Each Occurrence: \$5,000,000
 - 2) General Aggregate: \$5,000,000
 - e. Automobile Liability – Combined Single Limit
(Bodily Injury and Property Damage): \$1,000,000
 - f. Professional Liability –
 - 1) Each Claim Made: \$4,000,000
 - 2) Annual Aggregate: \$4,000,000
 - g. Other (specify): NONE

Exhibit G - Insurance

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This is **EXHIBIT H**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated March 17, 2020.

Dispute Resolution

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

H6.09 *Dispute Resolution*

- A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement, including any Task Order, or the breach thereof ("Disputes") to mediation by ***a mediator certified pursuant to the guidelines for the certification of mediators established by the Dispute Resolution Commission of the North Carolina Judicial Branch***. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution method of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT I**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated March 17, 2020.

Limitations of Liability

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

I6.11.A *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Specific Project or the Task Order from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal), up to the amount of insurance required under this Agreement. If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed the amount of the Engineers compensation under this Agreement.

This is **EXHIBIT J**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated March 17, 2020.

Special Provisions

Agreement is/are amended to include the following agreement(s) of the parties: Attachment J1 - "First Amendment to Task Order Agreement".

This is **EXHIBIT K**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated March 17, 2020.

Amendment To Task Order No. _____

1. Background Data:

- a. Effective Date of Task Order:
- b. Owner:
- c. Engineer:
- d. Specific Project:

2. Description of Modifications

[Include the following paragraphs that are applicable and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

- a. Engineer shall perform the following Additional Services: []
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Task Order and previous amendments, if any, is modified as follows: []
- c. The responsibilities of Owner with respect to the Task Order are modified as follows: []
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation: []
- e. The schedule for rendering services under this Task Order is modified as follows: []
- f. Other portions of the Task Order (including previous amendments, if any) are modified as follows: []

[List other Attachments, if any]

3. Task Order Summary (Reference only)

- a. Original Task Order amount: \$[]
- b. Net change for prior amendments: \$[]
- c. This amendment amount: \$[]
- d. Adjusted Task Order amount: \$[]

The foregoing Task Order Summary is for reference only and does not alter the terms of the Task Order, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Task Order as set forth in this Amendment. All provisions of the Agreement and Task Order not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____.

OWNER:

ENGINEER:

By: _____

By: _____

Title: _____

Title: _____

Date
Signed: _____

Date
Signed: _____

This is Task Order No. 001
consisting of 2 pages.

Task Order

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated **March 17, 2020** ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- a. Effective Date of Task Order: **March 17, 2020**
- b. Owner: **City of Lenoir**
- c. Engineer: **Mattern & Craig, Inc.**
- d. Specific Project (title): **General Engineering Services (GES)**
- e. Specific Project (description): **Transportation & Traffic Engineering Services On-Call**

2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are:

Provide engineering assistance to the Planning & Public Works Departments for Transportation & Traffic Engineering related services as requested. These services shall be defined by City staff on an hourly basis to be reported and invoiced monthly in accordance with the Fee Schedule attached as Exhibit C. Or, by lump sum as defined by subsequent Task Order defining a specific project scope of service and contract fee amount.

- B. Other Services

Engineer shall also provide the following services, if required in conjunction with project identified under this GES contract: General Civil Engineering, Stormwater & Drainage, Field Survey, and Structural Engineering.

- C. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

3. Additional Services – *Not Used*

4. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 of the Agreement.

5. Task Order Schedule – *Not Used*

6. Payments to Engineer

- A. Owner shall pay Engineer for hourly services rendered under this Task Order per Fee Schedule attached as Exhibit A.

7. **Consultants retained as of the Effective Date of the Task Order:** Mattern & Craig, Inc.

8. **Other Modifications to Agreement and Exhibits:** *None*

9. **Attachments:** *None*

10. **Other Documents Incorporated by Reference:** *None*

11. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is **March 17, 2020**.

OWNER: City of Lenoir

ENGINEER: Mattern & Craig, Inc.

By:

By:

Print Name: Scott Hildebran

Print Name: Randy W. Beckner, PE

Title: City Manager

Title: Principal

Date Signed: March 17, 2020

Date Signed: March 17, 2020

Firm's Certificate No. : C-1154

State of : North Carolina

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

City of Lenoir

Mattern & Craig

PO Box 958

231 16th Avenue NE

Lenoir, NC 28645

Hickory, North Carolina 28601

DESIGNATED REPRESENTATIVE
(Paragraph 8.04):

DESIGNATED REPRESENTATIVE
(Paragraph 8.04):

Jared Wright

Brian Newman, PE

Title: Director of Public Works

Title: Office Manager

Phone Number: (828) 757-2183

Phone Number: (828) 838-4139

E-Mail Address: jwright@ci.lenoir.nc.us

E-Mail Address: brnewman@matternandcraig.com

Task Order Form

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CITY OF LENOIR

COUNCIL ACTION FORM: March 17, 2020

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, was installed after initially being approved by Council on March 7, 2017, and has been renewed each year. The fencing/enclosure for the sidewalk café was modified by City staff after establishment of the sidewalk café, in order to meet state regulations for separation of ABC permits during City events that use the “open concept beer garden.”

The requested permit is for the placement of the tables and chairs, as well as the support structures for sunshades/string lights.

III. Staff and Planning Board Recommendation:

Renewal of the sidewalk café permit, with the following conditions:

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.

IV. Reviewed by:

City Attorney: _____

Finance Director: _____



Planning Director: _____



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. _____

