



City of Lowell Council Meeting Agenda

Tuesday, March 12, 2024, 6:00 PM
City Hall
101 W. First Street
Lowell, North Carolina 28098

1: General

- 1A. Call To Order
- 1B. Invocation / Pledge of Allegiance
- 1C. Adoption of Agenda for this Meeting
- 1D. Public Comments

2: Approval of Minutes

- 2A. Approval of Minutes 02-13-2024 (p. 3-27)

3: Special Presentation

4: Consent Agenda

- 4A. Planning Report (p. 28)
- 4B. Finance Report (p. 29-30)
- 4C. Parks & Recreation Report (p. 31-32)
- 4D. Stormwater Report (p. 33)
- 4E. Geographic Information System (GIS) Report (p. 34-35)
- 4F. Communications Report (p. 36-37)
- 4G. Police Report (p. 38-39)
- 4H. Public Works Report (p. 40)

5: Unfinished Business

- 5A. Consideration of Black Mountain Software (p. 41-84)
- 5B. Consideration to Set Time of March 19, 2024 and April 16, 2024 City Council Work Sessions (p. 85)
- 5C. Proposed Code of Ordinances Amendment: Chapter 76- Traffic Schedules and Chapter 72-Traffic Regulations (p. 86-88)

6: New Business

- 6A. Resolution #03-2024 - Authorizing the Adoption of the Updated CDBG-I Compliance Plans (p. 89-115)
- 6B. Request to Set Public Hearing - LDO Text Amendment - Article 17 Sign Regulations (p. 116-119)
- 6C. Update to Interlocal Agreement for Enforcement Services of Gaston County Soil and Erosion and Sediment Control Ordinance (p. 120-124)
- 6D. Update to Interlocal Agreement for Enforcement Services of the Gaston County Stormwater Ordinance (p. 125-129)

6E. Discussion of Lowell Police K-9 Program (p. 130)

6F. Discussion of Vacant Positions

7: Reports / Discussions

7A. City Manager Report

7B. City Attorney Report

7C. Mayor and City Council General Discussion

8: Adjournment

8A. Meeting Adjournment

Date Posted: March 8, 2024

1. General

1A. Call To Order- 6:00 PM

Mayor Larry Simonds called the meeting to order at 6:00pm. Councilmembers Bonham and Chitwood were absent. City staff present were City Manager Scott Attaway, City Attorney John Russell, Police Chief Moore, Police Asst. Chief Harrison, Planning Director Joe Gates, GIS Analyst Todd Stroupe, Public Works Director Thomas Shrewsbury, and City Clerk Cheryl Ramsey. A quorum was determined at the beginning of the meeting. The meeting was teleconferenced on YouTube for the public and the agenda and meeting materials were made public on the city's website as well as in person. Members of the public were also in attendance.

1B. Invocation / Pledge of Allegiance- 6:00 PM

Joe Heffner, Pastor of the Lowell Church of God gave the Invocation. Mayor Simonds then led the audience with the Pledge of Allegiance.

Mayor Simonds then asked if any soldiers were present in the audience. He wanted to honor them by playing a song for them tonight. A recording of American Soldier by Toby Keith was played. Mayor Simonds then stated he is going to recommend tonight we start a Ministerial Association and the minister from Lowell Church of God would be a part of it and head it up for us. He would like the City Manager to have something drawn up and get back with Mr. Heffner. He said we had a great Ministerial Association at one time and we don't need to turn our back on God but be stronger with God. He asked if there needed to be a motion and no one thought it did. Mayor Simonds again asked Mr. Attaway to look into that. Mayor Simonds thanked all for coming.

1C. Adoption of Agenda for this Meeting- 6:07 PM

The item was motioned null by Travis Smith and seconded by Scott Bates with a passing result 3-0-1-0 Abstained by Larry Simonds

1D. Public Comments- 6:07 PM

1. Lisa Beagle of 3 Black St, Lowell, NC stated she is a Christian who will unashamedly stand on God's word as she speaks and is a citizen of Lowell. She came to speak against the Kava and Kratom Bar [North Main Kava Bar] and the events they host there. She urged all to research what they really are. She said kratom has similar effects as heroin and can be abused, causing dependency. She asked if this is the type of business we want here on Main St. She talked more of the effects of kratom. She then talked of one of the questionable events that will be held there, hosting a drag show event on March 9, where the flyer says "bring your dollar bills to tip the girls and enjoy the show." She said this statement alone implies adult explicit content and it is an adult show. She asked if the next step is a strip show and bring these businesses into our town? She asked if we know the background of the men in this show and do we know who we are bringing into our town? She mentioned sex trafficking and child exploitation are real issues and is running rampant in our country. She said as a community we should not have to have events like this to bring people or businesses into our small town where family businesses should thrive. She stated she contacted each member of council and was told although they do not agree with the event and will not

support it, they are unable to stop it because it is not an adult only business, which is not allowed in Lowell. She said she is advocating for change in the city code that would state no adult entertainment events at all at any business in our town. She will continue to pray for Lowell and it's leaders and hopes that they will put God in the forefront and drive out the evil.

2. Bambi Johnson of 407 McAdenville Rd, Lowell NC stated she has been a resident of Lowell for 25 years and she and her husband are the co-owners of North Main Kava Bar. She thanked everyone voicing their opinions on their upcoming event. She said she wanted to explain to them what "adult entertainment" covers. She said it covers any kind of live music at Miami Fusion. It covered their last event which was Flamingo dancers. She said it also covers their bingo music night and karaoke night. She then said she "wanted to speak about the drag show that is coming, and it is coming. There are no ordinances to stop it. What a drag show really is...and it seems social media is turning it into something it is not. What it is, and there is no stripping involved. They are men dressed as women who lip sync and dance. The dollar bills are to tip them while they dance. They are fully dressed. The show will go on and all tickets will be pre-sold because we have had plenty of scrutiny, threats and some viable they we take very seriously." She stated she has spoken to the Police about the threats and she will begin to report people that make bodily threats. She welcomed the protests and will provide water to make sure they stay hydrated. She then wanted to talk of how the Town of Lowell supports it's small businesses here. She said "you say you want small businesses here, you want to support them, and then we come in...I recently spoke to two other small businesses here, brand new to the area, and they have all said that only a small percentage of Lowell citizens actually walk into those businesses and support them. Most of our business is outside of Lowell. It comes from Mt. Holly, Belmont, Charlotte, you name it but it is not coming from the City of Lowell." She said all the councilmembers have been in. She said it hurts nothing to purchase coffee but when you don't support the businesses in Lowell then you can't really be upset when they look at different ways to fund their business and that is what they are doing. She said they are looking outside of Lowell because Lowell has not made us welcome and they are ok with that because their business is thriving. She said she's "heard on social media that there are thousands of patrons" but stated that is not what's happening but the press that you are us is giving us a boost in business. Which tells me that you don't want Lowell to grow or you are not willing to support the businesses that come into town. That means you can't just complain when the businesses that are in town to try to produce the funding for their business. Be better than this Lowell! Support the businesses that are here. Maybe come in for coffee, then we don't have to have the drag show but when only 1% of our business comes from Lowell itself, that's pretty sad." She then stated she is a God fearing woman who believes in Jesus but she also believes in the music just played and the soldiers who fought for our freedoms, freedom of speech and freedom of choice. She said that it is for the rights she is exercising and will continue to do so and is feels sorry for those who feel differently.

3. Wayne Buchanan 620 Geer St, Lowell, NC stated that we don't need this business here in Lowell and we never had it before. They should do it outside of Lowell and that is his opinion.

4. Candy Funderburk of 600 Rogosin Blvd Lowell, NC stated that there were people here that against it and some for it but if the council is for it, to leave the ordinance as it is but if they are against it, they can do a text amendment to the ordinance that says specifically what you are against, the drag show. She said you have to be specific like 'within 1200 feet from a church or a park.'

5. Jim Heffner of 3005 Southhampton Cir., Gastonia, NC and pastor in this city. He said more can happen here in Lowell than bad things. He said the scripture is against these things and an abomination to act, dress or do those things. He said He made man and female and didn't cross them and we have a problem in our nation and would hate to see it land here. He said he doesn't hate anyone and there are more things that we can offer our young people, children, and seniors but not something like this. He said he and his church are against this [drag show].

6. Conner Nanney Lowell Bethesda Rd, Gastonia, NC stated he had a Christian upbringing and went to Gaston Christian School and now attending Belmont Abbey College. He stated he spends more time in Lowell than Gastonia or Belmont. He said as someone who has been heavily influenced by the Christian faith and the Bible, he understands where people are coming from regarding this event at Kava Bar where he is a pretty frequent customer. He said as an American citizen he believes American is still one of the few places where you can express yourself how you desire but it upsets him to know that people are as opposed to the freedom of expression that they are especially in a small town such as this where American patriotism is, he assumed, what everyone wants. He said people have American flags and that we just pledged allegiance to the flag yet people are so opposed to people's rights to express themselves and to do what they want as long as they are not harming or threatening somebody else. He said as a Christian, while he maintains certain opinions that have been expressed tonight on what a drag show should entail, he also believes it is not his place to judge people for the decisions they might make. He said it's not his place to restrict their right or try to or openly speak against them for what they want to do. He imagined a town such as Lowell, where we pledge allegiance to the flag and where he sees conservatives and people wearing Trump apparel, stuff that he agrees with personally, that we wouldn't find people so opposed to civil liberties and wouldn't find Christians that want to judge other people.

7. John Cato, 109 Walnut St, Lowell, NC stated the past city council was so busy spending money instead of fixing what we have. He said Phillips St needs to be a three lane highway so the parents taking their kids to school will have a place to park on the side of the road so the people living in the living in the neighborhood, especially in emergencies, where they can get in and out and it won't interfere with traffic problems, which now it is. He said that is a city road. His other issue was on Main St where it is a three lane road. He said one goes to the bank and Sam's Pawn Shop, the 2nd lane goes to the post office, and the third comes back this way [toward City Hall], and none of them are painted. He said people from outside of town don't know which way to go and asked why that hasn't been fixed as it is a city street. Lastly, he said water lines need to be replaced. He said he called Larry [Mayor Simonds] way before election time in November to complain. He said since November, the water people have been out on his street three times to fix leaks and that is a brand new paved highway so why keep tearing the roads up and destroying our new highways.

8. Jim Kiser of 711 McAdenville Ave, Lowell, NC said he knows a lot of people are against this thing at the Kava Bar but said let's look back at people going to these bars drinking and getting drunk and going out driving and killing people. He said he doesn't hear anyone complaining about that. He said what's wrong is wrong and if you are going to complain about one, you should complain about the other.

Mayor Simonds said that when they passed these crazy ordinances where you buy liquor by the drink, where you can sell alcohol in convenience stores is where all the troubles begin. If it [ordinance] had never

been passed, we wouldn't be talking about this. He said we have a zoning officer here tonight and would like him to explain the ordinance. He asked Joe Gates to explain the ordinance. Mr. Gates went over the documents requested by the mayor and stated Kava is permitted as a retail and coffee shop and would not be selling alcohol and do not have a permit to do so. He said they were permitted to sale coffee, Kava, and Kratom, which are legal in the state of North Carolina and under Table 8.1 of the general uses of the Main St zoning district. Mayor Simons asked where is adult entertainment allowed? Mr. Gates said "adult entertainment as defined by General Statute under Article 14, section 26, lists out what an adult business is and our [Lowell] ordinance references that section where adult businesses are allowed with a special use permit in the Industrial zoning district, so if a business were to meet the criteria, based on the definition, which is based on the State statute, then that business would have to locate in the Industrial district with the approval of a special use permit by the city council." Mayor Simonds asked if this business what permitted to sale coffee and things like that but once you put a cover charge on something like this, does that not differentiate from our ordinance, to change from a coffee shop and in his opinion to adult entertainment because this is a drag show. He said if a child was to wonder in there, it would be terrible. He said "why allow something so egregious. People have their rights, yes, but don't influence other people by your ignorance, in my opinion. I think it's the most ignorant thing to ever come to Lowell and ever been put before us. This should have never been in the ordinance and been allowed and needs to be taken out of the ordinance if it is. We have ordinances, we have different zoning areas for different businesses but we also need to take out adult entertainment in the Industrial zone as well and if it's in there, it needs to come out as well. Whatever we have to do to have a public hearing or whatever. The most important thing for this town tonight and this day forward is to appreciate our businesses as they are and help the businesses. I agree 100% but don't do something that will hurt the people. [Speaking to owner of Kava] if you really love and care about and we love you, we don't hate you and I have nothing against you personally whatsoever but the influence of young people and having the ability to entertain like this is your prerogative if you want to do it. The way I read the law, you should be shut down if it goes forward because the ordinance and the way it was written. This is not adult entertainment and we don't hate anyone and we would love for your business to be successful and I'm not trying to tell you what type of deals to have out there, it's your business, but this is so egregious. You have a church across the street, you have Christian people and listen, every one of us is going to die, everyone is going to leave here at one time or another and how do you want to be remembered for being wrong or being right. Everyone has their opinion, that's why you have elections. I would never have thought we'd have anything that would allow such a thing in Lowell. I think it's the most ignorant thing I've ever heard in my life and for people to have to come up here tonight to express their views for something like that, either side, it's not the place for it. This is a city council meeting trying to better our city and go forward in the eyes of Christ. Understand this, I don't care what they say about all these people that can stand on the side of the road, these atheists and things like that, if there's not a law there to do that, put them in a net and take them away, they should. I don't make the laws but I do oversee this board and I'm your mayor and don't care if you like me or hate me, that's fine, that's up to you. I love Jesus and we're all going to die but when we leave here we want to be at the feet of Jesus and we want to understand what it means. That is the real world. Nobody wants to hurt anyone but I respectfully ask you, not to be mean, just not do this, as a citizen, not do this. Mrs. Johnson said "I'm sorry but no."

Mayor Simonds continued "you have to follow the law and we have a Police Chief and they know the law and I'm sure the Planning and Zoning Board know what the ordinance is. He knows there is nowhere where that is allowed to happen, nowhere. Am I right Mr. Gates or am I wrong?" Mr. Gates said "the ordinance does not address this particular matter so again, without a specific law to be written, then our ordinance as it is currently written, we don't have a leg to stand on so to speak. If the council so desires to write in or amend the ordinance through the public hearing process, then staff could draft ordinances and work with legal to draft something to the board's liking. Then we can present that to the Planning Board, through the process of a text amendment, then advertise a public hearing at which time the council could amend the law to your liking." Mayor Simonds said "it's not a law to my liking, it's just a law how it is written. It has no place in downtown. You show me where you can have adult entertainment downtown." Mr. Gates said "as I previously stated, the law and the General Statute does not currently...Mayor Simonds cut him off and asked if he is looking at a State ordinance? Mr. Gates said "yes, in your packets, under the definition, it states that our definition is based on State law because adult businesses are regulated throughout the state of North Carolina and in the United States. When our ordinance was written and approved, that was the definition that was used and that way it is standard across [the board] and we match any other state and county who use that as the base of their definition. Again, the town doesn't have the ability, necessarily, to change state statute and I guess we would have to seek some other legal recommendation as to how you would navigate that in a way that would amend the ordinance."

Mayor Simonds said "listen, I'm not here to argue with you, I just disagree with you for one reason, the State of North Carolina is the most corrupt in the history of the United States. To allow these things to happen in a small town, I don't look to the State to approve it, I look to this board, you as a representative of this city and our City Manager to follow the law. It's like when we have businesses in town, yall find every way in the world to stop businesses from coming and I don't approve of that. What you should do is extend the right hand of fellowship to the people coming here that want to make a living, that want to businesses up and down Wilkinson Blvd and get jobs and this does not create jobs. This creates havoc to the citizens and we just don't need to have this reputation." He asked "do you see any other municipality doing this, other than Mecklenburg County? I'm talking about Gaston County and listen, we are one of 524 municipalities in the state of North Carolina and if everyone of them went by what Roy Cooper wants you to do, we'd be broke, all of us." Mr. Gates said "if he would like to instruct staff, they would definitely get to work on that amendment"... Mayor Simonds said "we need to have that on the agenda starting next month where we can straighten these things out and eliminate this stuff." [Mayor Simonds directed to the Mrs. Johnson, Kava owner again] "I respectfully ask, that this is a small town and no one is here to hate anyone or to cause havoc. I want us all to reach out and be together." Mrs. Johnson, got up to go to the podium to speak. Mayor Simonds said she can't speak again because she already spoke.

9. Paul Williams of 703 McAdenville Rd, Lowell, NC said "I personally do not care for the taste of Kava. I personally do not enjoy seeing men dressed as women but I did not think that there is anywhere in the United States of America, and I wore the country's uniform for 11 years, that it is against the law anywhere in the 50 states to dress up like a woman if you choose to do so and really that is all they are doing. They are not removing their clothes. They don't have agendas underneath it. I will not be personally attending the event but do not think it is anywhere where it is against the law to dress as the opposite sex of what you are. If you want to change that of course that is welcomed but I don't think that is possible."

Mayor Simonds said "like I tried to explain to every one of you, it's your right to do what you want to do in your private home, that's your business but if a child gets in that place...look at all the rhetoric all on Facebook about this whole thing. You don't read the good things like how many people got saved last week, how many people attended church, and how many people were led to God. Things like this lead people to God more than anything because God is the rule and I think (inaudible). It's not up to me to tell you you can't do this I'm just respectfully asking you not to. I'm not mad at you, it's your business, but don't do it...in my opinion. If you so choose to do it, it's in violation of our ordinance and that's up to staff, City Manager, Police Chief and people like that who enforce the law and the electorates. That's why we are elected, to enforce our ordinances. I'm not talking about your rights, I'm talking about ordinances and our ordinance today, we don't have the permit or permission to do that downtown and that's our rules." He asked if anyone else on council wanted to comment.

Mayor Pro Tem Bates said when he "received a call from the citizen in reference to this, I started researching and going through the ordinances. I personally do not see any violation that she [Mrs. Johnson] would be committing the way the ordinance is written right now. I have been contacted for council to go in and make changes to do that but as far as the way the ordinance is right now, she is not considered an adult establishment and she doesn't even meet the criteria of an adult establishment through North Carolina General Statutes. I'm no lawyer but that is just my interpretation. Maybe the City Attorney can be look into it and come back with his thoughts on it." Mayor Simonds asked if the attorney had an opinion as far as the ordinance goes as it is written? Mr. Russell said as the ordinance is written he is not aware of anything that says you can't do this action. He said the city regulates by what is your ordinance, so if you don't have an ordinance prohibiting something, it is therefore allowed. It is the same context as state criminal law and state statutes Mr. Bates referred to.

Mayor Simonds said the way he reads it is "that this is a general downtown business where you have to apply for it and have a permit. We have laws and rules where you have to be 21 or older to attend things like that. How old do you have to be to go into a place like this? You have to be at least 21 years old and if a child gets in there, it's going to be terrible. It's terrible we've talked about it as much as we have. So what you're saying is this is permitted (inaudible). I have the permit here where Mr. Gates issued the place as a coffee shop and that's the truth and nothing but the truth. This is not New Orleans and we don't want to be that. We just want a nice little place to sleep, go home, get up in the morning, go back to work and not be effected by this. I don't see how in the world you can sit there in good conscious and say this is good, it's not." Mayor Pro Temp Bates said "I'm not saying it's good, I'm saying the way the ordinance is written, I don't see any violations. Just like Mrs. Johnson said if you look across the street, the Miami Fusion, I'm sure they were issued a permit for their restaurant but yet they have karaoke and live dancing there as well. I'm not condoning what's going on, I'm just saying at what point do we...you have to be very specific in your ordinance." Mayor Simonds said the only thing that allows it is the state, not Lowell and the only place you can have (inaudible) is Industrial [district]. Mayor Pro Temp Bates said her business is not considered...Mayor Simonds cut him off and said 'her business and I agree 100% but she changed her business when she changed to a drag show or whatever and that's a different statute in the ordinance book. That's where I see the issue. Yall are the board and I don't make the decisions." Mayor Pro Tem Bates said "respectfully Mayor, I've done a lot of research on this and I can not find anywhere where a drag show is considered adult entertainment. Like I said I'm not a lawyer so..." Mayor Simonds asked the attorney if it

is adult entertainment or not? Mr. Russell said adult entertainment depends on what actually happens. He said there "is a state statute that says a lot but to define adult entertainment, I don't know if you can sit here and say in advance this is or this is not adult entertainment. That would be a decision for the Police or Zoning officer to make that determination. Mayor Simonds said "I believe every word I said that it violates the ordinance. Let me ask you something, what if a man and his wife want to take their children in there and this is going on. Is this permissible for them to have children in that building that night. Hell no!"

Councilmember Smith said "I agree with Bates but our ordinance allows this now. If you want to change it, you bring it to the council but I feel like we have a lot more important things on this agenda to go over. Unless the public has any more questions, I'd like to move forward with the meeting." Mayor Simonds asked if anyone had any more comments. No one did. He said "the only thing I want to recommend is the Police Chief, the City Manager, and Code Enforcement understand what these laws are and what we have on these books. We don't have anything that allows this. You want to refer to the state, that's your opinion but I expect it to be enforced. I expect that if a child goes in there with their parents or something like that, the law be enforced. Do you understand Mr. Chief [to Chief Moore]? It's up to this board. If they say it's ok. You're saying tonight [to Mr. Russell] that children can go in there, have coffee since it's open to the public? That's what I'm saying and I don't think you disagree with me. Would you take your family in there for a Coca Cola?" Mr. Russell said that's not a legal question but personal. Mayor Simonds said it's just a question and repeated the question and added if a child went in that night, would it be ok? Mr. Russell said you couldn't say without knowing what is going on and that's an individual decision. He said "everyone is going to have a differing opinion about where they take their family. You can not say without knowing what exactly is happening." Mayor Simonds said I think we have an ordinance on it and then asked if anyone else wanted to speak.

10. Monica Love of 501 Birch St, Lowell NC said she was born and raised here. She mentioned she is a devout Christian and believes in male and female. Her concern is the capacity of the building and how many does it hold and will it spill over into the street. She said "what they do is what they do but once it comes into the street and my kids and grandkids are exposed, that's where I have a problem. Will there be someone there to monitor. How many are they expecting. I know Bambi [Mrs. Johnson] said people are going to be coming from out of town and we don't know who those people are or what they are about but once it's on the sidewalk or the adjacent lot or into the street...we don't have a social district so what happens then. Can council check into that?" Mayor Simonds said that's a good idea. He asked Mr. Gates asked how much land space of the building and he is referring to land adjacent to it. Mr. Gates said there is no way he would know that off the top of his head what the land space of the building is.

Mayor Simonds said "once this spills into someone else's lot then that's a different subject right?" Mr. Gates said he "didn't know if I understood the question but if you're asking if you would require some sort of permit or something if you're on the road and hosting part of your event, then I'd say you are correct as you would be obstructing NCDOT right-of-way, if that is your question. The capacity was brought up and that would be through Gaston County Building Inspections and the Fire Marshalls office as far as their rated capacity. The business owner, if they don't have it already could check with the Fire Marshall's office and post it and would face fines if they exceeded it." Mayor Simonds asked who owns the land between that building and the Masonic Lodge? Mr. Gates did not know. Mayor Simonds asked if there is a different ordinance for public display? Mr. Gates said "you would have to see what was happening and then make a

decision at the time. I can't preemptively tell you what's going on or what could or would happen without something actually happening." Mayor Simonds asked the Police Chief to answer what is the ordinance of them being outside of the business. Chief Moore said if they are outside, if it is a demonstration, they would need a permit. If they are going to their car or leaving the business or talking no they do not [need a permit]. If they are doing a display, yes they do [need a permit]. Mayor Simonds asked if he would be issuing those permits and Chief Moore said yes. There were no further comments.

2. Approval of Minutes

The item was motioned To Approve by Scott Bates and seconded by Travis Smith with a passing result 3-0-1-0 Abstained by Larry Simonds

The item was motioned To Approve by Travis Smith and seconded by Shane Robinson with a passing result 3-0-1-0 Abstained by Larry Simonds

2A. Approval of Special Call Meeting on January 3, 2024- 6:49 PM

2B. Approval of Regular Minutes January 9, 2024- 6:49 PM

Mayor Pro Temp wanted to make a comment about this meeting. He said "there was a comment made where a councilmember stated to the Mayor "you're a joke and that's a fact". My thing is that we are leaders of the city and you need to be professional, courteous and respectful. Mr. Simonds whether he's the Mayor, whether we like it or not, the citizens voted him in and we need to conduct ourselves professionally respectfully with each other. If there is any personal agendas with anybody on this board, I think it should be handled outside council chambers and not in front of the citizens.

3. Special Presentation

3A. Proclamation in Recognition of the Month of February as Black History Month- 6:52 PM

Read aloud by Mayor Simonds.

The item was motioned To Approve by Shane Robinson and seconded by Scott Bates with a passing result 3-0-1-0 Abstained by Larry Simonds

3B. Introduction of Police Administrative Assistant Sabrina Stafford - 6:54 PM

Chief Moore introduced the new Police Administrative Assistant that started with the City of Lowell on January 16, 2024.

3C. Presentation by City of Lowell Lead for NC Americorps Fellow, Emiyah Watkins- 6:57 PM

Scott Attaway said that Emiyah Watkins was sick and will present at the next council meeting.

4. Consent Agenda

The item was motioned To Accept by Scott Bates and seconded by Travis Smith with a passing result 3-0-1-0 Abstained by Larry Simonds

4A. Planning Report- 6:57 PM

4B. Public Works Report- 6:57 PM

4C. Parks & Recreation Report - 6:57 PM

4D. Finance Report- 6:57 PM

4E. Geographic Information System (GIS) Report- 6:57 PM

4F. Communications Report- 6:57 PM

4G. Stormwater- 6:57 PM

4H. Police Report- 6:57 PM

5. Unfinished Business

5A. Master Sign Plan Application - Public Hearing - File # MSP23-01- 6:58 PM

Mr. Gates explained the purpose of the public hearing. He stated this is for the Chevrolet dealer down the street. Per our ordinance, the amount of signage you have exceeds our maximum or 10% of the wall area or not to exceed 100 sq. ft. you would need to apply. Because the overall signage package for Chevrolet currently exceeds that, even though the specific sign [the word McKinney to Gastonia] from that is being proposed is actually smaller, all the signs in its totality had to go through this process. He said staff is in support of the approval and the Planning Board voted unanimously to approve. Councilmember Robinson said it seems we are making for businesses it difficult to get signs and different things. He asked what is our ordinance in comparison to other cities and maybe consider making this a little broader. Mr. Gates said that based on his comments last month, the Planning Board began discussing this with a few viewpoints: what does that look like in other towns, what is the ultimate goal from council as guidance is welcomed. He recommended limiting principles to help convey that to staff so that when it is time to bring some options or amendments, the Planning Board is in sync with Council and producing something that you would want to see. He said the Planning Board is proactively working to improving this. Mayor Simonds asked if anyone had a problem with the sign. Councilmember Robinson said he doesn't have a problem with the sign and thinks it should be opened up so we don't have businesses held up. With no other comments the public hearing was closed.

The item was motioned To Approve by Shane Robinson and seconded by Scott Bates with a passing result 3-0-1-0 Abstained by Larry Simonds

To go into Public Hearing.

The item was motioned To Approve by Travis Smith and seconded by Scott Bates with a passing result 3-0-1-0 Abstained by Larry Simonds

To Close Public Hearing

The item was motioned To Approve by Shane Robinson and seconded by Scott Bates with a passing result 3-0-1-0 Abstained by Larry Simonds

To Approve the Master Sign Application

5B. Proposed Amendment to Section 33.16 Membership and Vacancies; Attendance.- 7:04 PM

Mr. Gates reminded Council that this was to clean up a discrepancy in the Code of Ordinances and the Lowell Development Ordinance of different requirements for the number of people allowed to serve on the Planning Board. This is for the two to match since there will be a discussion of the candidates later in the agenda. The Section 33.16 of the Code of Ordinances old language stated that there needed to be five members from Lowell and then there was language about the Gaston County Commissioners appointing three people from the ETJ or Extra Territorial Jurisdiction. Since we no longer have ETJ, the sentence no

longer makes sense. Mayor Simonds asked if we can strike that sentence and never have it brought up again since it's been eliminated. Mr. Gates said that is what the amendment does in the second half of the first sentence and if approved by council would simply state that the Planning Board should consist of seven members of Lowell citizens. Mayor Simonds asked how many people serve on the Zoning Board now. Mr. Gates said there are currently six and one more to select out of two applications.

The item was motioned To Approve by Travis Smith and seconded by Scott Bates with a passing result 3-0-1-0 Abstained by Larry Simonds

To go into Public Hearing.

The item was motioned To Approve by Travis Smith and seconded by Scott Bates with a passing result 3-0-1-0 Abstained by Larry Simonds

To come out of Pubic Hearing.

The item was motioned To Approve by Shane Robinson and seconded by Scott Bates with a passing result 3-0-1-0 Abstained by Larry Simonds

To Approve the Changes to the Text Amendment.

6. New Business

6A. Annual Utility Allocation Report -LaBella Engineering- 7:07 PM

Bonnie Fisher, City Engineer with LaBella Associates gave the Utility Allocation Capacity accounting. She said it comes from our existing policy for Managing Utility Allocations and Extensions, Section 3, which requires capacity account. She said the policy states that the City of Lowell will track capacity, primarily water and sewer utility, to see how much usage you're using throughout the year and how much you have available. The policy says that the City Public Works Engineer shall prepare a schedule of the capacity that is available and a list of utility allocations that have been granted and this report is presented to council once a year. She said this is the 2023 report. Lowell's sewer capacity is a 0.6 million gallons per day plant and the permit requires that you track the daily flows and this is monitored by a Discharge Monitoring Report or DMR and flows are recorded each day but the report is produced on a monthly basis. LaBella takes those monthly reports and craft the flow against time so you can see what is happening at your plant. She explained the flow at the metering station at Fair St where Two Rivers accepts it, meter it, and sends Lowell a bill and is tracked separately. For 2023, the average monthly flow at the plant was found to be .23 million gallons per day, the permitted flow is 0.6, at you have an Interlocal Agreement for 150,000 gallons per day with Two Rivers. The last information she had when she looked at this presentation in July 2023, Lowell had about 33,000 going through that point. Mr. Attaway added that the metering point is at Fair St station. Mayor Simonds said "we collect it and give it to Gastonia". Ms. Fisher continued with her presentation explaining the flow over time where over time it increases and decreases. She said that shows you the infiltration of rain water and ground water. She noted the high than average flows at the plant in April 2023 with a couple of days where it got above the permitted 0.6.

She then talked of the design flow reduction request where the NC DEQ requires a flow design rate of 120 gallons per day per bedroom for residential development. The state allows for cities to request a lower design rate. The city of Lowell went through the permit process and the evaluation showed that residents contributed less wastewater or about 60 gallons per day per bedroom. Lowell was approved for the lower amount in January 2023. Mayor Simonds asked how many 5 bedroom houses Lowell had. Ms. Fisher said not many but the 60 gallons per day would be for any number of bedrooms. Mayor Simonds said "so we're staying well under the limits as far as the sewer system goes, we're in good shape. As growth comes in

then of course we're going to use more sewer. What we have to guard against is making sure all the man holes, everything is taken care of, [that] we don't have a spill going into the South Fork River, things like that, that's why we have people place for when alarms go off. That's the biggest thing. I understand what you're saying, you're the engineer and I know you have to present this to the board but how long have you been with Lowell? How long has LaBella been taking care of our engineering needs? Ms. Fisher said since about 2018. Mayor Simonds asked her if she "sees anything that needs to be any changed, just cut to the chase. I mean that's all well and good what you're saying but we all know that we're under our limits and we're in good shape." Ms. Fisher said "the graphs earlier show that you do have groundwater getting into your sewer system which is very typical for an aging infrastructure. If you can make repairs, there is testing you can do to find the connections where your storm systems are tied to your sewer. You can find those areas, cut them off, or you can line pipes. There are a lot of things you can do to get the groundwater out of your sewer pipes." She said she would recommend a rehabilitation program like that and believes that staff is actually considering that. Mayor Simonds said "I know we have money to update our sewer system down the road but as far as being over the limit or whatever you're speaking about, I think we had one violation or two with one, I think, in the recent months when all this water was bad. Overall, I think we are staying under the levels and not being fined and things like that. You can always use improvements but what people need to do is monitor things themselves and what employees need to do is go by and monitor all these man hole covers. You know how the system works, we need to keep all our drainage cleaned out, all our piping and stuff like that and infrastructure. I understand that."

Ms. Fisher continued with the presentation regarding new development going forward. She said both the new developments, River Heights and Lowell Woods, have been approved for 12,600 and 15,300 gallons per day respectively. When you add that to Lowell would be at 43% of the permitted capacity. Mayor Simonds interrupted and asked if she had the flows for Preston Place? She and Mr. Attaway said that that is Lowell Woods. Mr. Gates added that there are two different projects that share a connection with two different names. He said this property was sold off some time ago and a developer picked it up. Mayor Simonds asked how many houses are being allowed to be built at Preston Place. Mr. Gates said he believes it is 84. Mayor Simonds then said 'not to change the subject, but what are the lot size is over there?' Mr. Gates said "I don't know that off the top of my head, Mayor." Mayor Simonds said "that such a small piece of property to have all those houses but that was voted on by the prior council." Ms. Fisher continued with her presentation including if the city has capacity that could be available and the preliminary capacity assurance review PCAR update for the flows to the Wastewater Treatment Plant and Willow Creek Meadows.. Mayor Simonds interrupted and asked if she had the figures for the Belmont Land Investment or the development out on Spencer Mountain Rd., Main St.? Mr. Attaway said that is Spencer Ridge. Mayor Simonds asked if that has been approved for development. Mr. Attaway said they've been given a preliminary capacity assurance review, they're zoning has been approved. Mayor Simonds said "as far the city spending money out there with water line and sewer line, we are not obligated to do anything?" Mr. Attaway said no. Ms. Fisher continued with the discussion of the Willow Creek Meadows PCAR and the water allocation provided by Two Rivers Utilities. Mayor Simonds interrupted and asked "what you're saying is Two Rivers controls part of our sewer?" Ms. Fisher said this is the water supply. This concluded her presentation.

6B. Consideration of Change Order 09 to the Demolition Contract with Trifecta Demolition- 7:22 PM

Mr. Attaway guided council to the financial dashboard located in the agenda packet showing the \$2million SCIF grant awarded to the city used for this project. He said the total number considers this change order. He said the next page tells a little about what the change order is inclusive of some permanent rip rap [stone]. Danny Watson, Project Manager with LaBella came up to explain more about the change order. He stated that this order was to permanently stabilize the bank. He said what they encountered from the previous rainfalls and after our last meeting was to check out the impact to the site. What they discovered was that since it is on an abandoned site of 20-30 years, the existing infrastructure was not maintained and the trucks and the hauling on the existing road, is that it tore up the road more and needed stabilization of all the gravel roads and banks on the site. The damage spilled over into rip rapping banks which also needed permanent repair. He said Mike [Craddock] with Trifecta's demolition crew submitted rates and ultimately lowered his unit rate in the contract after some negotiations.

Mayor Simonds stated he needed to leave early at the last council meeting but asked if there was a change order requested during that meeting. Mr. Attaway said yes there was a change order then. Mayor Simonds asked how much that was? Mr. Attaway said that was change order #7 for \$73,650. Mayor Simonds asked what they [LaBella] are asking for tonight? Mr. Attaway said \$39,029 and that would be it for the balance of the work at the site. Mayor Simonds said that would be a total of \$1,987,000? Mr. Attaway said that was correct. Mayor Simonds said you only had \$2 million? Mr. Attaway said correct. Mayor Simonds asked what do you do when you run out of money? Mr. Attaway said this will complete the job. Mayor Simonds asked if this will complete everything as far as the corrosion stuff, etc? Mr. Attaway said yes. He said the only thing left there is the raised site. Mayor Simonds said "so we've spent all the money we could spend without going over, right? Has anyone, I mean I understand numbers when it comes to how much money you have available and in most cases people like to stay under. In this case, under \$2million, we're only going to be less than \$13,000 [under the quote] to complete the project. I don't know how they came up with the figures but they did a heck of a job. They come up with a \$2 million project and spend it all and the last two meetings we had to ask for more money to get this thing completed. What was in the original contract? Was this not in the original contract way back, to finish this before now? I mean all these new change orders seem kind of recent." Mr. Attaway said "yes the former council that started this project and it was stated numerous times that we are going to find things and that there would be change orders to this site, large site. So the original contract was approximately \$950,000 and this is change order #9 in the demolition contract...and each change order has had various listings of the quantity of items." He listed examples of the items found including underground storage tanks. Mayor Simonds asked Mr. Attaway the amounts needed this time and last month again. Mr. Attaway answered [see above].

Mayor Simonds added the two up and said "looks like you'd see these things coming before you get down to where you come to council meetings to say we need this money to finish a project. I don't have the original contract in front of me but I'm sure in the very beginning you weren't considering spending \$2million but now that we are at the end, you won't be completely spending the \$2million with about \$12,000, \$13,000 left over for any changes or whatever. I don't understand. Did we only have the one bid for the different things with the same contractor and never ask another...can someone do anything cheaper rather than just allowing the same contractor come in and just keep making changes? We never questioned anything, we just...we eliminated the bid process and just go by what someone tells you. To me

that's inappropriate, in my opinion. I think when you get change orders or whatever and it's not in the contract, I think you should go out and have another bid rather than go by whatever the company tells you. I think it's always room for question in whenever you spend \$2million and now the money is almost gone. You got \$12,000 left to sweep up dust or whatever, I don't know. I just have a question. I don't know how they allow you to just make change order after change order without no other bids. When did all these change orders start, when you were at \$1.2million correct?" Mr. Attaway said he is not sure. Mayor Simonds said "it's in front of you". Mr. Attaway said he doesn't have dates. Mayor Simonds "at one time, you were thinking this would be handled at \$1.2million, now we have \$2million appropriated, we're spending the whole \$2million." Mr. Attaway said "I guess you could've left it like that and the former council could have as well but they elected to do the change orders." Mayor Simonds said "I understand, but when you have change orders, you take bids, you don't necessarily have to stay with the same contractor. I say anything over \$10,000 should require bids but that's not up to me. I have never seen no town or anywhere that just allows someone to come in saying this is how it has to be. I'm not saying anything is wrong, just in my mind you got to save all you can because it's not our money to blow, it's our money to save. If you could've saved some money, then we'd have the money to do other things. But to take the entire \$2million for this project, I think your initial bids were nowhere near that. What was it \$1.2, \$1.3 in the very beginning?" Mr. Attaway said "again, this contract was a \$950,000 demo contract." Mayor Simonds asked if "this work has already been completed and you're asking for money tonight?" Mr. Attaway asked Mr. Watson. He didn't answer because Mayor Simonds said "well you've already authorized it without approval." Mr. Attaway said it wasn't authorized. Mayor Simonds said "well you've already spent the money, you said the work's completed right." Mr. Attaway said yes but we are not authorized to go over a contract, they have to come in to do a change order for the contract and I'll let Danny and Mike speak to that." Mayor Simonds said "how the bid process works is...if I'm doing a project, I'm getting all the bids I can get." Mr. Watson said "that the part of the bid process is that it was \$1.2million and the change orders, I mean you could've stopped construction in the middle after they completed with the existing infrastructure it was going to cave in and if you went back to the bid process that would take a couple months and you'd have to shut down the work and the existing infrastructure would be more decapitated. According to our permits, we have to maintain erosion control, sediment control and stormwater control. So by stopping construction and re-bidding the change orders would take time in itself while the contract.." Mayor Simonds interrupted and said "that's what a contract is for. I think it's very important that whenever the city goes into a contract with whomever it be and they tell you it's going to be this amount of money and all of a sudden month after month after month you keep spending more and more money without the bids. That's my question. I'm not saying anything was inappropriate just money the city has to spend even though the State wrote the check and that's fine. I'm sure we have to be good stewards of the money no matter what and I would recommend in the future that this board never allow anyone and I know we have the Manager/Council form of government, but as an answer to the public. We should know what we're spending ahead of time rather than a City Manager, I'm not talking about you, but any City Manager that says it's ok to spend X amount of dollars to go ahead and authorize...has council already approved this?" Mr. Attaway said "no, and I never authorized it." Mayor Simonds said "well how did it get to this point?" Mr. Watson said "the extra rip raps that were put in, we didn't get the tonnage tickets until late, then we added them up and asked Mike and Trifecta to come up with an estimate and present it as a change order." Mayor Simonds interrupted and said "excuse me, if you have a list of those, do you have a list of how much you paid the dump to take it, is that what you're saying?" Mr. Attaway said he is talking about the quarry. Mr.

Watson said the truck tickets are to bring it in. Mayor Simonds asked if we have copies of those invoices? Mr. Watson said "we have a copy of all the truck tickets. We've added them up and justified that they were the tickets turned in." Mayor Simonds said he'd like to have a copy of them. He asked if there was anything else. Mayor Simonds asked Mr. Watson to provide the copies of the invoices from the very beginning to now as he'd like to go through them to see what was spent.

Councilmember Robinson said last month council approved a little extra funds in case that last finding would not be accepted by Gaston County dump. He asked Mr. Watson if the landfill accepted that? Mr. Watson said yes. Mr. Attaway said the underground storage tank was deemed acceptable by the landfill and that was change order #8 with the removal of the tanks and then change order #10, which is the \$10,000 threshold that council approved in January. He said the \$2613 was the not to exceed number to backfill it [the hole] with stone. Mayor Simonds asked if that is the same thing we are talking about tonight. Mr. Attaway said no, that was from last month. Councilmember Robinson then asked about the erosion control and coming well under a half a million dollars. Mr. Watson said "what we found from the rains, the existing site conditions, it didn't hold up very well from the rain and more stone was needed to refurbish the existing roads mainly using up..." Councilmember Robinson interrupted and asked "prior to this, we were a little over \$100,000 under that budget after this \$39,000, we're still going to be under that budget by..." Mayor Simonds said \$13,000. Councilmember Robinson continued saying "last month, when we were in here and according to the minutes, that "Danny is keeping track and they were projected to come in far under that amount" talking about the erosion control." Mr. Watson said that's correct. He said "at that time we had all tickets turned in and were well under, then we met on site after all the rain and needing more stone. The idea is that..." Councilmember Robinson said "this is an additional \$39,000 to that well under?" Mr. Watson said yes. Councilmember Robinson asked how far are we under that now if we add the \$39,000? Mr. Watson said all of the budget of the contract was used up, refurbishing the site (inaudible). Councilmember Robinson said "I know the change for tonight is for \$39,000 but I'm trying to get to where we were significantly under that half a million last month and the only change is \$39,000..." Mr. Watson said there was a significant amount of stone placed in January and we got the tickets around the third week of January so we added all the tickets up in the last pay app, then asked Trifecta to turn in the rest of them so we can add them [together] to see where we are." Then we found out..." Councilmember Robinson said "that maybe we were not significantly under last month as it was stated?" Mr. Watson said "yes because that is the records we had. From the records we had we were well under and so we got more truck tickets and the idea was to use the savings from the truck tickets but not go over the contract and we found we went over from adding the tickets we got the 3rd week of January. So as soon as we got the tickets we added them up and reviewed the contract." Mayor Simonds asked how many tons of stone do you get when you order it? Mr. Watson said 15-20 tons. Mayor Simonds asked how much is it per ton? Mr. Watson said "for the rip rap it is \$136 per ton and for the AVC it's about..." Mayor Simonds asked how many tons have you had to use since the last meeting? How many are you using? He then asked Mr. Watson if he was the engineer that did the sewer lines that went into the laundromat. Mr. Watson said no. Mayor Simonds asked if he "did anything to the street over here [pointing towards back of building]?" Mr. Watson said no. Mayor Simonds said "getting back to this..." Councilmember Robinson said the cost the Mayor was talking about is in the packet. He then read the amounts noted on the proposal for services. Mayor Simonds said it was \$500 just to unload a truck and asked Councilmember Robinson to read it again. Councilmember Robinson said it was on page 60 of the packet. It was then shown on the screen.

Mayor Simonds asked how many tons were requested. Mr. Watson said 364.44 tons [page 61] and the \$39,000 is to cover that.

Mayor Simonds said "I understand budget and I understand when you build a piece of property, you want to come under the budget and I don't know how you can come so close to the original \$2million and just \$12,\$13,000 below and the past two meeting nights you've asked for more money. Looks to me, I don't know how you could misjudge this. Just in my mind. You came in last month and you gave them how much?" Mr. Attaway said \$73,000. Mayor Simonds said "\$73[\$73,000] last month, \$39 [\$39,000] tonight, that's \$112 [\$112,000]." Councilmember Robinson said "I, myself, understand that there are so many factors in this project that there are changes and things are going to come up and a lot of unknowns. I'm just saying for myself, trying to figure out how last month, we were going to be well under that with only \$39,000 more, but now we are exceeding that." Mr. Watson asked Mr. Attaway to go back to the figure on the screen [showing pictures in the agenda packet]. He said "all the existing roads around the sites..." Councilmember Robinson said "you're saying you didn't know that at the last meeting when you were here? Where are all the tickets that you didn't know about at that time? Mr. Watson said "those tickets were turned in in January to evaluate for payment for the last pay app. (inaudible), there was a lot of stone used for the existing roads. So we then had all the rip rap on site to see what those tickets added up to and as soon as we got the tickets, we added them up." Councilmember Robinson said "I'm assuming it was just a misstatement last month that you were well under that." Mr. Watson said "it wasn't a misstatement. The records that we had... the engineers, here's what's been turned in and based on what's been turned in, we're well under. As soon as we got the rest of those tickets and added them up we found that the rip rap went over that." Mayor Simonds said "when you got tickets to cover from last month to (inaudible). The last meeting was January 9th, so all those tickets should be January on forward and we should have record of the date on the invoice and how much we spent. Do you have that Scott?" Mr. Attaway said "I think on this proposal, on the bottom of it, it tells you the date, the ton load and starts January 8th to January 17th." Mr. Watson said the tickets were given to them the third week of January.

Mayor Simonds said "this is the thing that I have a question about, on January 9th, you're already up to a point where you have to ask for money, \$39,029 and tonight is \$73,000, is that correct?" Mr. Attaway said no, it's backwards. Mayor Simonds said "so it's \$112,000 and this is just for stone and labor?" Mr. Watson said "the change order previously or change order #7 has nothing to do with the truck tickets, that's all related to demo [the \$73,000] and this [\$39,029] is just the truck [tickets]." Mayor Simonds asked "you handle the construction part of it right?" Mr. Watson said "yes in terms of keeping track of what's been turned in and evaluating that based on the contract. As soon as we get the truck tickets turned in we evaluate that..." Mayor Simonds said "so start to finish you have how much has been spent for stone?" Mr. Watson said yes. Mayor Simonds said what do you do as far as the grading goes, the cleaning up. How does that factor into it, is that like per ton?" Mr. Watson said "this is a demo contract, a backfill and erosion control contract. There is no grading. The construction contract is about \$1.1,\$1.2 million but the total project including the testing and everything is \$1.9 [million], not just the construction." Mayor Simonds said to Mr. Attaway "you appropriated \$2 million, have you spent more than \$2 million out there?" Mr. Attaway said "no, sir." Mayor Simonds said "but you're within \$12,000 of spending that." Mr. Attaway said "that would be the total, yes." Mayor Simonds would like to get a copy of all the invoices and dates to add it up. He then asked where are they taking the other stuff, like the steel? Mike Craddock answered saying

"all of the steel, anything recyclable get recycled." Mayor Simonds asked who gets the money for that? Mr. Craddock said that goes back to the contractor. Mayor Simonds said "that's a good perk". Mr. Craddock said that is part of the demolition industry. Mayor Simonds asked how much do you think they got of a perk? Mr. Craddock did not know. Mayor Simonds said "well there should be an invoice, who did it?" Mr. Craddock said he's in estimating and doesn't know that. Mayor Simonds asked "who sold the steel? Who is the contractor that sold it?" Mr. Craddock said "Trifecta, my company." Mayor Simonds said "so your company got the money from the steel?" Mr. Craddock said "correct". Mayor Simonds said "and you don't know how much you got for it." Mr. Craddock said "I don't keep up with that. I don't. We have multiple positions that handle that." Mayor Simonds said "so the city doesn't get that money." Mr. Craddock said "correct". Mayor Simonds said "even though it belongs to the city." Mr. Craddock said "no it belongs to the demolition contractor per the contract." Mr. Attaway said "Mayor, the salvage was in the contract for the demolition bid and that was approved by the former council." Mayor Simonds asked how much money were they to receive for the steel. Mr. Attaway said "there was no monetary amount listed, it was listed that they would retain the salvage." Mayor Simonds said that property belongs to Lowell. Mr. Attaway said "the mentality is that that's going to drive the competitive bid process down because as the demolition contractor notice and estimate how much salvage is in a job, then maybe they can beat out a peer bidder and we went with the low bid." Mayor Simonds said "the bid was already awarded, there was no other bidders, correct?" Mr. Attaway said there were two other demo bids. Mayor Simonds asked if they got the money for the demo? Mr. Attaway said he was saying there were two other bids for the demo. Mayor Simonds asked why the city wasn't going to get any money from the steel at the beginning of the contract? Mr. Attaway said because it drives down the cost of demolition. Councilmember Robinson said it's part of their bid. Mayor Simonds said he understood. Mr. Attaway gave an example of how it would drive down the bid. Mayor Simonds said "once you award the bid, you award the bid that takes care of the job for whoever it is but once you bid and then they give you the same amount they charge you to do the job and in the meantime all this steel...Who'd you sell the steel to?" Mr. Craddock didn't know the name of the location. Mayor Simonds said "it's your company and you don't know who wrote the check?" Mr. Craddock said "no sir, I'm an employee of the company. I don't handle the salvage." Mayor Simonds asked him if he could provide who bought the salvage. Mr. Craddock said he could.

Mayor Simonds said "this whole project has gone, for me, completely south. It's not done as of yet and I don't see how we can keep coming in here and you ask for more money even though you are trying to stay under your \$2million or make sure you do spend the \$2million. To me, it looks like you're making sure you spend the \$2million. It's just every month you ask for more money and I think Shane has a good point. I don't understand. Once you say this is it, then you come back and ask for more money." He then gave an example of what he is referring to and again asked to see everything from the beginning of the project, every penny. He then asked how much was the total engineering cost? Mr. Watson said \$108,000. Mayor Simonds then said "so the rest went to you including the perks for hauling the steel? That's a lot of money." Mr. Craddock said "it was a lot of work." Mayor Simonds said "and you're still coming back for more money. Looks to me that somewhere in there you would have mercy on poor towns so we could save us some money. Steel is high. Anyway, I just want a complete breakdown from day 1 and everything we spent. Does the board agree with that?" No one answered.

Councilmember Robinson said "the only other question I have...Danny when you were here last month, we didn't know about funds that were coming in, so now that this is change order #9, are all the invoices in and this is the final number?" Mr. Watson said all they have left is fill in two tanks. Councilmember Robinson asked if that is part of the change order and everything has been included and no other tickets? Mr. Watson said correct. Mayor Simonds said "well you've already done the work so we have to pay for it. You've already authorized the work." Mr. Attaway said "again, as I've stated two times, I did not authorize it but yes the work was done." Mayor Simonds asked who authorized the work? Mr. Attaway said "Mayor, staff and the project managers did not authorize, it was done by the contractors. The tickets were behind and then counted like Danny [Watson] said and realized things were over." Councilmember Robinson asked if the city recommends paying this or did the city oversee the work. Mr. Attaway asked Mr. Watson to speak to the integrity of the work. Mr. Watson said "in the beginning, we had to evaluate where we were with the existing conditions of the site. The intent was not to go over the contract. The existing roads were failing and something needed to be done. The intent was to use the bid process at the competitively bid rate of \$43 a ton, which is a very good price to refurbish the roads. If you rebid that work that would take a couple months and that item was already competitively bid which is a very good value for ABC stone. The idea was to use the stone and not go over the contract. That was done and stayed within the contract but the rip rap is what put it over. Those tickets came in later and we evaluated that, \$39,000 over, so that's where we are."

Mr. Attaway asked about the integrity of the rip rap and if it has been inspected. Mr. Watson said yes. Mayor Simonds said he wanted to see all the invoices and that everything should add up. He asked where they get the stone from. Mr. Watson said Martin Marietta in Kings Mountain. He then asked how much his part is. Mr. Watson again said \$108,000 and they have not asked for any change orders for the engineering portion of the contract. Mayor Simonds asked if they will be done this week. Mr. Watson said they have a little more left within their budget to make sure the inspection work is done. He said there are two more tanks to remove and backfill but most of that is going to be done by DEQ and Geocentric. Then they will review the final pay app and make sure it is complete then close it out. Mayor Simonds said "it mind boggles me that you came in last month and this month asking for more and say the rain did it." Mr. Watson said "yes, we're engineers and we evaluate the costs that come in from the contractor, we don't do the actual work. We inspect it to make sure it is going according to the contract." He said they make sure it is inspected and up to DEQ standards. Mayor Simonds repeated he wanted what was done from day one and complained about not having a record for the steel. He asked about the nine change orders. Mr. Watson said some of them were RFI's with a lump sum of a lot of the change orders. Mayor Simonds said some of them were really high like \$400,000 for one. Mr. Attaway said no, the highest change order is \$73,650. Councilmember Robinson said that he understood this part, his only concern was about what was said last month. Mr. Watson said that is from the records they had at the time. He said he is not the contractor and was going based off what he had. Councilmember Robinson said he understood.

Mayor Simonds started reading off the amounts on the invoice in the packet. Mr. Watson corrected the amount they [engineers] were paid and that was \$65,000 and no change orders [not \$108,000]. Mayor Simonds said it's up to the council at this point. He continued to complain about the orders. Councilmember Smith said "Danny what would've happened if we didn't lay the extra gravel. What would be the consequences and the cost of the clean up had that not been done?" Mr. Watson said it would be a

pretty significant cost and they'd have to explain to DEQ why they didn't stabilize the existing site. He said the existing site hadn't been maintained in 20-30 years and they discovered those issues from being on the site. Councilmember Smith said "so you didn't just lay \$30,000 worth of gravel just to lay \$30,000 worth of gravel?" Mr. Watson said it needed to be done. He said another contractor wouldn't charge \$43 per ton, which he stated again that it was a very good rate. Councilmember Robinson said he understood that part and mentioned his issue again regarding the what was brought before council last month and how the engineers said they would be well under then. Mr. Watson again said they didn't know that at the time. He said "if you recall, we were going to check out the site from the rains, so we didn't know the issues". Councilmember Robinson said "I specifically asked last month what effect on the rain have on the site but when you look at some of the truck load dates, they were done on January 8th, the day before the council meeting." Mr. Watson said "they dump the truck loads but that doesn't mean that they immediately install it that day. They put it in piles, then they install it." Councilmember Robinson said "I understand that. You were in here and unaware." Mr. Watson said yes, he was unaware.

Councilmember Smith made a motion to approve change order #9 for the demolition contract with Trifecta Demolition, Councilmember Robinson said "I'll make it a second but under the discussion, I'd like to say that as of now this is the last, there is no outstanding tickets. This is the last. I mean you're going to come in under your \$2million but this is, the last change. There is no outstanding tickets or next month somebody says we missed this. This is it." Mr. Watson said this is it. Mayor Simonds asked if we'll have a copy of the tickets from tonight. Mr. Attaway said he'll get the copies from Mr. Watson. The vote was unanimously in favor.

The item was motioned To Approve by Travis Smith and seconded by Shane Robinson with a passing result 3-0-1-0 Abstained by Larry Simonds

6C. Selection and Appointment to the Lowell Planning and Zoning Board- 8:07 PM

Joe Gates presented stating that earlier it was mentioned to get the Planning Board up to seven members. He said council have two applications in their packets for review and selection. Mr. Attaway said Ms. Hopper was in the audience tonight and is also in the Citizen's Academy. Mayor Pro Tem Bates asked if the background checks have been done. Cheryl Ramsey explained that the background checks are not done until after they are selected so the vote would be pending the results. Mr. Attaway said we do that for the cost to run the check. Ms. Ramsey explained she does that when people apply to jobs, because there could be a number of applicants to pay for. Mayor Simonds asked who the applicants were and Mr. Gates said Tamika Hopper and Robert Sebastian. Mayor Pro Tem Bates asked if in January when we appointed a member to the Lowell Community Committee, the background check hadn't been done? Mr. Attaway said "no, Cheryl, who does that wasn't at the meeting to specify her process then." Mayor Pro Tem Bates said "but Tori in Parks and Recreation said it had been done." Ms. Ramsey said that she thought it had been done but it had not. Mayor Pro Tem Bates said the problem I have is if we are going to do a background check, it needs to be done and part of the process because if we are approving somebody for a committee and we don't have any knowledge of their background. I guess that is coming from my background." Ms. Ramsey said that she does the same thing for employees and that everything is conditionally. Mayor Pro Tem Bates asked why don't we require the applicants to get their own background checks to keep the city from having to pay. He said if they are really interested in coming to a committee, they shouldn't have a problem paying for it. Ms. Ramsey said we don't currently do that. Mayor Pro Tem Bates said he knows that but it would be an option and if it needs to be an update to the ordinance, he would like that to be looked

into. He said he'd also personally like to see the background checks in the agenda packets. Councilmember Robinson said he understands that but for him, having the citizens supply that would make it harder to get participation. He said having the background attached may help make the decision on whether he appoints individuals or not.

Mayor Simonds said he thought Tamika serving on the Citizen Committee [academy] would be beneficial as she's shown interest in this town and he appreciates that. His recommendation would be for her. Councilmember Smith asked if the other applicant was here. Mr. Gates said no. Mayor Simonds asked if he can be an alternate. Mr. Attaway said we don't have any alternates but would keep his application on file. Initially Councilmember Robinson made a motion to nominate Ms. Hopper to the Planning Board pending a background check. Ms. Ramsey said it has already been done on her because she is already on the Citizen's Academy and that is required for them as well. Councilmember Robinson changed his motion to nominate Ms. Hopper to the Planning Board.

The item was motioned To Approve by Shane Robinson and seconded by Scott Bates with a passing result 3-0-1-0 Abstained by Larry Simonds

6D. Resolution #01-2024 to accept ARPA funds for the Wastewater Pre-Construction Planning Grant- 8:13 PM

Presented by Scott Attaway. He said this is to correct the previous Resolution #17-2023. NCDEQ informed the city that the previous resolution could not name two authorized officials to sign things and it listed the Mayor and the City Manager. The resolution now lists just the City Manager.

The item was motioned To Approve by Travis Smith and seconded by Scott Bates with a passing result 3-0-1-0 Abstained by Larry Simonds

6E. Consideration to Add Traffic Calming Measures to Rogosin Blvd.- 8:33 PM

Scott Attaway said that staff added the item per Mayor Simonds request for more information about Rogosin Blvd's former traffic calming study and stated the amended policy is in the agenda packet. He asked Jeff Harrison, Assistant City Police Chief to go over the results. He added that there is an option in the ordinance, even if it doesn't meet traffic calming measures in the policy, that council can choose to still add a traffic calming measure. Asst. Chief Harrison said the old policy was restrictive and very hard for a complaint area to receive any assistance other than stepped up police patrol. This is due to the usage of average speed, rather than an 85th percentile speed which has been changed in the new policy. He said the 85th percentile provides a more accurate picture of speeds in the area and reduces the effect that slow or very slow drivers have on the data. He said other policies were changed to make them more professional and to give a clear direction in solving traffic issues throughout the city.

Asst. Chief Harrison discussed the new policy regarding the Class A issue for that area [Rogosin Blvd.] Class A is an 85th percentile speed of one to nine miles an hour over the posted speed limit. If the data indicates a Class A issue, the action to be taken is increased random police patrols or such other measures as deemed by the City Council at its discretion. Class B would be the more harsh result of the study, that's 10 plus miles per hour of the 85th percentile speed. If that is triggered, city staff will assess, with the community, the type of calming measures that would best address public safety and the nature of the issue. He said council could put in place whatever they deem necessary for the Class A offenses. When you apply the new policy to the Rogosin Blvd. complaint, where they did the speed study, it is a Class A issue. He said the 85th percentile speed is 31 mph at the maximum measured. Under the old policy, the

average speed was only 19mph. Although it doesn't get the Class B, the 31 mph does bring you within the threshold which they would not have had with the old policy.

Mayor Simonds said Rogosin doesn't have any sidewalks and thinks the complaints are coming from pedestrians and doesn't see anything wrong with speed bumps. He was thinking at least two on each side of the road. Councilmember Robinson asked how we engage with the community about putting down speed bumps. He said "speed humps, if it saves a child's life, I'm all for it. I know some of these people may be in favor of it and some of these homeowners may oppose to it. How do we engage the community prior to coming to them? Do we send them anything?" Mr. Attaway said when we have received a complaint in the past, the Police Department will meet with the individual to see what the problem is and what they think an appropriate measure is. He said staff can reach out to the Rogosin area residents if council would like. Councilmember Robinson said he would like to know what everyone thinks not just one person. Councilmember Smith asked if this was a complaint by one person. Mr. Attaway said "no, over the years, we've probably heard several complaints from the Rogosin neighborhood but I was referring to another incident about one individual." Councilmember Robinson said is not opposed to a speed bump there but would like to engage more than just the one complaint. Asst. Chief Harrison said they should be able to arrange a meeting for that area and use data to get a consensus of what they all think. Councilmember Smith agreed with the idea.

Mayor Pro Tem Bates said "we need to be careful if we don't adhere to the policy to what the Police Department has. I think we need to be careful going above that in putting speed bumps (inaudible) because then everybody in the City of Lowell is going to want one and then we are going to have to explain why we gave this neighborhood speed humps and not this neighborhood." He added that he's seen where the Police has a new speed box displayed. Asst. Chief Harrison it's the mobile speed limit sign that lights up and logs speed data. Mayor Pro Tem Bates asked if they still use the old one that doesn't display and just shows the data? Asst. Chief Harrison says he doesn't. Mayor Pro Tem Bates said he thinks you'd get more of an accurate reading as it looks like just an electrical box with no lines coming across the road so people have no idea [that they were being monitored]. His suggestion would be to go back to that box even though you may get the same results. Mayor Simonds said the thing about Rogosin is that you have no sidewalks and pedestrians and it's [speed humps] not going to be that expensive. He said he thinks that area is a problem and asked if any tickets have been written on that street? Asst. Chief Harrison said no they have not. He said they've stepped up patrols there but there are certain areas of the city that is very hard to enforce speed because any where you park there [on Rogosin], they're going to see your car. Councilmember Robinson said that it would be hard to collect data off of just two weeks of review. Asst. Chief Harrison said he will provide the data he has collected to council. He then gave the different scenarios used to collect data including leaving the device on where people can see it and get used to it to turning it off during certain times of the day, etc. Mayor Simonds said we are creating our own problems with not having any sidewalks or speed humps out there. He asked how much does a speed hump cost. Thomas Shrewsbury, Public Works Director said "the last one that was put down approximately 8 years ago for \$1100 and then an additional \$300 for the signage that is required. Now you would be looking at least \$2000 for it and the signage." Mayor Simonds said you can't put a price on life. Mayor Pro Tem Bates said unless you build a speed hump up, like it is on Oakland, it will tear your car up, but a regular speed hump isn't going to stop some people. He thinks if you have a small neighborhood like that, then he agrees with

what Councilmember Robinson said and see how many people are interested in the speed bump and how many people are speeding. He said if it is select few have an officer patrol down there and give them a ticket which would solve the problem. Asst. Chief Harrison said that this complaint was regarding one particular car and once they handled with that person, they didn't have any more complaints. They did continue to patrol but it [the complaint] was for one particular car. Mayor Simonds again complained about the lack of sidewalks and asked why there aren't any. He continued with the need for the speed humps.

Councilmember Smith asked if we considered the traffic calming measures tonight, it's up to the police officers and Chief to figure out what those measures would be? He added "it wouldn't just be that we approve this and then we put a speed bump on Rogosin?" Mr. Attaway said it would just be that council would instruct staff how to move forward, talk to neighbors, get pricing but not approving anything at this time. Councilmember Robinson said that will help make his decision. Mayor Simonds asked if there was anything on the agenda about Dogwood or have there been any complaints. Asst. Chief Harrison said no. Mayor Simonds said he's heard from multiple people that they are drag racing on Dogwood. Asst. Chief Harrison asked Chief Moore who said he did receive one complaint about drag racing. Mayor Simonds asked them to go look at the markings of the street. He complained of drivers without licenses racing. He asked if they've checked for speeders on Power Line Dr. and Saxony? Asst. Chief Harrison said they have in the past but have not done driver's license checks lately. Mayor Simonds said if you did that, you'd have a lot of citations. Asst. Chief Harrison said they can put the speed box at either location if council would like. Mayor Simonds then asked about the speed limits signs to slow trucks down. Asst. Chief Harrison corrected himself and said we did have one on Saxony but because it is a state run road they can only put the speed study there to get an idea of the speeds but not make any recommendations. Mayor Simonds maybe you can contact the state and asked about speed bumps on highway 7. Asst. Chief Harrison said the traffic calming policy only applies to state roads and you can't put a speed bump on highway 7. Mayor complained further about the speeders wreaking havoc.

6F. Discussion about closed section of Birch Street between N. Clay Street, Potts Street and Ashe Street.- 8:33 PM

Scott Attaway said that staff added the item per Mayor Simonds request. He directed council to the agenda, page 83, where it gives a history of the closure. He added that the owners wanted to shut it down because of all the illegal dumping on the property and in turn the city would give the owner code violations. He said they attempted to notify people in 2021 that this was happening but the owner closed it within two days. Mayor Simonds asked when the water run-off fees started? Mr. Attaway said he doesn't have that in front of him, but may be on our 2nd year. Mayor Simonds said something inaudible about the asphalt on the street. Mr. Attaway pointed to an area on the map of where the asphalt was being billed "because it was over the 200 sq. ft. of impervious surface that any property would have. Any property is going to get billed [at a rate of] \$6.75 times the amount ERU's (Equivalent Residential Unit) you have on the site, 2,827sq. ft at \$6.75 each and that's your ERU." Mayor Simonds said "how can Lowell Free Will Baptist Church pay \$80 for that little parking lot." Councilmember Smith said it's a building. Mr. Attaway said it applies to parking lots, etc. Mayor Simonds said you have the street blocked and the roof area of the church is nowhere near (inaudible). Mr. Attaway said we can check it. Mayor Simonds said "and they're paying \$80 a month just for a water run off fee. I don't know what the Church of God is paying. He asked Joe Heffner, Pastor of the Lowell Church of God, in the audience what they were paying. Mr. Heffner said they have six different bills so I really don't know. Mayor Simonds asked if it was all one parcel. Mr. Heffner

was inaudible. Mayor Simonds said "you have the sewer bill, water bill, garbage...I guess we can authorize Shrewsbury [Thomas] to go check it out to see why he's getting six bills for one piece of property." Mr. Heffner said something inaudible.

Councilmember Robinson said his concern is that at one time they were talking about possibly working with the landowner to extend the Birch St to W 1st St. He said "now that Warehouse is closed down, but there were multiple times that trucks would block Ash St to which the Chief is probably aware that. They were backing in from the warehouse blocking Ash St completely where people couldn't get through. Now if that happens and Birch St is closed, there is one way out, Clay St, but that becomes an issue to me. Can we get with the landowner, do they have a design plan for this?" He said he'd like the city to get with them [landowners] to extend the street as part of the compromise. Joe Gates explained the layout to council further laying out why the owners wanted to close the street. Mr. Attaway said he or Mr. Gates will arrange a meeting the property owners to express council's concerns. Mayor Simonds asked if they are getting a water run off fee bill. Mr. Attaway said yes and that now the closed asphalt area is added on their stormwater bill. Mayor Simonds asked how much is their square footage. Mr. Attaway said he didn't know. Councilmember Robinson asked if they are a brownfield. Mr. Attaway said he heard that they are applying to be one but has not heard an update in over a year. Councilmember Robinson said he assumes they have applied because he saw something online. Mayor Simonds asked if council has to approve that. Mr. Attaway said not to his knowledge as he thinks it's between the property owner and DEQ.

Mayor Simonds said "(inaudible) for the property across the street being done without any bidding." Mr. Attaway said it was bid under the Economic Development Agreement per statute. Mayor Simonds said "so you don't have to take bids on a property sold by the city?" Mr. Attaway said he doesn't have the statute with him and doesn't know by memory but it was something along the lines of if you're selling a piece of property that is going to be used for a large development that is going to produce jobs in your city with Industrial or Commercial flex space, which this is, then city council has that option. Mayor Simonds said the people next door that owned (inaudible) and bought the old liquor store (inaudible) that property would have been perfect for parking had they had the opportunity to buy it. It was never made public that it was going to be sold and I don't care what kind of scheme you go through to say you can do that. It's city property that's going to be sold and I don't know why you didn't go through the bidding process. I know this is water under the bridge but in the future you have to have some kind of common sense." He talked some of the bidding process and said to send them a letter, not demanding anything, but give them the mandates to "clean that up." He asked if there is still a big water line there? Mr. Shrewsbury said it is a 6 inch water line there. He said there should be something in place to make them clean the property up. He asked the attorney if it is too late to have them clean the place up. Mr. Russell said if there is a violation of the ordinance, then you can but you can't redo the contract. Mayor Simonds asked if that was a violation of the ordinance. There was further discussion of ordinances for violations. Mr. Gates said they can research and report back next month. Mayor Simonds ask more about the water line and clean up.

6G. Text Amendment - Lowell Code of Ordinances, Chapter 76: Traffic Schedules and Chapter 72 Traffic Regulations- 8:48 PM

Presented by Mr. Attaway. Staff is recommending that City Council amend Schedule XII: Weight Restrictions to include a portion of Cobb Street between Kenworthy Ave and S. Church Street and to put in the Code of Ordinances. At the moment, the code states that 2.5 ton and up vehicle could not traverse on that section

of Cobb Street. Currently there is not but with the preparation of Aberdeen extension connecting into Kenworthy and possible accidental left/right turns on that road and other turn issues, it could be difficult for large trucks. The idea is to resolve a problem before it starts. If council is ok with this staff would bring it to council for a vote. Councilmember Smith said he thinks this is a no brainer for no trucks sign on Cobb St. Mayor Simonds asked if it could be a one way street since it's not wide enough for two vehicles. He asked who pays for the street where the telephone pole is? Mr. Attaway said he's not sure what the Mayor is talking about. Mayor Simonds explained where. Mr. Attaway said NorthPoint? There was further discussion with Mr. Attaway ultimately saying the city is doing no work over there.

Mayor Simonds asked " what about Kenworthy where they are wanting to put a convenience store at the bottom of the hill where they have a temporary permit, they [property owners] still don't have a way out of the property right, from the state to use there property?" Mr. Attaway said yes, they do. Mayor Simonds asked where are they going to go in and out. Mr. Gates said he can provide the Mayor with a copy stating so from NCDOT. Mayor Simonds talked more of this property and a house by the lot on Kenworthy. Mr. Gates said he's only seen the approved plans and did not know what Mayor Simonds was referring to regarding the house by the property on Kenworthy. Mr. Attaway said he thinks the Mayor may be referring to I-85 widening project and it's impacts which was discussed in the last retreat where Kenworthy St is going to be moved up to the back of the convenience store property and perhaps Ms. Currence's, but he doesn't know. He said that would be a DOT conversation with those property owners. Mayor Simonds asked Ms. Currence in the audience if DOT contacted her. She said the only thing she's received is a card a couple years about them coming down toward Gastonia. She asked if they are coming through her house and asked how can two tractor trailers get up and down that road every 20 minutes. She said she doesn't know what's going on and nobody can tell her. Mayor Simonds recommended she meet with the City Manager and have a conference call with DOT. Mayor continued to talk about the properties and citizens of Kenworthy. He and Ms. Currence talked about the properties and a section of Reed St for a few minutes. Mayor Simonds and Mr. Gates discussed mixed property uses and the properties in the area of Reed St and the plans of Kenworthy. Mayor Simonds complained about the plans and traffic for a few minutes.

Ultimately, Mr. Attaway stated that this will come back to council after staff has some time to review options regarding the language for the text amendment. Mayor Pro Temp Bates asked can the state limit the truck traffic going left or right on Church St? Mr. Attaway said no they will not limit the truck traffic on state streets. Councilmember Robinson asked if we could no left or right turns on Aberdeen Extension. Mr. Attaway will work on some sort of solution and will come back to council with that. Mayor Simonds continued to complain about the situations, the people in that neighborhood, the traffic and not allow the extension not to be opened.

6H. Consideration of Budget Amendment #12- 9:07 PM

Mr. Attaway said this is to receive fund from insurance proceeds for a police vehicle for \$600.

The item was motioned To Approve by Travis Smith and seconded by Scott Bates with a passing result 3-0-1-0 Abstained by Larry Simonds

7. Reports / Discussions

7A. City Manager Report- 9:07 PM

1. Stated the Department Head liaison has been sent to the councilmembers to decide

2. Centralina Board of Delegates meeting is February 21, 2024 at 5pm at Centralina
3. Upcoming conferences in April for the League of Municipalities City Vision Conference and he's sent out information on the weekly report regarding that
4. He is working on the finalization of the Budget Retreat agenda for March 1, 2024
5. YMCA - met with them about the recreation center and as soon as council selects a liaison they can come to the next meeting to discuss program calendars, MOU, contract discussion and some timelines
6. Carolina Thread Trail project - bid documents are under review now
7. Department Budget requests are due this Friday (February 16) with budget meetings occurring now
8. Citizens Academy - Have had the third class recently and four participants attending

7B. City Attorney Report- 9:14 PM

Nothing for tonight

7C. Mayor and City Council General Discussion- 9:14 PM

1. Councilmember Robinson asked if the Mayor was going to attend the Centralina meeting on February 21st? Mr. Attaway said they need us to make a quorum. He asked what time is the meeting in case the Mayor does not attend. Mr. Attaway said 5pm in Charlotte. He said "I know we also talked a little bit about the Department Heads not allowed, or if they are not needed no need to be here." Mr. Attaway said yes. He said that's great and thanked Mr. Attaway for that. He then asked about the security checkpoint. He said he didn't know what the others think but personally doesn't think we need it. We never had it in the past. Councilmember Smith said he didn't have a problem with it but he's in the minority so he really doesn't have a say. Councilmember Robinson asked if a motion was needed. Mr. Attaway said yes. Councilmember Robinson made a motion to eliminate the security checkpoint, seconded by Mayor Pro Tem Bates. The vote was 2-1 with Councilmember Smith voting against.
2. Mayor Pro Tem Bates said he doesn't think all the employees are needed in the Budget sessions but scheduled to come at their time to talk. He didn't understand why they needed to be there. Mr. Attaway he brought them in is so they can understand the entire vision of the council and the city and the projects that we are working on. He said "it helps departments know what other departments are doing and working on and the expectations of you all but if you disagree, I will bring them on relevant agenda items."
3. Mayor Simonds said "we need to get to work and it's not a show but a business of what has to be done and we need to get down to where we can afford to live here again. We're going to save all we can. Positions and things like that if it's in the future, it's going to take some tough jobs, I mean tough work. Just like tonight, we have the Police Chief and the Asst. Chief here and that's going to take a lot of money." He asked about the filling of the position for the Police. He then compared the jobs of the Admin. Asst hired at the Police Department to the Ranlo Admin. Asst doing the multiple jobs there. He didn't know how they could do it and we could not. He asked about the job of the Payroll Clerk. Mr. Attaway said he does Accounts Payable, Payroll and assists with HR and Finance. He thinks there should be a hiring freeze and that employees are paying too much. He said we are the only of all the cities around us that has a GIS, Ranlo doesn't. Public Works can do that. He asked Mr. Shrewsbury about the mapping and Mr. Shrewsbury

said it's all paper. Mayor Simonds said you can transfer that over to the computer because he said Mr. Attaway showed it to him. Mr. Attaway said the GIS Analyst built the map for us.

4. Councilmember Smith said "back to Mayor Pro Temp Bates comment earlier...me and Larry are working on our relationship, there are issues there. I was brought up on respect. You talked about professionalism and I've been very professional in my position. This meeting went over three hours and an hour and a half of that pertained to when were actually on the agenda so I would also come back to you and Councilmember Robinson and professionalism. We need to keep the Mayor on the agenda. Me and Larry have talked several times and working together but I also think we need to stick to the agenda." Mayor Simonds said he's a people person and he's not in a hurry but when people have concerns he's going to address them and talked more about that for a few minutes.

8. Closed Session

9. Adjournment

9A. Meeting Adjournment- 9:21 PM

The item was motioned To Approve by Scott Bates and seconded by Travis Smith with a passing result 3-0-1-0 Abstained by Larry Simonds



Planning Report

Meeting	Agenda Group
Tuesday, March 12, 2024, 6:00 PM	Consent Agenda Item: 4A
Reference File	Presented By

To: Scott Attaway, City Manager
From: Tyler Cobb, Planner
Date: March 5, 2024
Re: Monthly Planning Update

Code Enforcement:

Multiple nuisance violation letters issued.
One minimum housing case started on Belt/Moose.

Enforcement Action:

Cases in progress.

Zoning:

Processed (9) zoning permits in February.
Permit count (23) for calendar year 2024 to-date.
Meeting with Choice USA regarding site plan.

Planning:

Attended Lowell Planning and Zoning meeting, 2/6/2024.
Attended Lowell City Council Meeting, 2/13/2024.
Attended Lowell Community Committee meeting 2/26/2023.
Attended GCamp at Gaston County.
Approved master sign plan permit for Gastonia Chevrolet.
Development Agreement meeting with Lennar.

Other:

Attended monthly department head meeting.
Attended Polimorphic Monthly update meeting.
Updated website AI tool with LDO articles.



Finance Report

Meeting	Agenda Group	
Tuesday, March 12, 2024, 6:00 PM	Consent Agenda	Item: 4B
Reference File	Presented By	

To: Scott Attaway, City Manager
From: Lisa Nolen, Finance Director
Date: March 5, 2024
Re: Finance Update

Utility Billing:

- Assist Utility Billing department daily with posting payments, reconciling, completing deposit, answering phone, and other needed tasks due to vacancy in the department.
- Answer questions from Utility Billing staff.
- Assist with training of Accounts Payable/Payroll clerk to provide additional assistance for Utility Billing department due to vacancy.

Finance:

- Enter cash receipts, cash disbursements, and general journal entries into Southern Software.
- Process and pay bills via check and online.
- Collect receipts from staff, break out charges and sales tax to post to correct accounts, and post all Lowe's credit card charges.
- Issue purchase orders for staff.
- Ensure all transactions are entered correctly and reconcile bank accounts.
- Complete tasks as needed for the agenda related to Council meetings.
- Complete reporting requirements for SCIF grant and update spreadsheet for all SCIF related transactions.
- Complete needed documentation and tasks for other grants.
- Train Accounts Payable/Payroll clerk on duties to assist Finance Director.
- Assist other staff as needed.

Other:

- Attend Department Head meetings.
- Attend meetings with City Manager.
- Attend March Budget Retreat.

Attachments

01-31-2024 Dashboard.pdf

City of Lowell, North Carolina
 FY 2024 Revenue Dashboard
 1/31/2024

Type	Budget	YTD thru 01/31/2024	Budget Remaining	Percent Remaining	Percent of FY24 Remaining
Funds					
General Fund	5,007,973.98	4,394,268.53	613,705.45	12%	42%
Water/Sewer Fund	1,755,709.24	1,303,521.47	452,187.77	26%	42%
Stormwater Fund	423,774.44	234,125.77	189,648.67	45%	42%
Total	7,187,457.66	5,931,915.77	1,255,541.89	17%	42%

Notes:
None

City of Lowell, North Carolina
 FY 2024 Expense Dashboard
 1/31/2024

Department	Budget	YTD thru 01/31/2024	Budget Remaining	Percent Remaining	Percent of FY24 Remaining
General Fund					
Administration	2,652,310.85	1,049,430.33	1,602,880.52	60%	42%
Public Safety	1,327,415.47	686,503.58	640,911.89	48%	42%
Public Works-Streets	318,185.88	146,928.26	171,257.62	54%	42%
Sanitation	345,633.72	180,006.05	165,627.67	48%	42%
Parks & Rec	257,188.22	121,701.83	135,486.39	53%	42%
Powell Bill	100,000.04	15,985.81	84,014.23	84%	42%
Total	5,000,734.18	2,200,555.86	2,800,178.32	56%	42%
Water/Sewer Fund					
Water/Sewer	1,380,721.44	775,394.65	605,326.79	44%	42%
Wastewater Treatment	374,987.80	206,958.02	168,029.78	45%	42%
Total	1,755,709.24	982,352.67	773,356.57	44%	42%
Stormwater Fund					
Stormwater	423,774.44	200,350.15	223,424.29	53%	42%
Total	423,774.44	200,350.15	223,424.29	53%	42%

Notes:
None



Parks & Recreation Report

Meeting	Agenda Group	
Tuesday, March 12, 2024, 6:00 PM	Consent Agenda	Item: 4C
Reference File	Presented By	

To: Scott Attaway, City Manager
From: Tori Dellinger, Parks and Recreation Director
Date: March 5, 2024
Re: February Parks and Recreation Report

Athletics:

- Registration for Youth T-ball and Baseball opened February 1st. Registration ended on March 1st
- Processed Youth T-ball and Baseball Registrations
- Communications with area Parks and Recreation Directors and coordinated team schedules
- Answered questions from parents

General:

- Cleaned restrooms
- Picked up trash
- Dragged baseball fields
- Attended Department Head meeting
- Attended Lowell Community Committee meeting
- Staff reviewed Facade Grant applications
- Updated letterboard at Harold Rankin Park
- Coded invoices, updated department budget spreadsheet
- City of Lowell received the Gaston County Public Health 2024 Healthy Health Communities Mini Grant in the amount of \$5,000.00
- Submitted application for the CaroMont Health Corporate Sponsorship Grant. Applicants should receive notice of the grant in May

Events:

- Senior Valentines Lunch
 - Thursday, February 8 at Presbyterian Church of Lowell (Dine-in or Drive Thru)
 - Over 65 seniors attended (combined dine-in and take-out)
 - Event included lunch, BINGO, and Valentine’s activity
 - Communications promoted via website, social media, event website, letterboard at Harold Rankin, and via Code Red

- Eggs in the Park (Planning)
 - Ordered eggs for event (6,000 eggs)
 - Egg hunts will be divided into three age groups:
 - 6:00pm - ages 2 and under (egg hunt will be roped off on the large baseball field)
 - 6:15pm - ages 3-5 (egg hunt will be on the small baseball field)
 - 6:30pm - ages 6-12 (egg hunt will be on the large baseball field)
 - Communications will be promoted via website, social media, event website, letterboard at Harold Rankin, and via Code Red

- Lowell Golden Event Hunt (Planning)
 - Each day from March 25 until March 28, we will hide a Golden Egg somewhere around Lowell. We'll post the clue and prize on Facebook and Instagram. Then, we want you to go find The Golden Egg!
 - Seven (7) businesses are donating/ sponsoring a Golden Egg
 - Communications will be promoted via website, social media, event website, letterboard at Harold Rankin, and via Code Red

- Senior Easter Lunch (Planning)
 - City will host lunch on Thursday, March 28 at Woodlawn Baptist Church
 - To date, we have had over 20 seniors sign up.
 - Communications will be promoted via website, social media, event website, letterboard at Harold Rankin, and via Code Red



Regular City Council Meeting Memorandum

Prepared By: Scott Attaway

Stormwater Report

Meeting	Agenda Group
Tuesday, March 12, 2024, 6:00 PM	Consent Agenda Item: 4D
Reference File	Presented By

To: Scott Attaway, City Manager
From: Jamie Watkins, Stormwater Administrator
Date: March 5, 2024
Re: Monthly Department Update

- Attended Know Your Flood Risk public information session at Gaston County Citizens Resource Center on Wednesday, February 7th.
- Assisted with Senior Valentine's Lunch at the Presbyterian Church of Lowell on Thursday, February 8th.
- Continued work on Permit Year 3 self-audit.
- Worked on updating Stormwater Utility Billing for several accounts.
- Assisted with GIS data point collection at the retired dye plant.
- Attended Regional Stormwater Partnership of the Carolinas Annual Meeting in Charlotte on Wednesday, February 14th.
- Was elected Secretary of the RSPC at said meeting.
- Attended Budget Review with City Manager on Thursday, February 15th.
- Attended Department Head Meeting on Monday, February 26th.
- Conducted site inspections of active construction sites, walked the entirety of Lowell Woods site, on Tuesday, February 27th.



Geographic Information System (GIS) Report

Meeting	Agenda Group	
Tuesday, March 12, 2024, 6:00 PM	Consent Agenda	Item: 4E
Reference File	Presented By	

To: Scott Attaway, City Manager
From: Todd Stroupe, GIS Analyst
Date: March 6, 2024
Re: Geographic Information System (GIS) Report

GIS and Mapping

- Generated Philips Street closure map for social media post
- Calculated new commercial and Lowell-owned impervious areas and monthly ERUs
- Updated non-municipal SCM inventory with high-density inspection information
- Generated stormwater outfall locations map
- Generated South Church Street closing traffic control map
- Compiled Rogosin Boulevard community mailing list
- Performed monthly updates to the City’s tax and location GIS layers
- Assisted in retired dye plant site inspection visit
- Generated S Church St water cut-off map for social media post
- Continue to work on lead and copper service line inventory
- Continue to work on Phase 2 of MS4/stormwater infrastructure mapping

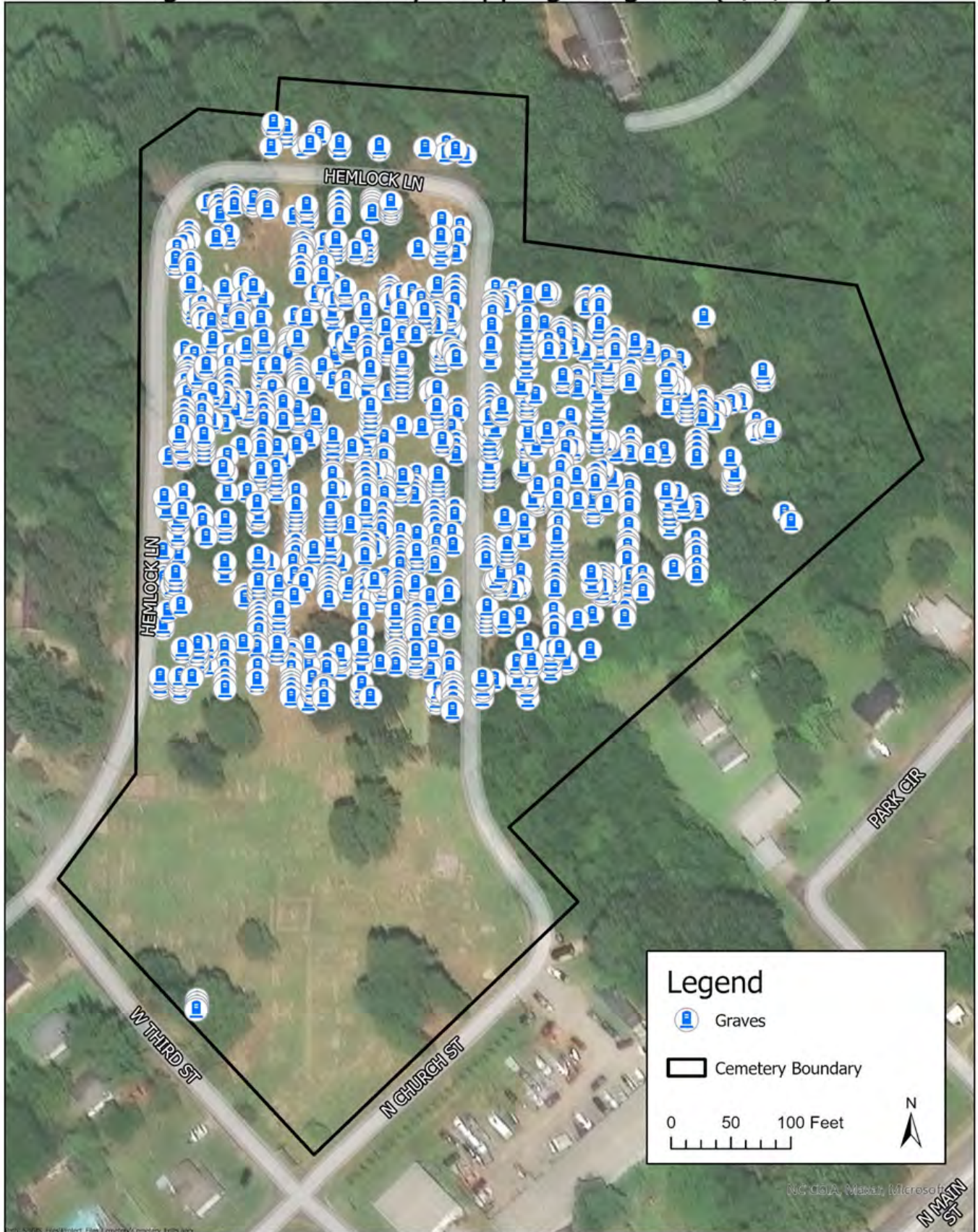
Meetings and Events

- Attended Matthew Belk Greenway meeting with Centralina Regional Council
- Assisted with Lowell Senior Valentine’s lunch
- Attended pavement survey meeting with City of Gastonia
- Attended monthly city council meeting
- Attended Church Street Utility Relocate Traffic Control Plan meeting
- Attended internal department heads meeting
- Attended CRTPO-GCLMPO Joint MPO Roundtable meeting
- Presented about the GIS department at Citizens Academy

Edgemont Cemetery Mapping Project

- Kicked off the mapping project in October 2023
- 1,066 graves were collected as of March 6, 2024
- Developing a public-facing interactive web map that will allow users to click on a grave for names, birth and death dates, pictures of headstones, etc.

Edgemont Cemetery Mapping Progress (3/6/24)



This map is a graphic representation and should only be used for illustrative purposes. Map created by Lowell GIS with data provided by Gaston County GIS.



Communications Report

Meeting	Agenda Group	
Tuesday, March 12, 2024, 6:00 PM	Consent Agenda	Item: 4F
Reference File	Presented By	

To: Scott Attaway, City Manager
From: Cristy Cummings, Communications Director
Date: March 1, 2024
Re: February Communications Report

- City website updates
 - Updated Quick Links on the Homepage
 - Added documents as requested by Department Heads
 - Added all 2024 Council/Committee meetings to the month-at-glance calendar on the homepage of the website
 - Created a new ARPA update page on the website with descriptions and photos of projects (still in progress)
 - Creation of event listings
- Creation of social media content for Facebook and Instagram
 - Event promotions
 - Holiday/office closing posts
 - Other posts to keep residents in-the-know
 - Creation of artwork for posts and events
- CodeRed
 - Updated CodeRed contacts
 - Sent out City alerts (phone, email, text)
 - Senior Valentine's Lunch and Baseball registration
 - Water Outage alert to Walnut St. residents
 - Water Outage alert to Nightingale Dr. residents
 - Water outage alert to Rhyne-Oakland Rd. residents
 - Lowell PD Community Watch meeting for districts 2 and 3
 - Temporary road closure notice for S. Church St.
- General
 - Created an updated ARPA graphic for the ARPA projects page on the website
 - Set up agenda link and ran test meetings for Planning Board meeting, regular City Council meeting, and Special City Council meeting
 - Monitored video and audio during regular City Council meeting and Special City Council meeting
 - Completed yearly budget
 - Assisted Parks and Recreation with Valentine's Senior Lunch
 - Attended meetings with:

- MAPS Group on salary study
- Staff meeting
- Haven Creative Agency Branding webinar
- NC League of Municipalities with ARPA project information for Lowell
- AI working group meeting with Centralina
- Church Street Utility Relocate Meeting



Regular City Council Meeting Memorandum

Prepared By: Scott Attaway

Police Report

Meeting	Agenda Group	
Tuesday, March 12, 2024, 6:00 PM	Consent Agenda	Item: 4G
Reference File	Presented By	

To: Scott Attaway, City Manager
From: Jeff Harrison, Assistant Chief of Police
Date: March 6th, 2024
Re: February report

For February 2024 the Lowell Police Department again increased call volume. Unfortunately, citation data has now fully changed over to New World and the file path used to import that data into current RMS is no longer available. The citation data will once again be available when we fully utilize New World, more detailed update on program and its full launch is below. Officers completed 41 traffic stops last month, a number that is much lower than months past. Police command staff is addressing the problem and expect to see more traffic stops and citation data return to be closer to expected levels for March. Special checks remain a large part of the monthly call log. With New World, we will divide special checks into subcategories. Officers will log regular patrol checks different than requested checks by residents or businesses.

With the resignation of Chris Mulkern and Officer Lowery out for approved leave, it was as if the department was down two officers. We have since filled Chris Mulkern’s vacancy with Alex Moore, an experienced officer that returns to our ranks from the City of Gastonia. His paperwork is in process, and we expect to submit it to the training and standards division very soon. Officer Lowery has returned from leave and is back to full duty.

All employees of the Police Department attended training for New World. Tim Morrow with the City of Gastonia IT/ GPD conducted the training. Officers learned how to enter data, take reports, and navigate the system. We were all surprised to learn the system will do much more than we ever knew. Monthly reporting is different in New World than our current RMS system. There is not a list of reports to choose from and run, the reports must be built to pull the needed data. We will have a full complement of citation, call type, and arrests reports available monthly. If there are any reports the city council would like to see, please let us know and we will get the report created if possible. Administrative Assistant Stafford is currently utilizing the mobile element of New World in the office to assist officers in any way she can.

The Metro-E connection is complete. The installation work was completed in the last week of February and testing will be conducted on the 12th of March. This is the last step before COG IT comes in to get the system up and running in our building. We anticipate being fully operational on New World around April 1st.

Admin staff met with Belmont Police Department and Dallas Police Department and began planning the Gaston County Law Enforcement Memorial service. The 15th of May was the date chosen and the service will be held at Woodlawn Baptist Church. Requests for assistance from other agencies will be sent out in March. We will also select a main speaker in March and hope to announce them soon.

There was a child death at Holbrook Middle School on February 29th. The facts of the case are as follows. The child was picked up from his bus stop as usual and according to the bus driver, the child seemed no different than any other day. The

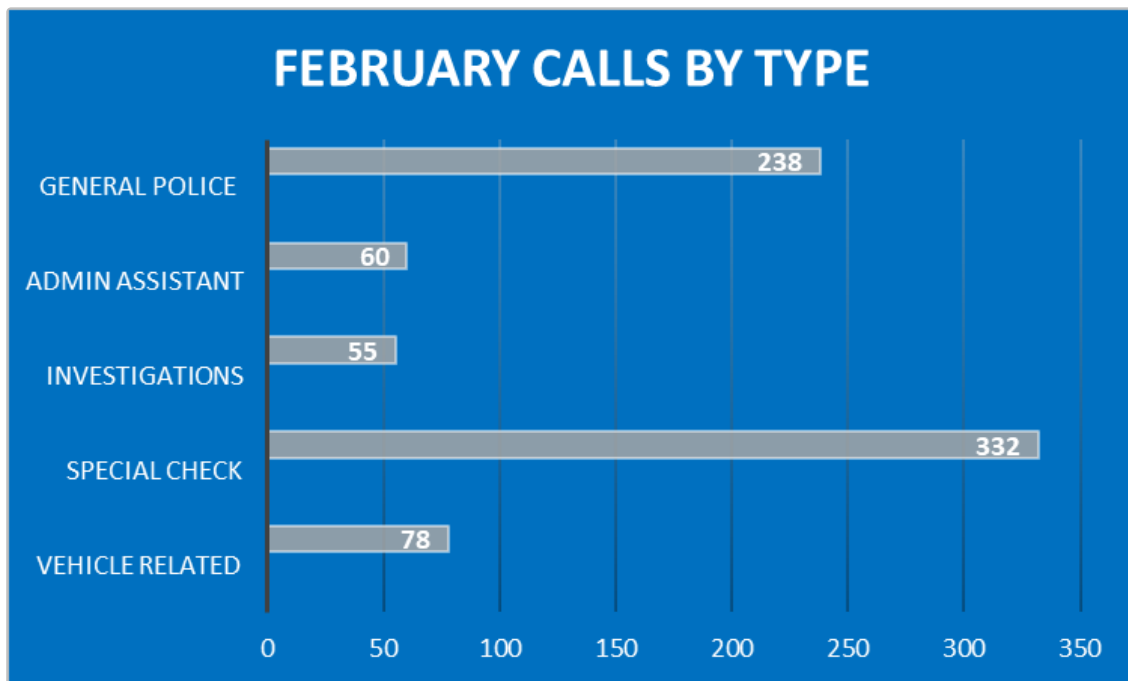
child found a seat and appeared to fall asleep. It is common for children to sleep on the way to school, so no one thought anything was out of the ordinary on this morning. Upon arrival at the school, a couple of children attempted to rouse the unconscious child with no success. One child appears to check for a pulse as they notified the bus driver of the situation. Officer Bowen was SRO that day and immediately responded, Officer Stamey arrived about the same time and the two began life saving efforts. Narcan was utilized as part of those efforts. GEMS arrived and took over patient care. The child was taken to CRMC where lifesaving efforts were halted and the child was determined to be deceased. The school reported the death to parents and staff without consultation of school security or investigating agencies. Included in that report was misleading information that the child had “passed out”. This was incorrect, the child found a seat, fell asleep, and never woke up. Due to the untimely release of information by school staff, extra police officers were called in and utilized to help control the school where emotions were understandably high. Safety concerns have been addressed with GCS security leadership and no further problems occurred. Due to the initial unknown nature of the death, the primary investigation was turned over to the Gaston County Police Department assisted by the Lowell Police Department. It was determined by hospital staff the death was natural, and no criminal action had taken place.

Monthly calls history

2022-687

2023-655

2024-763





Public Works Report

Meeting	Agenda Group
Tuesday, March 12, 2024, 6:00 PM	Consent Agenda Item: 4H
Reference File	Presented By

To: Scott Attaway, City Manager

From: Thomas Shrewsbury

Date: 3/7/2024

Re: Public Works Report

- Street Department employees continued working to keep catch basin boxes and grates clean. Crews used hydro-vac equipment to clean and remove debris from culverts, pipes and boxes.
- City crews worked on sewer line right-of-way maintenance. They performed visual inspections and removed downed trees, limbs and debris to prepare the area for spring mowing.
- Water Department staff repaired the following leaks:
 - 2-inch line break on S. Church St.
 - 2-inch main break on Pinewood Dr.
 - 2-inch line break on Riverside Drive
 - 2-inch line break on 200 Ethelyn Ave
- Replaced broken water cutoff at 2803 Lowell Rd.
- Replace a bad water tap at 919 W. First St.
- Installed a sewer tap on S. Church Street
- Installed water and sewer taps on Moose Street
- Installed a 2-inch water tap for Holbrook.
- Set a 2-inch water meter for Times Oil.
- City crews worked to replace water meters in the system that had not been converted to radio read. Meters had not been converted due to connection issues or repairs that were needed. City staff made the necessary repairs or changes to allow approximately a dozen meters to be switched out. More water meters are planned for conversion in the coming weeks.
- Staff continued work on the lead water line identification and inventory. Crews worked to complete numerous inspections and will continue to consistently work towards completion of the state-mandated service line inventory.
- Staff worked with Northpoint developers and contractors to make preparations for the road closing and service interruptions expected during the stormwater installation.



Consideration of Black Mountain Software

Meeting	Agenda Group	
Tuesday, March 12, 2024, 6:00 PM	Unfinished Business	Item: 5A
Reference File	Presented By	

To: Scott Attaway, City Manager
From: Lisa Nolen, Finance Director
Date: March 5, 2024
Re: Consideration of Black Mountain Software

The NC League of Municipalities is using American Rescue Plan Act Grant (ARPA) funds they received to assist municipalities with their Municipal Accounting Services Program (MAS). As part of this program, they are providing Accounting Assistance, IT Assessment and Assistance, and Implementation of Black Mountain Financial Software.

The cost of implementation of Black Mountain Software as well as the first 3 years of support will be paid by the League. See the attached proposal and presentation.

The move to Black Mountain Software for our financial needs would be advantageous to the City of Lowell for many reasons.

- The cost of implementation and 3 years of support is being paid by the NC League of Municipalities. The cost of implementation of the software and 3 years of support is \$159,070 (see proposal) and this cost is paid by the League. The League is also providing IT and Accounting support at no charge to the City which is in addition to the software cost and implementation.
- This software includes other applications that we currently do not have:
 - a. Summit Code Enforcement - allow for us to bill for code enforcement and also maintain this information as profiles within the system.
 - b. UB Intelligent Mail Barcode - will save money on postage for utility bills.
 - c. Credit Card Manager - allow for departments to key information from credit card receipts and scan the receipts into the system. This will save time in the reconciliation process of the credit card statement.
 - d. Wireless Barcode Scanner - save time processing payments of utility bills and eliminate keying errors.
 - e. Daily Time Cards - save time and eliminate errors in processing payroll
 - f. Human Resources - will be able to complete 1095-C and other HR related tasks in house. Currently, this is a service billed and performed by others.
 - g. Permitting - will eliminate the need for third-party software and duplicate work of completing a permit.
 - h. Asset Manager & Mobile Asset Tracking - will allow us to manage and track assets such as equipment, computers, etc.
 - i. Department Security - we will be able to set-up each user's access based upon department(s).
 - j. Purchase Requisition process built into the software.
- The software is cloud based and the daily backup of the software is included with the annual support.
- Black Mountain Software would improve and speed up processes in payroll, accounts payable, credit card transactions and reconciliation.

- Bills, invoices, credit card receipts, etc. can be scanned into the software for easier access. This would eliminate the time required to dig through paper files to pull documentation needed by the auditor.
- Each department will be able to key purchase requisition information into the software, scan and attach quotes and other supporting documentation for review and issue of purchase order by the Finance Director. We currently use another software for the purchase requisition process and then this information has to be manually keyed into our current financial software. This will save time and eliminate errors associated with purchase requisitions/orders.
- This software provides the ability of employees to complete their timesheets within the software from a computer, tablet, or smartphone. Once the employee completes, the supervisor can review and approve. Once approval has been completed, payroll can be processed without the need to manually enter employees' time from paper timesheets. This will save time checking timesheets and will eliminate keying errors.
- Black Mountain Software has automatic upload of State and Federal taxes. This will cut down on the time needed to complete these tasks as well as eliminate errors.
- The support provided by Black Mountain Software is timely. We currently have to call Southern Software to put in a ticket for support and then wait for a call back.
- Black Mountain Software will integrate with our website for customers to pay their utility bills as well as provide a phone number for customers to call to pay their utility bill. We currently use a third-party vendor for this service. The software will also have the ability to email utility bills to customers, if the customer chooses. Any emailed bills will not need to be mailed, which will save on postage costs. We have had many customers request this.
- Black Mountain Software has work orders that can be completed and sent to department tablets. We are currently using another software for this task. Due to this, the work order information also has to be entered in Southern Software as well to record to the corresponding utility account.
- Two credit card swipe machines will be provided. Currently, credit card payments made inside City Hall are keyed manually, which takes more time and increases the chance of errors.
- Black Mountain Software also has automatic journal entries of payroll related payments; i.e. retirement, 401K, etc. Currently, we have to manually make these entries in Southern Software.

Attachments

NC League of Municipalities MAS Board Presentation - March 2024.pdf

Lowell Software Proposal.pdf

Lowell RESOLUTION.pdf



**WORKING AS ONE.
ADVANCING ALL.**

Lowell Municipal Accounting Services Program (MAS)

March 2024

By: Autumn Lyvers – Supervisor of Accounting – West

Municipal Accounting Services (MAS) Program Overview

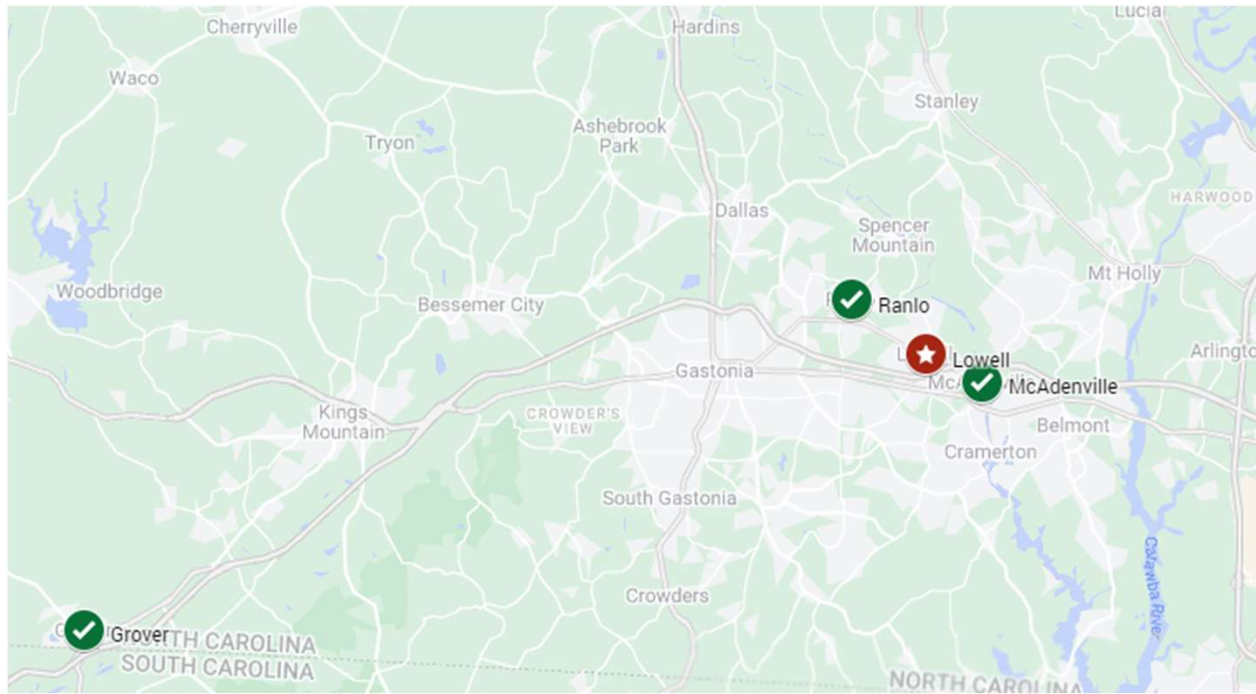


- Funded through an ARPA Grant to the League
 - Obligations required by 12/31/2024
 - Program completion 12/31/2026



- Designed for Smaller Towns – Primarily under 2500 in population
- Goal to Provide Software and Assistance to between 40 and 60 Towns
- 3 Components:
 1. Implementation of Black Mountain Financial Software
 2. Accounting Assistance
 3. IT Assessment and Assistance

Neighboring MAS Towns



- McAdenville
- Ranlo
- Grover

Implementation of Financial Software



Black Mountain Software selected through RFP process that emphasized ease of use by small towns and strong customer service.

Steps to Conversion:

PRE -

- 1. Financial Assessment
- 2. IT Assessment
- 3. “Catch-up” Financial Assistance Provided - if needed.
- 4. Potential IT Needs (Hardware and Software)
- 5. MAS Conversion Team Assigned and Implementation Begins
- 6. Standard Chart of Accounts Introduced
- 7. Conversion Process Completed Over the Following 3 to 4 months

POST -

- 8. Town Staff is Trained by Black Mountain Team
- 9. Town Moves to Best Practice Phase of Program



Software Highlights



- **At no cost to Town - 3 Year Package** of initial implementation and annual costs – Accounting, Payroll, and Utility Modules with many additional add-ons.
- **Town does not pay any software costs until Year 4!**
- Uniform, **Standard Chart of Accounts** will be used for all towns participating in the program.
- Some **Hardware Upgrades**, if necessary (based on the results of the IT assessment – some computers, printers, Windows application, and firewalls may be provided)
- Initial and Ongoing Software **Support and Training** from Black Mountain Staff for **3 Years** – continues in year 4 with annual maintenance paid by the town.

Software Functionality



- Three Core Financial Management Suites:

- **Fund Accounting Suite** – accounting; procurement; cash receipting; budget preparation; reporting
- **Payroll Suite** – payroll processes and reporting; ACH deposits; employee portal
- **Utility Billing Suite** – Water/Sewer and Electric systems; billing; ACH payments; Automated Meter Reading (AMR) interface; email bills; service orders

- Miscellaneous add-on items as needed



Accounting Assistance Highlights



“Catch-up” services from an outside firm for those that are behind on State required reporting and/or operational best practices.



MAS Staff will be assigned to assist before and after software conversion. Assistance includes, but not limited to:

1. Implementation of **Best Practices**
2. Year End **Audit Readiness** Assistance
3. **Monthly Oversight**
4. Available to Answer General **Accounting Questions**
5. **Major Benefits:** Town staff receives accounting training which may allow some outsourced services to come In-house.

Lowell MAS Team



Diane Seaford
Deputy Director
Municipal Accounting
Services



Autumn Lyvers
Accounting Supervisor



Julie Scherer
Accounting Specialist



Kyra Doster
Accounting Specialist

Lowell Software Proposal



Year 4 Lowell Cost Estimate - \$21,972 (based on 5% increase over previous year)



Package Description	License Purchase Fees	Annual Fees Year 1	Conversion Fees	Annual Fee Prepayment		Total
				Year 2	Year 3	
Base Packages: Fund Accounting, Payroll, & Utility Billing						
Fund Accounting	\$33,700	\$6,600	\$1,850	\$6,800	\$7,000	\$55,950
Payroll	\$7,890	\$2,250	\$1,100	\$2,320	\$2,390	\$15,950
Utility Billing	\$14,390	\$4,200	\$4,650	\$4,320	\$4,450	\$32,010
Base Package Subtotals:	\$55,980	\$13,050	\$7,600	\$13,440	\$13,840	
Add-On Applications:						
UB Intelligent Mail Barcode	\$370	\$0	\$0	\$0	\$0	\$370
UB-Rate Analysis	\$1,855	\$30	\$0	\$30	\$30	\$1,945
Credit Card Manager	\$1,875	\$340	\$0	\$350	\$360	\$2,925
Department Security	\$2,930	\$110	\$0	\$115	\$120	\$3,275
CR Cash Drawer	\$240	\$0	\$0	\$0	\$0	\$240
CR Cash Drawer	\$240	\$0	\$0	\$0	\$0	\$240
CR Receipt Printer	\$1,055	\$0	\$0	\$0	\$0	\$1,055
CR Receipt Printer	\$1,055	\$0	\$0	\$0	\$0	\$1,055
CR Wireless Barcode Scanner	\$505	\$0	\$0	\$0	\$0	\$505
CR Wireless Barcode Scanner	\$505	\$0	\$0	\$0	\$0	\$505
Daily Time Cards	\$790	\$315	\$0	\$325	\$335	\$1,765
Human Resources	\$3,740	\$680	\$615	\$700	\$720	\$6,455
Accounts Receivable	\$4,670	\$850	\$765	\$875	\$900	\$8,060
Summit Code Enforcement	\$530	\$2,400	\$425	\$2,470	\$2,545	\$8,370
Permitting	\$4,670	\$850	\$765	\$875	\$900	\$8,060
Asset Manager	\$4,670	\$850	\$850	\$875	\$900	\$8,145
Mobile Asset Tracking	\$1,395	\$255	\$0	\$265	\$275	\$2,190
All Subtotals:	\$87,075	\$19,730	\$11,020	\$20,320	\$20,925	
Grand Total:						\$159,070

Process and Next Steps



Completed to date:

- ✓ Preliminary Financial Assessment
- ✓ Software Demo and Quote

Next steps:

- Board Presentation
- Board Considerations – to be complete by end of March 2024:
 - Resolution (handout) which includes:
 - MOA
 - Software License Agreement
- IT Assessment
- Catch-Up Bookkeeping Assessment and Assistance (if needed)
- Conversion tentatively set to begin January 2026– **after** financials are current & in satisfactory state.
 - Accounting Go-Live – April 2026
 - Utility Billing Go-Live – May 2026

Lowell – MAS Opportunity



Thank you!

Any Questions?



Lowell Software Proposal



Year 4 Lowell Cost Estimate - \$21,972 (based on 5% increase over previous year)



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All Subtotals:	\$87,075	\$19,730	\$11,020	\$20,320	\$20,925	
Grand Total:						\$159,070

**RESOLUTION TO APPROVE A MUNICIPAL ACCOUNTING SERVICES,
CYBERSECURITY AND TECHNICAL ASSISTANCE MEMORANDUM OF
AGREEMENT**

WITNESSETH:

WHEREAS, the North Carolina State Budget Act of 2021 (SL 2021-180, as amended by SL 2021-189, and SL 2022-6) provided to the NC League of Municipalities (League) grant funds provided to the State of North Carolina by the U.S. Treasury pursuant the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319, American Rescue Plan Act of 2021 (ARP); and

WHEREAS, the League received two Award Agreements (OSBM-NCLM-65) from the Office of State Budget and Management (OSBM) and the North Carolina Pandemic Recovery Office (NCPRO); and

WHEREAS, the first Award Agreement is identified as OSBM-NCLM-65. This grant enables the League to provide “financial software and assistance programs for units of local government for expenses related to the COVID-19 pandemic...” This grant is referred to as the Municipal Accounting Services and Cybersecurity Grant; and

WHEREAS, the second Award Agreement is identified as OSBM-NCLM-66. This grant enables the League “to provide guidance and technical assistance to units of local government in the administration of funds from the Local Fiscal Recovery Fund, as established in Section 2.6 of S.L. 2021-25, and in the administration of projects funded through the State Fiscal Recovery Fund, as established in Section 2.2 of S.L. 2021-25.” This grant is referred to as the Guidance and Technical Assistance Grant; and

WHEREAS, the Municipal Accounting Services and Cybersecurity Grant and the Guidance and Technical Assistance Grant are collectively referred to herein as the “League Grants”.

WHEREAS, the League Grants are deemed part of US Treasury Expenditure Category: 6, Revenue Replacement and shall only be spent on governmental services; and

WHEREAS, pursuant to US Treasury Guidance, units of local government that receive services that are funded by one or both of the League Grants are beneficiaries of one or both of the League Grants, respectively, and such services are provided at no cost to these local governments; and

WHEREAS, the League has established a Municipal Accounting Services, Cybersecurity and Technical Assistance Memorandum of Agreement pursuant to the terms of the League’s Municipal Accounting Systems and Cybersecurity Grant and the Guidance and Technical Assistance Grant; and

WHEREAS, this Municipal Accounting System, Cybersecurity and Technical Assistance Memorandum of Agreement will offer local municipalities:

(1) Services rendered by the League (League Services) including but not limited to capital expenditures for special purpose software and computer equipment as set forth in §2 C.F.R. 200.439; and

(2) Services rendered by one or more service providers (Contractor Services), retained by the League on behalf of the Municipality, who are members of a particular profession or possess a special skill as set forth in §2 C.F.R. 200.459; and

(3) Equipment, including information technology systems, and supplies, including computing devices, as set forth in §2 C.F.R. 200.439 and §2 C.F.R. 200.453; and

WHEREAS, the Municipal Accounting Services, Cybersecurity and Technical Assistance Memorandum of Agreement, is attached hereto as Exhibit A; and

NOW, THEREFORE BE IT RESOLVED BY THE CITY/TOWN COUNCIL/BOARD OF THE TOWN OF LOWELL:

1. That, the Municipal Accounting Services, Cybersecurity and Technical Assistance Memorandum of Agreement is hereby approved.
2. That the Manager/Clerk is authorized to execute the attached Memorandum of Agreement (or one substantially equivalent thereto) and such other agreements and actions as necessary in accordance with the League's Municipal Accounting Services and Cybersecurity Grant and the Guidance and Technical Assistance Grant.

Adopted, this the _____ day of _____, 2024

TOWN/CITY OF LOWELL

By: _____

(Name)

Mayor

ATTEST:

(Name)

Town Clerk

Exhibit A
MUNICIPAL ACCOUNTING SERVICES, CYBERSECURITY AND
TECHNICAL ASSISTANCE MEMORANDUM OF AGREEMENT (MOA).

MUNICIPAL ACCOUNTING SERVICES, CYBERSECURITY AND TECHNICAL ASSISTANCE MEMORANDUM OF AGREEMENT

This Municipal Accounting Services, Cybersecurity and Technical Assistance Memorandum of Agreement (hereinafter the “Agreement”) is entered into as of the Effective Date set out below, by and between the Town of Lowell (hereinafter the “Municipality”) and the NC League of Municipalities (hereinafter the League), each additionally referred to as a “Party”; and collectively as the “Parties.” This Agreement and the obligations hereunder shall be effective upon execution of this Agreement by all Parties (“Effective Date”).

For good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

Article I. Overview.

1. Enabling Law and Regulation.

The North Carolina State Budget Act of 2021 (SL 2021-180, as amended by SL 2021-189, and SL 2022-6) provided to the League grant funds provided to the State of North Carolina by the U.S. Treasury pursuant the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319, American Rescue Plan Act of 2021 (hereinafter ARP/CSLFRF). Pursuant to this legislation, the League received two Award Agreements from the Office of State Budget and Management (hereinafter OSBM) and the North Carolina Pandemic Recovery Office (hereinafter NCPRO).

The funds are deemed part of US Treasury Expenditure Category: 6, Revenue Replacement and shall only be spent on governmental services.

2. Grants Awarded to the NC League of Municipalities.

The first Award Agreement is identified as **OSBM-NCLM-65**. This grant enables the League to provide “financial software and assistance programs for units of local government for expenses related to the COVID-19 pandemic...” This grant is referred to as the **Municipal Accounting Services and Cybersecurity Grant**.

The second Award Agreement is identified as **OSBM-NCLM-66**. This grant enables the League “to provide guidance and technical assistance to units of local government in the administration of funds from the Local Fiscal Recovery Fund, as established in Section 2.6 of S.L. 2021-25, and in the administration of projects funded through the State Fiscal Recovery Fund, as established in Section 2.2 of S.L. 2021-25.” This grant is referred to as the **Guidance and Technical Assistance Grant**.

The Municipal Accounting Services and Cybersecurity Grant and the Guidance and Technical Assistance Grant are collectively referred to herein as the “**League Grants**”.

One or both of the League Grants fund this Agreement.

3. Status of the Parties.

The undersigned Municipality is a beneficiary of the League Grants. The service providers retained by the League and funded by the League Grants for the benefit of the Municipality are contractors (“Contractors”).

4. Services Offered.

Pursuant to this Agreement, the League hereby offers the following to the Municipality:

- Services rendered by the League (“League Services”). See Exhibit A.
- Services rendered by one or more service providers (“Contractor Services”) retained by the League on behalf of the Municipality, who are members of a particular profession or possess a special skill as set forth in §2 C.F.R. 200.459. See Exhibit B, as applicable (and subsequent Exhibits, as applicable).
- Equipment, including information technology systems, and supplies, including computing devices, as set forth in §2 C.F.R. 200.439 and §2 C.F.R. 200.453. The League shall fund League Services and Contractor Services pursuant to this Agreement.

The League shall fund League Services and Contractor Services pursuant to this Agreement. The Municipality accepts the League Grant(s) pursuant to this Agreement.

5. Additional Services.

Additional Services (hereinafter “Additional Services”) may be offered to the Municipality by the League during the League’s Grant period pursuant to this Agreement. The Municipality’s official, who is designated in the Municipality’s adopting Resolution, may execute further agreements, modifications of this Agreement, and agree to Additional Services to be provided to the Municipality. These Additional Services shall be described in additional Exhibits to this Agreement (Exhibit C, D, E, etc.) that, when executed by the Parties, shall become part of this Agreement.

6. Term of Agreement.

This Agreement shall begin on the Effective Date of this agreement and shall end when terminated at the discretion either party. All expenditures by the League under this Agreement must be obligated on or before December 31, 2024, and expended on or before December 31, 2026. Unless otherwise terminated, this Agreement shall expire on December, 31, 2026. Agreements executed by the Municipality and the Contractor, as may be reflected in Exhibit B, (and subsequent Exhibits attached hereto, as applicable) will survive termination of this Agreement, unless terminated early by the Municipality and the Contractor.

7. Termination of Agreement.

The League may terminate this Agreement, in whole or in part, at any time upon written notice to the Municipality and the Contractor. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the League to be paid. If the Contractor has any property

in its possession belonging to the League, the Contractor will account for the same, and dispose of it in the manner the League directs.

8. Duties of the Municipality.

The Municipality will utilize League Services and Contractor Services in accordance with this Agreement. It agrees to submit quarterly performance reports for the League Services and Contractor Services received pursuant to this Agreement and to cooperate with the League in appropriate review of these League Services and Contractor Services. The nature and scope of the reports will depend on the project. Any deficiencies or other performance concerns will be addressed with the Municipality and the Contractor.

The Municipality shall obtain and provide to the League a unique entity identifier assigned by the System for Award Management (SAM), which is accessible at www.sam.gov.

The Municipality shall provide the League with all relevant information requested by the League to enable the League to comply with the reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note) or other federal or state requirements or audits, unless such information is otherwise confidential under applicable federal or state laws.

Article II. Scope of Funded Activities.

1. Scope of Services

Services provided pursuant to this Agreement are set forth in the Exhibit A & B attached hereto (and subsequent Exhibits as applicable).

2. Approved Budget.

The League, in consultation with the Municipality and the Contractor, shall establish applicable rates and fees to align with the scope of services described in Exhibit B (and subsequent Exhibits as applicable) or amendments thereto as approved in writing by the League. Such charges and rates under this Agreement, once finalized and accepted by the League, are hereinafter referred to as the "Approved Budget". The League shall furnish the Municipality with a copy of the Approved Budget, which will include a detailed summary of charges and rates that the League will be obligated to expend for the benefit of the Municipality using applicable grant funding.

3. Prior Approval for Changes.

The Municipality shall not make any changes, directly or indirectly, to the Contractor Services, or the Approved Budget, without the prior written approval of the League.

4. Allowable Costs for Services Rendered.

All services provided pursuant to this Agreement must fall with the definitions of allowable cost and not be otherwise prohibited under State or Federal law.

Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost

Principles, and Audit Requirements for Federal Awards, commonly called Uniform Guidance, Subpart E, defines those items of cost that are allowable, and which are unallowable. These allowable cost requirements are:

1. The costs must be reasonable;
2. The costs must be allocable to eligible projects under the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021 (ARP);
3. The costs must be given consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances;
4. The costs must conform to any limitations or exclusions set forth in these principles or in the ARP/CSLFRF grant award as to types or amounts of cost items.

5. Prohibited Uses of Funding.

The US Treasury's Final Rule prohibits certain uses of ARP/CSLFRF funds. Specifically, ARP/CSLFRF funds may not be used for projects within the following categories of expenditures:

1. To make a deposit into a pension fund that constitutes an extraordinary payment of an accrued, unfunded liability (Routine contributions which are part of a payroll obligation for an eligible project are allowed);
2. To borrow money or make debt service payments;
3. To replenish rainy day funds or to fund other financial reserves;
4. To satisfy an obligation arising from a settlement agreement, judgment, consent decree, or judicially confirmed debt restricting in a judicial, administrative, or regulatory proceeding;
5. For a project that includes a term or condition that undermines efforts to stop the spread of COVID-19 or discourages compliance with recommendations and guidelines in CDC guidance for stopping the spread of COVID-19;
6. In violation of the conflict-of-interest requirements imposed by the award terms and 2 CFR 200.318(c).
7. For any expenditure that would violate other applicable federal, state, and local laws and regulations.

Article III. Compensation.

1. Payment of Funds.

The League will pay the Contractor identified in Exhibit B (and other Contractors/Consultants identified in subsequent Exhibits as applicable) for services rendered in accordance with the Approved Budget and for the performance of the Contractor Services. No Contractor Services shall be funded by the League outside the parameters of the League Grants. Fees and costs must be supported by evidence of bona fide services rendered.

The Municipality has no obligation to pay for any services identified in the Approved Budget that are the League's responsibility. Services not expressly agreed to by the League shall be the responsibility of the Municipality.

2. Invoices.

Email invoices to Accountspayablearp@nclm.org. Expenses must be reasonable and necessary, documented, itemized, and incurred in accordance with this Agreement. All League expenditures under this Agreement must be obligated on or before December 31, 2024 and expended on or before December 31, 2026.

Article IV. Compliance with Grant Agreement and Applicable Laws.

1. Expenditure Authority.

This Agreement is subject to the laws, regulations, and guidance documents authorizing and implementing the ARP/CSLFRF grant, including, but not limited to, the following:

- **Authorizing Statute.** Section 603 of the Social Security Act (42 U.S.C. 803), as added by section 9901(a) of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2).
- **Implementing Regulations.** Subpart A of 31 CFR Part 35 (Coronavirus State and Local Fiscal Recovery Funds), as adopted in the Coronavirus State and Local Fiscal Recovery Funds interim final rule (86 FR 26786, applicable May 17, 2021 through March 31, 2022) and final rule (87 FR 4338, applicable January 27, 2022 through the end of the ARP/CSLFRF award term), and other subsequent regulations implementing Section 603 of the Social Security Act (42 U.S.C. 803).
- **Guidance Documents.** Applicable guidance documents issued from time-to-time by the US Department of Treasury, including the currently applicable version of the Compliance and Reporting Guidance: State and Local Fiscal Recovery Funds.

This Agreement is also subject to all applicable laws of the State of North Carolina.

2. Conflicts of Interest; Gifts & Favors.

The Municipality understands that (1) it will use Fiscal Recovery Funds to pay for the cost of this Agreement, and (2) the expenditure of Fiscal Recovery Funds is governed by the League's Conflict of Interest Policy and the Federal and State regulatory requirements (including, without limitation, N.C. Gen. Stat. § 14- 234(a)(1) and N.C. Gen. Stat. § 14-234.3(a)).

The Municipality certifies that, as of the date hereof, to the best of its knowledge after reasonable inquiry, no employee, officer, or agent of the Municipality involved in the selection, award, or administration of this Agreement (each, a "Covered Individual"), nor any member of a Covered Individual's immediate family, nor a Covered Individual's partner, nor an organization which employs or is about to employ a Covered Individual, has a financial or other interest in or has received a tangible personal benefit from Fiscal Recovery Funds, except as to the funds legally expended in this Agreement. Should the Municipality obtain knowledge of any such interest, or any tangible personal benefit described in the preceding sentence after the date hereof, the Municipality shall promptly disclose the same to the League in writing.

The Municipality certifies to the League that it has not provided, nor offered to provide, any gratuities, favors, or anything of value to an officer, employee, or agent of the League. Should the Municipality obtain knowledge of the provision, or offer of a provision, of any gratuity, favor, or anything of value to an officer, employee, or agent described in the preceding sentence after the date hereof, the Municipality shall promptly disclose the same to the League in writing.

3. Records Retention and Access.

The Municipality shall maintain all records, books, papers and other documents related to its performance of Approved Activities under this Agreement (including without limitation personnel, property, financial and medical records) through at least December 31, 2031, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit, or other inquiry involving this Agreement. The Municipality shall make all records, books, papers and other documents that relate to this Agreement, unless otherwise privileged, available at all reasonable times for inspection, review or audit by the authorized representatives of the League, the North Carolina State Auditor, the US Department of Treasury, the US Government Accountability Office, and any other authorized state or federal oversight office.

4. Suspension and Debarment.

The Municipality shall comply with the Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR Part 180, as adopted by the U.S. Department of Treasury at 31 CFR Part 19. The Municipality represents that neither it, nor any of its principals has been debarred, suspended, or otherwise determined ineligible to participate in federal assistance awards or contracts. The Municipality further agrees that it will notify the League immediately if it, or any of its principals, is placed on the list of parties excluded from federal procurement or nonprocurement programs available at www.sam.gov.

5. Byrd Anti-Lobbying Amendment.

The Municipality certifies to the League that it has not used and will not use Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. The Municipality shall disclose any lobbying with non-Federally appropriated funds that takes place in connection with obtaining any Federal award. This certification is a material representation of fact upon which the League has relied when entering this Agreement and all liability arising from an erroneous representation shall be borne solely by the Municipality.

6. Publications.

Any publications produced with funds from this Agreement shall display the following language: “This project is supported, in whole or in part, by federal award number SLFRP0129 awarded to NC League of Municipalities through the State of North Carolina by the U.S. Department of the Treasury.”

7. Equal Opportunity and Other Relevant Federal Laws

The Municipality agrees during the performance of this Agreement the following:

Civil Rights Laws.

The Municipality shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance.

Fair Housing Laws.

The Municipality shall comply with the Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability.

Disability Protections.

The Municipality shall comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance.

Age Discrimination.

The Municipality shall comply with the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 CFR Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance.

Americans with Disabilities Act.

The Municipality shall comply with Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

Clean Air Act.

The Municipality agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The Municipality agrees to report each violation to Unit and understands and agrees that Unit will, in turn, report each violation as required to the U.S. Department of the Treasury, and the appropriate Environmental Protection Agency Regional Office.

Federal Water Pollution Control Act.

The Municipality agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. The Municipality agrees to report each violation to Unit and understands and agrees that Unit will, in turn, report each violation as required to assure notification to the U.S. Department of the Treasury, and the appropriate Environmental Protection Agency Regional Office.

Hatch Act.

The Municipality agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

Protections for Whistleblowers.

In accordance with 41 U.S.C. § 4712, the Municipality may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

Uniform Relocation Assistance and Real Property Acquisitions Act of 1970.

(42 U.S.C. §§ 4601-4655) The Municipality will implement standards for predictable real property acquisition and relocation expenses for homeowners and tenants of land acquired through eminent domain.

Governmentwide Requirements for Drug-Free Workplace.

31 C.F.R. Part 20. The Municipality will implement required statements, policies and procedures.

Increasing Seat Belt Use in the United States.

Pursuant to Executive Order 13043, 62 Fed. Reg. 19216 (Apr. 18, 1997), The Municipality encourages its employees to adopt and enforce on-the-job seat belt policies and programs for its employees when operating company-owned, rented or personally owned vehicles.

Reducing Text Messaging While Driving.

Pursuant to Executive Order 13513, 74 Fed. Reg. 51225 (Oct. 6, 2009), The Municipality encourages its employees to adopt and enforce policies that ban text messaging while driving.

Article V. Limitations of Liability

1. Limitations of Liability.

In no event shall the League have any liability to the Municipality or any third party for damages resulting from Municipality's use of services provided through this Agreement or any separate agreement between the Municipality and the Contractor identified in Exhibit B (and other Contractors identified in subsequent Exhibits as applicable)

In no event shall the League be liable for any loss of profit or revenue, including but not limited to loss revenue caused by a cyber security breach, by the Municipality or any consequential, indirect, incidental, special, punitive, or exemplary damages incurred or suffered by the Municipality, even if the League has been advised of the possibility of such

loss or damage. Further, except for claims based on U.S. Patent or U.S. Copyright infringement or for personal injury or physical loss or damage to real or tangible personal property caused by the negligence of the League, Municipality agrees that the League's total liability for all claims of any kinds arising as a result of, or related to, this Agreement, whether based on contract, tort, (including but not limited to strict liability and negligence) warranty, or on other legal or equitable grounds, shall be limited to general money damages and shall not exceed the amounts actually received by Municipality under this Agreement.

THE REMEDIES PROVIDED HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REMEDIES, EXCEPT FOR THE WARRANTIES SET FORTH IN THIS AGREEMENT. THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, WHETHER ORAL OR WRITTEN, WITH RESPECT TO THE GOODS AND SERVICES COVERED BY OR FURNISHED PURSUANT TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES (I) OF MERCHANTABILITY, (II) OF FITNESS FOR A PRACTICAL PURPOSE, OR (III) ARISING FROM COURSE OF PERFORMANCE OR DEALING, OR FROM USAGE OF TRADE.

Article VI. General Conditions.

2. Venue and Jurisdiction.

This Agreement will be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement is the appropriate division of the North Carolina General Court of Justice in Wake County. Such actions may not be commenced in, nor removed to, federal court unless required by law.

3. Nonwaiver.

No action or failure to act by the League constitutes a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach of this Agreement, except as specifically agreed in writing.

4. Limitation of Authority.

Nothing contained in this Agreement may be deemed or construed to in any way stop, limit, or impair the Municipality from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

5. Assignment.

The Municipality may not assign or delegate any of their rights or duties that arise out of this Agreement without the League's written consent.

6. Integration.

This Agreement contains the entire agreement between the parties pertaining to the subject matter of this Agreement. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed, or implied, between the parties, other than as set forth or referenced in this Agreement.

7. North Carolina Public Records Law

Notwithstanding any other provisions of this Agreement, this Agreement and all materials submitted to the Municipality by the League are subject to the public records laws of the State of North Carolina and it is the responsibility of the League to properly designate materials that may be protected from disclosure as trade secrets under North Carolina law as such and in the form required by law prior to the submission of such materials to the Municipality. League understands and agrees that the Municipality may take any and all actions necessary to comply with federal, state, and local laws and/or judicial orders and such actions will not constitute a breach of the terms of this Agreement. To the extent that any other provisions of this Agreement conflict with this paragraph, the provisions of this section shall control.

8. E-Verify

League shall comply with E-Verify, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with N.C.G.S. §64-25 et seq. In addition, to the best of League's knowledge, any subcontractor employed by League as a part of this contract shall be in compliance with the requirements of E-Verify and N.C.G.S. §64-25 et seq.

9. Iran Divestment Act

League certifies that, as of the date listed below, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. § 147-86.55, et seq. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 147-86.59, League shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

10. Companies Boycotting Israel Divestment Act

League certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. 147-86.81.

[Remainder of page left blank intentionally. Signatures are on following page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by digital signature on the respective dates below, and this Agreement shall be effective upon the date of the Municipality's signature.

NC LEAGUE OF MUNICIPALITIES:

**MUNICIPALITY:
TOWN OF LOWELL**

a North Carolina municipal corporation

By:

By:

Signature

Signature

Rose Vaughn Williams

Name

Executive Director

Title

Date of Signature

Date of Signature

ATTEST:

City/Town/Village Clerk (or designee)

Exhibit A League Services

In addition to the Contractor Services set out in Exhibit B, the League may provide some or all of the services described below.

1. Cyber Security Assessment

The League's Cyber Security Advisor, or Cyber Field Technician ("Security Team"), will conduct a comprehensive assessment of the Municipality's overall cyber security posture ("Security Assessment") against the current standardized framework established by the Center for Internet Security ("CIS"). The Security Team will review approximately 155 security controls in coordination with the Municipality's management, and will provide IT support to establish a baseline security posture matrix. The Security Team will review the results and make appropriate hardware, software, policy, and procedure recommendations in accordance with industry best practices and the baseline standards set by the CIS assessment framework.

2. IT Evaluation

Prior to the installation of accounting software, including Black Mountain software, the League's IT technicians ("Technical Team") will review and evaluate the IT System's environment ("IT Evaluation") of the Municipality to verify the system is adequate to operate the software. The Technical Team will review the computer system for minimum security controls such as password protection, firewall installation and operation, and up to date antivirus programs. The Technical Team will act as a liaison to assist with communications between the software Contractor, which may include Black Mountain Software, and the Municipality. The Technical Team will make appropriate hardware and software recommendations if any deficiencies are found during the IT Evaluation.

3. Hardware and Software Acquisition

In the event that hardware or software deficiencies are found during the IT Evaluation, the League, utilizing funds from the **Municipal Accounting Services and Cybersecurity Grant**, will acquire and transfer title to the Municipality sufficient hardware and software to meet the "Minimum Requirements" as determined by the accounting software Contractor, which may include Black Mountain Software. As determined by the League's IT Director, Cyber Security Advisor, or Cyber Field Technician, computer hardware may be provided under this Agreement, which may include the following: 2 Computers, 1 Laser Printer, 1 Scanner, 2 Monitors, 2 Keyboards, 2 mouse devices, 2 UPS devices. Computer software to be provided under this Agreement may include a Microsoft Office license (if organization has no license).

In the event specific security hardware or software gaps are found during the Security Assessment, the League, utilizing funds from the Cybersecurity Grant, will acquire and transfer title to the Municipality sufficient hardware and software to meet the "Baseline Requirements" as determined by the Security Assessment. As determined by the League's Cyber Advisor, security hardware may be provided under this Agreement, which may include the following: ("NGFW") Next Generation Firewall, Layer 3 Network Switch. Security software may be provided under this agreement, which may include the following: Endpoint Detection & Response ("EDR"), Endpoint

Protection Platform (“EPP”), Extended Detection and Response (“XDR”), or Multi-Factor Authentication (“MFA”).

All hardware and software shall be used only for governmental purposes and primarily used for MAS purposes. The Municipality is responsible for the security, operation, support and maintenance of the provided assets.

4. Hardware and Software Installation

Hardware and software provided by the League will be installed by the Municipality’s IT professionals. If the Municipality has no IT service provider, the League, utilizing funds from the **Municipal Accounting Services and Cybersecurity Grant**, will contract for a third-party IT professional installer to set up and load the hardware and software provided pursuant to this Agreement.

5. Finance Evaluation and Assistance During Implementation

Prior to the installation of the accounting software, which may include Black Mountain software, the League’s Finance Team (“Finance Team”), in consultation with the Municipality and the software Contractor, which may include Black Mountain Software, will determine the appropriate accounting software to be installed. League MAS representatives will further work with accounting software Contractor during the pre-implementation period to prepare the Municipality for conversion actions and assist the Municipality in adopting best practice options for the new system.

6. Ongoing Cyber Security Consulting

Following the initial Security Assessment described in Section 1, the Security Team will consult with the Municipality on an ongoing basis to assist with meeting the recommendations set forth in the assessment and municipal-related cyber security concerns that would typically be addressed by a Chief Information Security Officer (“CISO”).

7. Accounting Assistance Efforts

During the term of this Agreement (as described in Article I, Paragraph 6 above), League Accounting Assistance personnel will provide the Municipality with ongoing assistance with accounting issues, review and assist with best practice accounting and finance processes, and generally assist the Municipality to be current with its bookkeeping and accounting. An emphasis will be placed on ensuring participating Municipalities are prepared for their annual audit. The implementation of best practices and timely preparation should improve the audit experience for both the Municipality and the firm performing the audit.

8. Communication Services

The League’s ARP Communications Specialist will provide the Municipality with communications services to help document and describe how the Municipality utilized ARP/CSLFRF grant funding and the impact of those efforts on the community. Communication activities include, but are not limited to, conducting interviews of municipal staff and officials, researching plans and investment strategies, verifying details of grant investments to deliver community outreach strategies and a press conference.

9. Duties of the Municipality

The Municipality further agrees to: (1) give the League access to data managed by the Municipality in order to facilitate implementation of the Municipal Accounting Services and Cybersecurity Grant; (2) provide on-line “read only” access into the Municipal Accounting System by the League’s Accounting Assistance personnel; (3) permit the League to contact applicable Contractor, including but not limited to Black Mountain Software, on behalf of the Municipality as needed to facilitate implementation of the League’s Grants; (4) make reasonable efforts to maintain industry standards for cybersecurity, which may include allowing the League to perform security audits in the League’s sole discretion; (5) if applicable, use the Standardized Chart of Accounts as provided in the accounting software installation; (6) respond to all requests from the League or Contractor, as applicable, to verify accuracy of monthly invoices submitted to the League by Contractor for grant-funded services provided by Contractor on behalf of the Municipality; and (7) for an Engineering or Planning Project funded under Grant 66 where the estimated professional fee is in an amount less than fifty thousand dollars (\$50,000), the Municipality hereby exempts the particular Project from the provisions of G.S. 143-64.31 (the Mini-Brooks Act) as permitted under G.S. 143-64.32.

10. Duties of the League Related to Data Security

The League agrees to: (1) access only the Municipality’s data that is necessary to implement the software; (2) restrict access to the Municipality’s data to designated League employees and agents; and (3) take reasonable measures to safeguard the Municipality’s data.

Exhibit B

License Agreement for Purchase and Support of Application Software



This AGREEMENT is made and entered into by and between BLACK MOUNTAIN SOFTWARE LLC, located at 110 Main Street, Suite 3, Polson, Montana 59860 (hereinafter referred to as BMS), and the Town of Lowell, located at 101 W First Street, Lowell, North Carolina 28098 (hereinafter referred to as LICENSEE).

The LICENSED SOFTWARE, as such term is used in the Agreement, includes all software products that the LICENSEE has obtained from BMS through purchase, lease, subscription, or rental and includes software, associated files, and documentation that may be related thereto, as the same may, from time to time, be amended, updated, or customized. The software products, associated files, and documentation that together constitute a computerized system are hereinafter referred to as LICENSED SOFTWARE. Examples of LICENSED SOFTWARE include, but are not limited to, the following products: (a) BMS Cloud Hosting, software hosted on cloud servers which the LICENSEE is granted access to; and (b) BMS Summit products, web application software hosted online which the LICENSEE is granted access to.

BMS hereby grants LICENSEE a limited, nontransferable, non-exclusive LICENSE to an executable copy of the LICENSED SOFTWARE, solely for LICENSEE's own internal business purposes and subject to the terms set forth herein. All rights not expressly granted to LICENSEE are reserved by BMS and its licensors. LICENSEE's ownership of and right to use the LICENSED SOFTWARE shall survive termination of this AGREEMENT. Notwithstanding, LICENSEE's obligation to only utilize the LICENSE SOFTWARE for internal business purposes and not transfer to other entities, not named in this AGREEMENT, shall survive termination of this AGREEMENT.

SCOPE OF SERVICES & FEES

The Scope of Services to be provided by BMS are more specifically set forth in Exhibit 1 to this AGREEMENT.

The Initial Service Fee for each software product provided to LICENSEE is to be paid for by the NC League of Municipalities (hereinafter referred to as "NCLM") pursuant to the Municipal Accounting Services Assistance Master Agreement. The Initial Service Fee Schedule is attached hereto as Exhibit 2. This Initial Service Fee shall cover a period of three (3) years ("Initial Performance Period") beginning upon the date on which the BMS commences implementation of the software for LICENSEE. . Thereafter, LICENSEE shall have the option to continue this AGREEMENT as described below.

During the Initial Performance Period, neither the LICENSEE nor BMS shall make any changes, directly or indirectly, to the Scope of Services, as stated in Exhibit 1 of the Agreement, or the Initial Service Fee paid by the League as indicated in Exhibit 2 of the Agreement, without the prior written approval of the NC League of Municipalities. All costs incurred for activities outside of Exhibit 1 and Exhibit 2 of the Agreement or without prior approval of the NC League of Municipalities shall be borne by the LICENSEE.

After the Initial Performance Period expires, LICENSEE shall be notified annually of rates for the Annual Service Fee for the upcoming year in sufficient time for budgeting, if requested. LICENSEE agrees to

payment of Service fees for as long as LICENSEE uses the LICENSED SOFTWARE.

1. WARRANTY AND LIMITATIONS OF LIABILITY

All work performed under this AGREEMENT shall be performed in a workmanlike and professional manner, to the reasonable satisfaction of the LICENSEE, and shall conform to all prevailing industry and professional standards.

BMS does not warrant that the functions contained in the LICENSED SOFTWARE meet LICENSEE'S requirements. It is the responsibility of LICENSEE to determine that the functions provided by the software meet LICENSEE'S needs. In addition, LICENSEE assumes the entire risk of using the LICENSED SOFTWARE.

BMS agrees to use reasonable efforts to correct any material errors found in the LICENSED SOFTWARE, during the term of this and any subsequent AGREEMENTS regarding the LICENSED SOFTWARE, at no additional cost to LICENSEE. An error, or "bug", is defined as a logical defect in the software that causes it to perform a specific function or calculation in an improper manner, or not as originally intended or designed.

LICENSEE agrees to report any suspected error to BMS and to provide a detailed description of the situation surrounding the detection of the suspected error. BMS shall analyze the situation and determine the cause of the problem. If it is a material error, BMS shall use reasonable efforts to correct it and provide a new copy of the corrected executable code for use by LICENSEE. If an error has caused the loss or inaccessibility of any significant data previously entered into the LICENSED SOFTWARE by LICENSEE, BMS shall provide all reasonable assistance necessary to retrieve or reenter such data. BMS shall advise LICENSEE if there are charges associated with the data recovery effort.

IN NO EVENT SHALL BMS HAVE ANY LIABILITY TO LICENSEE OR ANY THIRD PARTY FOR DAMAGES RESULTING FROM LICENSEE'S USE OR POSSESSION OF THE LICENSED SOFTWARE.

IN NO EVENT SHALL BMS BE LIABLE FOR ANY LOSS OF PROFIT OR REVENUE BY LICENSEE OR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES INCURRED OR SUFFERED BY LICENSEE, EVEN IF BMS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. FURTHER, EXCEPT FOR CLAIMS BASED ON US PATENT OR US COPYRIGHT INFRINGEMENT OR FOR PERSONAL INJURY OR PHYSICAL LOSS OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY CAUSED BY THE NEGLIGENCE OF BMS, LICENSEE AGREES THAT BMS'S TOTAL LIABILITY FOR ALL CLAIMS OF ANY KIND ARISING AS A RESULT OF, OR RELATED TO, THIS AGREEMENT, WHETHER BASED ON CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO STRICT LIABILITY AND NEGLIGENCE), WARRANTY, OR ON OTHER LEGAL OR EQUITABLE GROUNDS, SHALL BE LIMITED TO GENERAL MONEY DAMAGES AND SHALL NOT EXCEED THE AMOUNTS ACTUALLY RECEIVED BY BMS FROM LICENSEE FOR SUCH SPECIFIC LICENSE FOR THE PARTICULAR PRODUCT(S) AND SERVICE PERIOD(S) TO WHICH THIS CLAIMS PERTAIN.

LICENSEE'S REMEDIES PROVIDED HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REMEDIES, EXPRESS OR IMPLIED, WHETHER ORAL OR WRITTEN, WITH RESPECT TO THE LICENSED SOFTWARE AND ANY OTHER GOODS AND SERVICES COVERED BY OR FURNISHED PURSUANT TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES (i) OF MERCHANTABILITY, (ii) OF FITNESS FOR A PARTICULAR PURPOSE, OR (iii) ARISING FROM COURSE OF PERFORMANCE OR DEALING, OR FROM USAGE OF TRADE.

2. OWNERSHIP OF SOURCE CODE

BMS owns the copyrights and all associated intellectual property rights to the licensed software which is considered confidential and a trade secret. The original source code for each software product, including any alterations or customization requested and paid for by the LICENSEE, is the sole property of BMS. The original source code is not provided as part of this AGREEMENT. LICENSEE is only granted permission to utilize a copy of the executable code for each software product, subject to the terms and restrictions set forth in this AGREEMENT. However, if BMS should discontinue its operations so as to no longer be in a position to service, update, or otherwise care for its software products under this AGREEMENT, BMS shall take all reasonable steps to provide LICENSEE with a single copy of the then-current version of the source code of each software product LICENSEE utilized, at no additional charge. The source code supplied to LICENSEE under this provision shall be subject to each and every restriction on use and disclosure set forth in this AGREEMENT, and LICENSEE acknowledges that the source code and its associated documentation are extraordinarily valuable proprietary property of BMS that shall be guarded against unauthorized use or disclosure with great care.

3. NONDISCLOSURE

All rights of any kind associated with LICENSED SOFTWARE that are not expressly granted in this AGREEMENT are entirely and exclusively reserved to and by BMS. LICENSEE shall not give, assign, sell, rent, lease, or otherwise transfer this LICENSE or the LICENSED SOFTWARE, or any access to the same, to any third party. LICENSEE may also not modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the LICENSED SOFTWARE.

The LICENSED SOFTWARE is protected by both United States copyright law and international treaty provisions. LICENSEE agrees not to disclose or otherwise make available the LICENSED SOFTWARE, or related documentation, in any form, to any person for any purpose other than as necessary to LICENSEE'S use of the software as authorized herein. LICENSEE is hereby granted permission only to make archival copies of approved LICENSED SOFTWARE for the sole purpose of back up to protect LICENSEE'S investment from loss. However, LICENSEE shall safeguard the original and all copies of the LICENSED SOFTWARE and documentation against unauthorized disclosure and take such steps as necessary to ensure that the provisions of this AGREEMENT are not violated by any employee of LICENSEE or any other individual with access to LICENSEE'S computer system. For only those users that have elected to have their software hosted through BMS on the "Cloud", or other online hosting service, a backup of each application and the related application database shall routinely be performed each workday by a third-party provider.

4. ADDITIONAL SERVICES

See Scope of Services in [Exhibit 1](#).

5. PROTECTION OF DATA

5.1 Implementation on Client Hardware/Network

Intentionally omitted.

5.2 Implementation on Cloud and for Online Services

BMS shall make commercially reasonable efforts to safeguard LICENSEE'S data. LICENSEE UNDERSTANDS AND AGREES THAT BMS IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS OF THE THIRD-PARTY PROVIDERS, AND THAT LICENSEE'S REMEDIES, IF ANY, RELATING TO LOSS OF DATA ASSOCIATED WITH ERRORS OR OMISSIONS OF THE THIRD-PARTY PROVIDERS ARE STRICTLY LIMITED TO CLAIMS LICENSEE MAY HAVE AGAINST THE THIRD-PARTY PROVIDERS.

In the event of loss of data, LICENSEE shall participate and assist with data recovery by all reasonable means, in conjunction with the efforts of the third-party provider of infrastructure as a service, as well as the third-party provider of backup services. IT IS UNDERSTOOD AND AGREED THAT BMS'S LIABILITY IN THE EVENT OF LOSS OF DATA IS STRICTLY LIMITED TO TAKING THE REMEDIAL MEASURES DESCRIBED HEREIN, AND IN NO EVENT SHALL BMS BE LIABLE FOR ANY LOSS OR DAMAGES OF ANY KIND RESULTING FROM THE LOSS OF LICENSEE'S DATA.

5.3 Data Breach: Licensee's Obligation to Notify Individuals

In the event the parties hereto discover an unauthorized disclosure of LICENSEE'S data, the discovering party shall notify the other party within 24 hours of discovery of such a disclosure. LICENSEE hereby accepts all obligations under applicable law to notify each individual affected by the disclosure. LICENSEE agrees to pay all costs associated with the notification process and to diligently abide by all laws governing the unauthorized disclosure of personal information. BMS agrees to fully cooperate with the LICENSEE in their process. To the extent permitted by law, LICENSEE shall indemnify and hold harmless BMS against all costs of notification and remediation of an unauthorized disclosure of LICENSEE'S data, whether or not such breach is the direct result of an action or inaction of BMS. This indemnification shall extend to all claims for any losses, damages, liabilities, fines or expenses, including reasonable attorney's fees, arising out of any failure by LICENSEE to comply with its obligations hereunder.

6. NONPAYMENT

The Initial Service Fee for each software product provided to LICENSEE under this Agreement is to be paid for by the NC League of Municipalities pursuant to the Municipal Accounting Services Assistance Master Agreement. LICENSEE agrees to make all required payments for: (a) Annual Service Fees; (b) additional services that are requested by the LICENSEE under Section 4 above; and (c) any applicable Cloud Hosting or access fees, on or before the due date of such payment. If any such payment remains unpaid for a period of thirty (30) days, BMS shall have the right to terminate this AGREEMENT and all Service, support, Cloud Hosting, and/or access to the LICENSED SOFTWARE and other services.

7. COMPUTER SYSTEM

LICENSEE is responsible for and agrees to provide and maintain a computer system suitable to support the use and operation of BMS'S software products, as specified on BMS'S website in a document entitled Minimum Requirements. When applicable, LICENSEE is responsible for the stability of their internet access and understands that the quality of their internet connection can impact the services BMS provides. LICENSEE is responsible for and agrees to keep computer workstations, servers, operating systems, network switches and wiring, uninterruptible power supplies, etc. up to date and functioning properly. Information on the use of LICENSED SOFTWARE, including system performance metrics, is monitored and collected by BMS for the explicit purpose of improving the Software, End Users' experience, Software performance, Software reliability and general troubleshooting practices. LICENSEE may request BMS'S advice regarding modification of server, workstation, and/or network environments to ensure proper functioning of BMS'S software. However, actual modifications are to be performed by LICENSEE'S in-house or contracted technical support personnel, unless BMS personnel are specifically directed to make changes in an emergency. In this case, authorization to proceed must be provided in writing to BMS. If LICENSEE fails to properly provide and maintain a suitable computer system, and this leads to data corruption, LICENSEE may incur charges from BMS to cover costs related to repairing or restoring damaged data. In such an event, BMS retains the right to notify LICENSEE of the fact and the amount of the charges within 30 days of discovery and reporting of the issue.

8. APPLICABLE LAW

This AGREEMENT is the complete statement of the AGREEMENT between the parties on the subject matter, and merges and supersedes all other or prior understandings, agreements, and arrangements. This AGREEMENT shall be governed by the laws of the State of North Carolina. Exclusive jurisdiction and venue for all matters relating to this AGREEMENT shall be in courts located in the State of North Carolina, and BMS and LICENSEE consent to such jurisdiction and venue. If any of the provisions of this AGREEMENT are invalid under any applicable statute or rule of law, they are, to that extent, modified to conform with such applicable statute or rule of law.

9. NORTH CAROLINA PUBLIC RECORDS LAW

Notwithstanding any other provisions of this Agreement, this Agreement and all materials submitted to the LICENSEE by the BMS are subject to the public records laws of the State of North Carolina and it is the responsibility of the BMS to properly designate materials that may be protected from disclosure as trade secrets under North Carolina law as such and in the form required by law prior to the submission of such materials to the LICENSEE. BMS understands and agrees that the LICENSEE may take any and all actions necessary to comply with federal, state, and local laws and/or judicial orders and such actions will not constitute a breach of the terms of this Agreement. To the extent that any other provisions of this Agreement conflict with this paragraph, the provisions of this section shall control.

10. E – VERIFY

BMS shall comply with E-Verify, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with N.C.G.S. §64-25 et seq. In addition, to the best of BMS's knowledge, any subcontractor employed by BMS as a part of this contract shall be in compliance with the requirements of E-Verify and N.C.G.S. §64-25 et seq.

11. IRAN DIVESTMENT ACT

BMS certifies that, as of the date listed below, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. § 147-86.55, et seq. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 147-86.59, BMS shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

12. COMPANIES BOYCOTTING ISRAEL DIVESTMENT ACT

BMS certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. 147-86.81.

13. FORCE MAJEURE

BMS will not be responsible for any delay or failure to perform obligations specified in this AGREEMENT due to causes beyond BMS's reasonable control.

14. TERM AND TERMINATION

The term of this AGREEMENT shall be for so long as there are then current orders made a part hereof unless earlier terminated as provided herein.

Either party may terminate this AGREEMENT by giving the other written notice effective no later than sixty (60) days prior to the next Annual Service fee date. Such written notice shall be addressed and delivered to the designated points of contact, respectively, for LICENSEE and BMS at the addresses provided above or as later provided.

BMS may suspend LICENSEE's access to the LICENSED SOFTWARE and services during any period that LICENSEE is in material breach of this AGREEMENT or LICENSEE's access to and use of the LICENSED SOFTWARE creates a material security vulnerability. Where practicable, BMS will give LICENSEE at least two (2) days' advance notice of the suspension unless the suspension is made under emergency circumstances. BMS will reinstate LICENSEE's access to the LICENSED SOFTWARE when the grounds for suspension are cured.

In the event this AGREEMENT is terminated, BMS will retain LICENSEE's data for up to sixty (60) days from the effective date of termination. During that sixty (60) day period, upon LICENSEE's request, BMS shall provide LICENSEE with a backup copy of their data for each licensed software product that can be reasonably transferred to a local hosting service. In this case, BMS may assist LICENSEE with installation and/or configuration of LICENSEE'S software and data on a local network, upon payment of related installation fees. BMS has no obligation to retain LICENSEE's data after the sixty (60) day period and may destroy LICENSEE's data any time thereafter

15. INDEPENDENT CONTRACTOR

BMS shall be considered to be an Independent Contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. Nothing herein is intended or will be construed to establish any agency, partnership, or joint venture. BMS represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such employees shall not be employees of or have any individual contractual relationship with the LICENSEE.

16. NO ASSIGNMENT

Neither party may assign this AGREEMENT without the express written consent of the other. Notwithstanding the foregoing, a Party may assign this AGREEMENT and all of its rights and obligations hereunder to any AFFILIATE or to any THIRD PARTY in connection with the transfer or sale of all or substantially all of its business, or to which it may transfer all or substantially all of its assets to which this AGREEMENT relates, or in the event of its merger, consolidation, change in control or similar transaction, without obtaining the consent of the other Party, provided that the assigning party remains liable under this AGREEMENT and that the THIRD PARTY assignee or surviving entity assumes in writing all of its obligations under this AGREEMENT.

17. DUTY OF LICENSEE

The LICENSEE further agrees to: (1) give the League access to data managed by the Municipality in order to facilitate implementation of the Municipal Accounting Systems and Cybersecurity Grant; (2) provide on-line "read only" access into the Municipal Accounting System by the League's Accounting Assistance personnel; (3) permit the League to contact Black Mountain Software on behalf of the LICENSEE as needed to facilitate implementation of the Municipal Accounting Systems and Cybersecurity Grant; (4) make reasonable efforts to maintain industry standards for cybersecurity; and (5) use the Standardized Chart of Accounts as provided in the Black Mountain Software installation.

THE REMAINDER OF THIS PAGE REMAINS BLANK INTENTIONALLY.

SIGNATURES ARE ON THE NEXT PAGE.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by digital signature on the respective dates below, and this Agreement shall be effective upon the date of the LICENSEE's signature.

BLACK MOUNTAIN SOFTWARE, LLC:

LICENSEE:

LOWELL

a North Carolina municipal corporation

By:

By:

Signature

Signature

Mike Fabrizio

Name

Co-CEO

Title

Date of Signature

Date of Signature

ATTEST:

City/Town/Village Clerk (or designee)

The undersigned acknowledges this Agreement and its obligation to fund services provided herein as set forth under separate agreements between the NC League of Municipalities and each of the parties above.

NC League of Municipalities

By:

Signature:

Name:

Date:

EXHIBIT 1 Scope Of Services

MEMBER SERVICES

The Initial Service Fee and Annual Service Fee, as shown in The Initial Service Fee Schedule cover 1.) the purchase of an executable copy of the LICENSED SOFTWARE; 2.) telephone and other means of support, including granting access to online services provided by BMS, and training to all of LICENSEE'S involved personnel in the use of the LICENSED SOFTWARE; 3.) initial transfer of data from the LICENSEE'S current system into the LICENSED SOFTWARE, 4.) error correction, including software updates current with all changes in applicable law and equivalent to the products sold to new clients, and related data files changes; and 5.) hosting LICENSED SOFTWARE, including backup through a third-party provider.

1. Software Purchase. BMS grants LICENSEE a limited, nontransferable, non-exclusive LICENSE to an executable copy of the LICENSED SOFTWARE. This includes the selected Base Package and Add-On Applications from the corresponding Initial Service Fee Schedule.

All the software products are multi-user, with an unlimited number of LICENSE users (seats).

2. Support and Training. Unlimited phone, email, and internet support is included in the LICENSEE'S services. Support is available during normal business hours, which are Monday through Friday, 7:00 a.m. to 5:30 p.m. (Mountain Time). Any unexpected down times will be communicated via email as needed.

Training is included for the LICENSEE, with the services provided for each software application. Unless specifically arranged, initial training will be conducted online. After initial training, free online training is always available with advanced scheduling required. Hourly charges and travel costs apply at a pre-quoted rate for training physically provided onsite.

3. Data Transfer. At initial implementation, BMS will assist the LICENSEE in transferring (i.e. converting) data from an existing system(s). BMS will provide the LICENSEE, via NCLM, all data requests and data conversion templates needed for the conversion process. Any additional conversion data requested by LICENSEE would be custom and additional costs would apply to convert such data. A quote would be provided after discussion of the data to be included and review from BMS staff.

The following list includes, but is not limited to, the data BMS will convert for the Base Packages:

Fund Accounting – BMS approved universal chart of accounts as required for NCLM MAS participants, vendors, conversion month, YTD balances for balance sheets, revenue and expenditure accounts, outstanding checks, current year purchase orders.

Payroll – employee master file information (including demographic area, rates of pay, tax exemption settings, contact information), deductions, YTDs (to produce W2s), outstanding checks, leave balances.

Utility Billing – customer information (including account numbers, route/walk sequences,

independent billing, owner and resident names/addresses), balances, rate codes, security deposits, meter information (including readings), comments/notes.

Year-to-date (YTD) totals and/or ending balances are converted. Detailed transaction history is not converted.

4. Software Updates. Updates to the software will be applied as needed on a per-application basis. Critical updates required for error correction will be applied as needed. All BMS applications and cloud systems have updates automatically applied as they become available. Required system maintenance shall be scheduled and performed in such a way as to minimize disruption to LICENSEE'S workflow.
5. Hosting. BMS shall arrange for the hosting of LICENSEE'S applications by a third-party provider of infrastructure as a service, or through BMS'S online services.

Via Hosting, the software and data can be accessed 24/7 outside of the designated weekly maintenance window, which is 11:00 p.m. Saturday to 1:00 a.m. on Sunday (Mountain Time). Unexpected down times will be communicated via email as needed.

In addition, BMS shall arrange for LICENSEE'S data for each software product to be backed up each workday using a third-party provider of backup services. Data storage and backup shall meet all applicable industry and governmental standards for electronic storage, data security and backup. LICENSEE has the option, but not obligation, to perform additional backups manually to local workstations.

ANNUAL SERVICE FEES SPECIFICALLY **DO NOT COVER** (1) CUSTOM SOFTWARE ENHANCEMENTS, (2) LOCAL CLIENT HARDWARE/NETWORK RELATED SUPPORT, (3) DATABASE REPAIR DUE TO NON-SOFTWARE RELATED PROBLEMS SUCH AS THOSE INVOLVING LOCAL CLIENT HARDWARE, THE LOCAL CLIENT NETWORK, OR THE LOCAL CLIENT NETWORK ENVIRONMENT AND (4) FORMAT CHANGES TO ANY FILE USED TO IMPORT DATA FROM OR EXPORT DATA TO A THIRD PARTY.

ADDITIONAL SERVICES

LICENSEE may request BMS to perform additional services. Additional services can include, but are not limited to, additional data preparation or conversion; supplemental training or preparation of supplemental training materials; changes to any import or export file; changes to any credit card processing interface; and systems analysis and custom programming. A cost estimate for any such services shall be provided by BMS in response to a request by LICENSEE. If travel is required, an estimate of these costs shall also be provided. Upon agreement in writing by both parties, the requested effort shall be performed. Such an effort shall be provided at BMS'S standard rate during the period of performance. Costs of additional services shall be billed once the services have been provided and shall be due and payable within one month of billing. Actual travel costs shall be billed. Travel costs may include mileage or airfare, a nominal travel time charge per person, per diem, rental car, and lodging. Mileage and per diem shall be based on the current Federal rates.

Any additional services, not covered in the Scope of Services and Annual Service Fees, are paid for by the LICENSEE, and not the funding responsibility of NCLM.

EXHIBIT 2 - Initial Service Fee Schedule

Note to drafters: the “Initial Service Fee Schedule” for Exhibit 2 will vary for each License Agreement signed by Municipalities based on the package that the NCLM chooses for them.

Please see next Page for Exhibit 2, which will become part of the “Approved Budget” pursuant to Article II, Section 2 of the Memorandum of Agreement.

Town of Lowell
 Lisa Nolen, Finance Director
 101 W First St
 Lowell, NC 28098
lnolen@lowellinc.com



November 29, 2023

Package Description	License Purchase Fees	Annual Fees Year 1	Conversion Fees	Annual Fee Prepayment		Total
				Year 2	Year 3	
Base Packages: Fund Accounting, Payroll, & Utility Billing						
Fund Accounting	\$33,700	\$6,600	\$1,850	\$6,800	\$7,000	\$55,950
Payroll	\$7,890	\$2,250	\$1,100	\$2,320	\$2,390	\$15,950
Utility Billing	\$14,390	\$4,200	\$4,650	\$4,320	\$4,450	\$32,010
Base Package Subtotals:	\$55,980	\$13,050	\$7,600	\$13,440	\$13,840	
Add-On Applications:						
UB Intelligent Mail Barcode	\$370	\$0	\$0	\$0	\$0	\$370
UB-Rate Analysis	\$1,855	\$30	\$0	\$30	\$30	\$1,945
Credit Card Manager	\$1,875	\$340	\$0	\$350	\$360	\$2,925
Department Security	\$2,930	\$110	\$0	\$115	\$120	\$3,275
CR Cash Drawer	\$240	\$0	\$0	\$0	\$0	\$240
CR Cash Drawer	\$240	\$0	\$0	\$0	\$0	\$240
CR Receipt Printer	\$1,055	\$0	\$0	\$0	\$0	\$1,055
CR Receipt Printer	\$1,055	\$0	\$0	\$0	\$0	\$1,055
CR Wireless Barcode Scanner	\$505	\$0	\$0	\$0	\$0	\$505
CR Wireless Barcode Scanner	\$505	\$0	\$0	\$0	\$0	\$505
Daily Time Cards	\$790	\$315	\$0	\$325	\$335	\$1,765
Human Resources	\$3,740	\$680	\$615	\$700	\$720	\$6,455
Accounts Receivable	\$4,670	\$850	\$765	\$875	\$900	\$8,060
Summit Code Enforcement	\$530	\$2,400	\$425	\$2,470	\$2,545	\$8,370
Permitting	\$4,670	\$850	\$765	\$875	\$900	\$8,060
Asset Manager	\$4,670	\$850	\$850	\$875	\$900	\$8,145
Mobile Asset Tracking	\$1,395	\$255	\$0	\$265	\$275	\$2,190
All Subtotals:	\$87,075	\$19,730	\$11,020	\$20,320	\$20,925	
Grand Total:						\$159,070

Base Package Detail by Application <i>(All applications and packages are inclusive of Cloud Hosting)</i>
<p>Fund Accounting: Accounting Core Purchase Orders Remote Requisitions ACH Credit Positive Pay Cash Receipting Budget Preparation</p> <p>Payroll: Payroll Core ACH Direct Deposit Employee Portal</p> <p>Utility Billing: Utility Billing Core ACH AMR Interface Email Bills Summit Service Orders BMS Pay</p>

Additional Terms

1. All prices are in effect for calendar year 2023. To guarantee these prices, individual License Agreements must be entered into by the end of 2023. All pricing after 2023 will be subject to change. All towns/cities not belonging to the MAS program will be subject to standard BMS pricing.
2. Prices do not reflect sale or use taxes imposed by any state or local government, or any unit or subdivision thereof; during the Term of the Master Agreement between BMS and NCLM, such taxes are the responsibility of the League.
3. Utility Billing requires the use of specific bill layouts, options, and laser compatible billing forms for either postcard or full-page bills, as provided by BMS during the implementation process. Any additional work to edit or modify form layouts will be considered custom and billed at our current hourly rate. For the avoidance of doubt, LICENSEE shall be responsible for paying such costs.
4. With Automated Bank Drafting (ACH), there are setup and transaction fees charged by the banking institution (normally, a local bank) that processes these payments. LICENSEE shall be responsible for paying for such transaction fees.
5. This price indicates a standard file layout that BMS uses for the AMR Interface (Utility Billing). If a new/custom layout is needed to successfully complete this interface, additional service fees may be charged to accommodate a UB – AMR Custom Interface. LICENSEE shall be responsible for paying for such additional service fees.
6. The League will be billed and will pay for the License Purchase Fee, Year 1 Annual Service Fee, and Conversion Fee, as set out in the Initial Service Fee Schedule (under the applicable License Agreement between BMS and the LICENSEE), at the beginning of implementation. Upon completion of implementation, the League shall pay the Year 2 and Year 3 Annual Service Fee Prepayment fees referenced in the Initial Service Fee Schedule.
7. Existing clients purchasing additional modules will be billed upon commitment as follows: one-time fees billed in full and annual fees prorated to coincide with the annual renewal date.
8. All fees not identified in this License Agreement or the Memorandum of Agreement between the LICENSEE and the League shall be borne by the LICENSEE.
9. All hardware pricing is subject to change at invoice date.



Regular City Council Meeting Memorandum

Prepared By: Scott Attaway

Consideration to Set Time of March 19, 2024 and April 16, 2024 City Council Work Sessions

Meeting	Agenda Group	
Tuesday, March 12, 2024, 6:00 PM	Unfinished Business	Item: 5B
Reference File	Presented By	

To: Lowell Mayor and City Council

From: Scott Attaway, City Manager

Date: March 6, 2024

Re: Consideration to Set Time of March 19, 2024 and April 16, 2024 City Council Work Sessions

Staff is requesting that the City Council set the times of the next two scheduled City Council Work Session Meetings. The two dates are Tuesday March 19th and Tuesday April 16th. The March 19th meeting will involve a deeper dive into the working draft budget as it relates to revenue and expenditures, 2024-2025 Advocacy Agenda, and discussion of the Lowell Fire Tax District. The April 16th meeting will involve review of the proposed updates to the Lowell Personnel and Pay Plan with impacts to the FY25 Budget and city project discussions. Staff believes there is approximately 3-4 hours of content each meeting, including discussion.



Regular City Council Meeting Memorandum

Prepared By: Scott Attaway

Proposed Code of Ordinances Amendment: Chapter 76- Traffic Schedules and Chapter 72-Traffic Regulations

Meeting	Agenda Group	
Tuesday, March 12, 2024, 6:00 PM	Unfinished Business	Item: 5C
Reference File	Presented By	

To: Scott Attaway, City Manager
From: Tyler Cobb, Planner
Date: Wednesday, March 6th, 2024
Re: Amendment to Chapter 76: Traffic Schedules, Schedule XII: Weight Restrictions & Chapter 72, Section 72.060: Miscellaneous Driving Rules

Staff is recommending that City Council amend **Schedule XII: Weight Restrictions** to include a portion of Cobb Street between Kenworthy Ave and S. Church Street. Due to the industrial nature of recent development west of this area, staff believes this proactive amendment will cut down on confusion for larger commercial (semi-truck) traffic that will likely use the new extension of Aberdeen Blvd as it crosses S. Church Street and connects to Kenworthy heading towards Interstate 85. The goal is to restrict heavy truck traffic using Cobb Street, which is small residential/collector type of road, and keep the commercial through traffic on the new road and connections to Exit 22.

Additionally, some minor cleanup of language in Chapter 72, Section 72.060 will be need dealing with the Gross Vehicle Weight limitations.

Staff has attached map for this proposed amendment to Schedule XII.

Attachments

- CobbSt_AmendmenttoChapter76_2023Feb7.pdf
- PROPOSED TEXT AMENDMENT Chapter 76 72.pdf

Amendment to Chapter 76:
Traffic Schedules, Schedule XII: Weight Restrictions



This map is a graphic representation and should only be used for illustrative purposes. Map created by Lowell Planning Department with data provided by Gaston County GIS.

PROPOSED TEXT AMENDMENT (NEW TEXT UNDERLINED AND HIGHLIGHTED). DELETED TEXTED SHOWN WITH STRIKETHROUGH.

CHAPTER 76: TRAFFIC SCHEDULES, SCHEDULE XII. WEIGHT RESTRICTIONS.

There shall be no heavy trucks or trailers allowed on the following streets or portions of streets (see § [72.060](#)):

ON STREET	FROM	TO
<u>COBB STREET</u>	<u>KENWORTHY AVENUE</u>	<u>SOUTH CHURCH STREET</u>

CHAPTER 72: TRAFFIC REGULATIONS, SECTION 72.060: MISCELLANEOUS DRIVING RULES, NO HEAVY TRUCKS.

When signs are erected giving notice thereof, no persons shall operate any truck or trailer as defined in subsections (a), (b) and (c) listed below, ~~having a gross weight in excess of two and one-half tons~~ upon any portion of the streets described in [Ch. 76, Sch. XII](#), hereby made a part hereof.

(a) For purposes of this section, the term "truck" shall mean trucks that have any of the following characteristics:

- (1) Tractor and tandem tractor-type trucks when pulling semitrailers or tandem semitrailers;
- (2) Trucks exceeding seven feet in width;
- (3) Trucks having a gross vehicle weight of 26,000lbs or greater.

(b) When signs are erected in accordance with [Ch. 76, Sch. XII](#), no person may drive any truck for the transportation of property within the city except along and over the routes established in [Ch. 76, Sch. XII](#), unless and to the extent that deviation from such truck routes is necessary to reach a destination for the purpose of loading or unloading goods, merchandise, or equipment, or is necessitated by street repairs or other emergencies, upon any portion of the streets described in [Ch. 76, Sch. XII](#), hereby made a part hereof.

(1995 Code, § 7-27) (Ord. passed 5-17-1982) Penalty, see § [70.99](#)



Prepared By: Scott Attaway

Resolution #03-2024 - Authorizing the Adoption of the Updated CDBG-I Compliance Plans

Meeting	Agenda Group	
Tuesday, March 12, 2024, 6:00 PM	New Business	Item: 6A
Reference File	Presented By	

To: Scott Attaway, City Manager
From: Cheryl Ramsey, City Clerk
Date: March 5, 2024
Re: CDBG-I Compliance Policy Changes

In order to meet the requirements for the most recent CDBG-I compliance policy changes, the City of Lowell needs to update and readopt the Procurement Policy and Plan. See Memo to Council provided by Withers Ravenel and the updated policy changes.

Attachments

- RS03-2024 Resolution to Authorize the Adoption of the Updated CDBG-I Compliance Plans .pdf
- Lowell CDBG-I Council Memo Updated Plans 20240312.pdf
- Lowell CDBG-I Procurement Policy and Plan - Revised 1-2024.pdf
- CDBG-I Program Procurement Policy.pdf

**CITY OF LOWELL
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
2018 PROGRAM FUNDING YEAR
COMPLIANCE PLANS**

RESOLUTION #03-2024

A Resolution Authorizing the Adoption of the updated compliance plans for the CITY OF LOWELL during the implementation of the North Carolina Small Cities Community Development Block Grant for the Infrastructure (CDBG-I) Program.

WHEREAS, the CITY currently participates in the FY2018 Small Cities CDBG Program under the Housing and Community Development Act of 1974, as amended, and administered by the North Carolina Department of Environmental Quality (DEQ), Division of Water Infrastructure (DWI); and

WHEREAS, the CDBG program has many federal performance and procurement requirements;

WHEREAS, the CITY adopted initial CDBG policies and plans in October 2019;

WHEREAS, the CITY adopted the following CDBG policies and plans on March 9, 2021;

- Updated Citizen Participation Plan

WHEREAS, the CITY adopted the following CDBG policies and plans on September 12, 2023;

- Equal Opportunity Policy and Plan
- Procurement Policy and Plan
- Language Access Plan
- Section 504 Self-Evaluation Survey and Grievance Procedure
- Fair Housing Plan and Activities

WHEREAS, the DWI is requiring the following updated policy under this program;

- Procurement Policy and Plan

THEREFORE, BE IT RESOLVED by the CITY COUNCIL of the CITY OF LOWELL, North Carolina:

That this updated compliance plan is hereby submitted and adopted and to be used throughout the implementation of the CITY OF LOWELL FY 2018 CDBG PROGRAM.

Adopted this 12th day of March, 2024.

✓

Larry Simonds, Mayor

ATTEST:

✓

Cheryl Ramsey, City Clerk

MEMORANDUM

To: City Council, City of Lowell
CC: Cheryl Ramsey, City Clerk
From: Michele Faison, Project Manager
Date: 03/12/2024
Project: CDBG-Infrastructure Sewer Line Rehabilitation/Replacement Project
CDBG # 18-I-3034; WR No. 08180732.10
Subject: Updated CDBG Compliance Plan

The purpose of this memo is to summarize the updated **CDBG compliance plan** for the City's 2018 Community Development Block Grant Infrastructure (CDBG-I) Program being presented for adoption at the City Council meeting.

The City was awarded a CDBG-I grant from NC Department of Environmental Quality (DEQ) Division of Water Infrastructure (DWI) in Spring 2019. Previous Compliance Plans were adopted in October 2019, March 2021, and September 2023 to meet requirements for participation in the CDBG-I Program. DWI has requested that the Procurement Policy and Plan be updated and readopted. The City Clerk is designated as the Compliance Officer for all Compliance Plans. The following provides a brief summary.

- (1) **Procurement Policy:** The Plan now includes information for the new NC digital system for procurement, what needs to happen after multiple failed seal bidding attempts, clarification on cost reasonable requirements, clarification on change orders and contract amendments, and bid negotiations.

C: CDBG-I Files, 18-I-3034

Procurement Policy and Plan for CDBG-I Grantees

WHEREAS, the **City of Lowell** will comply with the terms and conditions of federal funding that is awarded and accepted, including, but not limited to, the terms and conditions of the Grant Contract, and the **most recent version** of the *Procurement Policy of the North Carolina Department of Environmental Quality's Water Infrastructure Division, Community Development Block Grant-Infrastructure Program (CDBG-I Program Procurement Policy)*, attached;

WHEREAS, the States were advised by Housing and Urban Development (HUD) to develop their own procurement policies, and the CDBG-Infrastructure Program has developed and adopted the attached policy (*CDBG-I Program Procurement Policy*) as reference for its grantee communities, using portions of 2 CFR Part 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements of Federal Awards," supplemented with NC General Statutes 143-64.31, 143-129, and 143-131; and 24 C.F.R. § 570.489(g), which explicitly prohibit cost plus a percentage of cost and percentage of construction cost methods of contracting. In addition, all purchase orders and contracts shall include any clauses required by Federal Statutes, executive orders, and implementing regulations including the Section 3 clause, per **2 C.F.R. 200.327 (Appendix II of Part 200)**, 24 C.F.R. 570.489 (g), and **24 C.F.R. 570.607**;

WHEREAS, the **City of Lowell**, as the recipient of Federal CDBG funds, acknowledges its responsibility to and will adhere to the aforesaid *CDBG-I Program Procurement Policy* of the North Carolina Department of Environmental Quality's Division of Water Infrastructure;

WHEREAS, the **City of Lowell** will, to the extent applicable, follow methods of procurement, procure by contracting with small, minority firms, women's business enterprises, and labor surplus area firms, when those entities offer the best level of knowledge, skills and abilities for professional services, and when those entities offer the knowledge, skills and abilities and are the lowest cost responsive, responsible bidders in building trade and related services; and

WHEREAS, the **City of Lowell** will demonstrate contract cost and price awareness and adhere to awarding agency contract provisions (2 CFR Part 200, Appendix II, except for items F and J, which were not adopted by the CDBG-Infrastructure Program, as allowed under 2 CFR Part 200.101(e)(1));

NOW THEREFORE, BE IT RESOLVED;

SECTION 1: All procurement of goods and services by the **City of Lowell** with CDBG grant funds shall be accomplished in accordance with the requirements of the *CDBG-I Program Procurement Policy*, and HUD implementing regulations at 24 CFR Part 570.489 (g) and (h), which prohibits cost plus a percentage of construction cost method of contracting for services.

SECTION 2: In addition, all purchase orders and contracts shall include any clauses required by Federal Statutes, Executive Orders, and implementing regulations including the Section 3 clause, per **2 C.F.R. 200.327 (Appendix II of Part 200)**, 24 CFR 570.489(g), **24 C.F.R. 570.607**, or the North Carolina General Statutes Chapter 143 applying to procurement in general by North Carolina municipalities and counties.

SECTION 3: When Federal and State regulations are different, the more restrictive regulation shall apply to the procurement in question, as outlined in the *CDBG-I Program Procurement Policy*

SECTION 4: The **City of Lowell** will adhere to the following guidelines during procurement of goods and services using Federal funds:

- A. In all cases where goods or services are procured based on one bid or proposal received, the **City of Lowell** will follow established principles to verify the reasonable cost of the procurement and shall contact the State Agency supervising the grant program before making any contract award based on non-competitive negotiation. The **City of Lowell** shall follow all noticing and advertising requirements prior to accepting the single source respondent. Written permission from the CDBG-I Program shall be obtained prior to entering into a single source contract.
- B. Section 3 certified businesses, and historically underutilized businesses, including women-owned and minority-owned enterprises shall be included on bidders' or professional services' lists maintained by the **City of Lowell**. Firms shall be solicited for all competitive negotiations, small purchases, and informal and formal bids when such firms are potential competitive sources for goods and services.
- C. *As applicable, appropriate and to the extent consistent with law, the **City of Lowell** shall, to the greatest extent practicable under a federal award, provide preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, Buy American preferences set forth in 2 C.F.R. part 184, for their infrastructure project.*

SECTION 5: The **City of Lowell** will adhere to the following guidelines during procurement of professional service contracts:

- A. Professional services shall be procured through the use of Request for Proposals (administrative services) or Request for Qualifications (engineering services). Respondents offering administrative services shall be selected on the basis of the best qualified respondent for the price. Respondents offering engineering services shall be selected on the basis of the best qualified respondent, without regard for price. A written selection procedure shall be used to evaluate respondents, and those records maintained in the procurement files.
- B. The **City of Lowell** shall develop a written scope of work for each service to be awarded on the basis of competitive negotiation, which shall include descriptions of tasks to be completed, project timetables, and an outline of fee proposal requirements. The selected engineering services respondent and the **City of Lowell** shall then enter into competitive negotiations to arrive at a mutually agreeable price for engineering services. All contracts awarded through competitive negotiations shall be awarded strictly on the basis of the written selection procedure.

SECTION 6: The **City of Lowell** will adhere to the following guidelines during procurement of construction contacts:

- A. Construction service contracts shall be competitively bid using sealed bids, with the award going to the lowest responsive, responsible bidder. A minimum of three bids shall be received prior to opening the sealed bids.

SECTION 7: Additionally, the **City of Lowell** will adhere to the following guidelines during all procurement:

- A. Prior to any contract award, the **City of Lowell** shall verify the consultant and/or contractor's eligibility to participate in a federally assisted program.
- B. No consultant or bidder shall assist in the development of the Request for Proposals, in the Request for Qualifications, nor the construction bid posting in which the consultant or bidder has a direct or indirect interest.
- C. No consultant or bidder shall assist in the evaluation of proposals or bid packages for contracts in which that consultant or bidder has a direct or indirect interest. The **City of Lowell** shall adhere to all applicable Federal and State conflict of interest regulations in making contract awards.
- D. The **City of Lowell** shall request references or check references of contractors or firms who are awarded contracts with Federal grant funds and will request a written warranty for all goods and services provided through the small purchase's procedure.
- E. The **City of Lowell** shall not award any contract for federally-assisted projects on a contingency or cost-plus-percentage of construction basis.
- F. The **City of Lowell** shall hold a pre-bid meeting and a pre-construction meeting for each construction project bid competitively using CDBG-Infrastructure funds. Evaluation criteria for the bids may add points for attending the pre-bid meeting of contractors, but it is not a prerequisite.

PASSED BY THE CITY COUNCIL, CITY OF LOWELL, NORTH CAROLINA.

Adopted this 12th day of March, 2024.

Chief Elected Official

ATTEST:

Clerk

NC DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER INFRASTRUCTURE (DIVISION)
COMMUNITY DEVELOPMENT BLOCK GRANT-INFRASTRUCTURE UNIT

Policy Title: CDBG-I Program Procurement Policy

Revised: December 20, 2023

Version: 6

Effective Date: January 1, 2024

This policy remains effective until it is amended, superseded, or rescinded.

PURPOSE AND SCOPE

Goods and services must be procured in an effective manner and in compliance with Federal, State, and local laws. These laws exist to ensure that funds are awarded through fair and open competition and are spent on eligible and reasonably priced goods and services.

Per 24 CFR Section 570.489(g), when procuring property or services to be paid for in whole or in part with CDBG funds, the State shall follow its procurement policies and procedures. The State shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition **where cost reasonableness has been determined in advance of contract bidding, per 2 CFR 200.324.**

Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the State. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used.

The policies and procedures shall also include standards of conduct governing employees engaged in the awarding **and/or** administration of contracts. Other conflicts of interest are covered by § 570.489(h). The State shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, Executive orders, and implementing regulations. The State shall make subrecipient and contractor determinations in accordance with the standards in 2 CFR 200.330.

This policy is for the use of Community Development Block Grant-Infrastructure (CDBG-I) Program grantees (**Units of General Local Government**). This policy was developed to replace the Uniform Administrative Requirements of Subpart D of 2 Part 200, Sections 200.317-326, *Procurement Standards*, which does not apply to the CDBG State programs, per 2 Part 200.101(d). This policy takes the most restrictive of the two procurement regulations, either state or federal, and applies them to units of general local government's procurement for the CDBG-I program.

Maximum Full and Open Competition.

This policy provides for full and open competitions among prospective vendors and bidders. Competition should ensure that the pricing is fair, and the units of general local government are getting a reasonable price for the goods or services procured. In addition, full and open competition should reduce the potential for conflicts of interest and collusion on bids between

potential bidders and the units of general local government. Maximum full and open competition:

- Prevents fraud, waste, and abuse.
- Increases visibility and transparency.
- Receive reasonable prices from qualified contractors.
- Provides opportunities for all responsible contractors.

Maximizing competition to ensure that procurements are conducted, and contracts are awarded in a way that obtains the most competition that will serve the unit of general local government well.

This policy strives to avoid the following procurement issues:

- Unjustified sole-source contracts,
- Insufficient price or rate quotes from qualified sources,
- Lack of independent cost estimates or cost analyses,
- A failure to rotate vendors on lower priced purchases,
- The use of unreasonably narrow or specific qualification criteria or bid specifications,
- Short timeframes for responding to offers,
- An insufficient number of responsive bidders,
- Overuse of change orders,
- Collusive bidding or price fixing,
- Cost mischarging,
- Source selection fraud,
- Fictitious vendor fraud,
- Failure to check government debarment lists,
- Overuse of small purchase contracts,
- Lack of outreach to minority and women business enterprises, and
- An excessive number of small purchases contracts close to the small purchase dollar limit.

Conflict of Interest and Ethics.

Units of general local government (**grantees**), as part of their procurement processes, must adhere to the conflict-of-interest regulations, including but not limited to those found at N.C. General Statutes § 14-234(a)(1), 2 C.F.R. § 200. 318(c)(1), §320-321, §323-326, 24 C.F.R. § 570.489 (g) and (h), and 24 C.F.R. § 570.611 must be carried out. **It is the unit of general local government obligation to not only avoid conflicts of interest, but also to be alert and question real or apparent conflicts by any others, including procured consultants and contractors.**

Units of general local government must maintain procurement integrity through strong documentation and financial controls to avoid fraudulence, misuse, and abuse of federal funds.

- Separation of Duties.
 - One method for minimizing the potential for fraud and abuse in the procurement process is to have different individuals handling different parts of the process. For example, where one individual award the contract or orders the goods or services, a separate individual will review the goods or services for performance and/or delivery. An easy guide for compliance is that employees who handle the money, the mail or the goods purchased should be different from employees managing the

bookkeeping and financial accounts. This practice can be difficult in small cities, small departments, or organizations with few employees, but a method of oversight must be established to avoid fraud and unnecessary purchases. The rule of thumb should be that if an employee touches the money, mail, or goods purchased, he or she should not touch the books.

- Documentation.
 - Each step in the procurement process should be documented, from the initial decision to purchase through to final inspection of goods and services and final payment. The records should include, but are not limited to, files on the rationale for selecting the methods of procurement used, selection of contract type, the contractor selection/rejection process, and the basis for the cost or price of a contract. The records should also include a justification for lack of competition when competitive bids or offers are not obtained, and the basis for the award cost or price. Documentation does not end at contract signing but should continue through the delivery of goods and services to record payments, inspection, change orders and cost/price analysis of the change order. Monitoring the performance of the vendor should be documented through inspections and review of performance and delivery.

REASONABLE COSTS

Per 2 CFR 200, a Cost or Price Analysis is required when procuring goods or services with federal funds more than the Simplified Acquisition Threshold, including contract modifications. An independent cost estimate serves as a yardstick for evaluating the reasonableness of the contractor's proposed costs or prices. An independent cost analysis consists of evaluating the separate elements (for example, labor, materials, etc.) that make up a contractor's total cost proposal to determine whether they are allowable, directly related to the requirement, and reasonable.

- Price Analysis – Price analysis is essentially price comparison. It is the evaluation of a proposed price (i.e., total sum) without analyzing any of the separate cost elements.
- Cost Analysis - Cost analysis is the evaluation of the separate elements (e.g., labor, materials, profit, etc.) that make up a contractor's total cost proposal or price to determine if they are allowable, directly related to the requirements and ultimately, reasonable. Cost Analysis should apply to both new contracts and contract modifications or change orders. The basic document in the grantee's efforts to evaluate cost and price is an "independent analysis" based on the procedures described below. The "independent analysis" can be done by grantee staff, by third party consultants, or by examination of existing price lists and product catalogs, but it is not based on bids received. The analysis is done prior to receipt of bids or review of proposals. This is the area where most findings have occurred historically because the analysis was not independent, or it was not documented prior to receipt of bids or proposals.

While the procurement method and degree of analysis depends on the facts surrounding the procurement, the following illustrates some of the cost and price analyses that may be performed in certain procurement situations.

- Micro Purchases – Micro purchases require simple price analysis prior to receiving bids or proposals. They do not require a cost analysis.
- Small Purchases – Grantees should review the proposed prices, from offerors to prices paid for the same or similar services. Catalog or market prices of products sold to the general public can suffice for cost estimates for equipment and supply purchases.
- Sealed Bid – Grantees should always prepare their own cost estimate and compare it to the low competitive bid received. If they are significantly different, the grantee will need to evaluate its initial estimate, compare it to the bids received, and identify the appropriate price.
- Competitive Proposals – To determine the reasonableness of proposed costs, the grantee will need to obtain cost breakdowns showing all the elements of the scope of work and perform a cost analysis using the appropriate set of principles.

Units of general local government should obtain a breakdown of proposed costs and perform a cost analysis of those costs. The following are special circumstances involving contracts and cost analysis requirements:

- Cost Reimbursement Contracts – A Cost Analysis using cost principles must be performed on a Cost Reimbursement Contract.
- Architecture and Engineering Contracts - Cost Analysis is required in determining if the cost portion of an A/E contract is fair and reasonable.
- Construction Contracts – Construction contracts awarded using Sealed Bids do not require Cost Analysis. However, an estimate of market costs should be made prior to awarding the contract. Construction Contracts awarded using any other method of procurement require Cost Analysis. Some grantees will contract out cost analysis to independent architect or engineering firms.

In addition, changes to the contract will require cost analysis in the following situations:

- Contract Modifications – If a grantee is negotiating a modification or change order to a contract that changes the scope and/or impacts the price or estimated cost, the grantee should perform further cost analysis. The only exception to this is if the modification is based on pricing already established in the contract. A contract where the scope is reduced, and the contract price remains the same will still require further cost analysis to determine that the change is fair and reasonable.
- Contract Terminations – If a grantee terminates a contract for convenience, the grantee must use cost analysis and the appropriate cost principles to negotiate the final amount of termination settlement. If the grantee is terminating a cost re-imbursement contract for cause, the grantee should use cost analysis and the appropriate cost principles to negotiate the final amount of termination settlement.
 - In addition, contracts must include termination language in the contract when they are over \$10,000, as described in Appendix II of 2 CFR Part 200.

Price Analysis.

Micro Purchase and Small Purchase procurement methods require price analysis when selecting vendors and suppliers. There are a variety of ways of analyzing price, some of which are illustrated below, but the method and degree of analysis grantees used is dependent on the facts surrounding the procurement situation. Price Analysis should be documented in the procurement file.

- Compare competitive prices received in response to the solicitation to each other.
- Compare proposed prices to prices on existing contracts or contracts proposed in the recent past. Be sure to factor in any changing conditions, including market, inflation, material price changes.
- Apply rough approximations and review significant inconsistencies, which may require a deeper look at prices to determine if the items are truly comparable. The types of approximations might include price per pound, per square foot, per hour or other typical unit pricing mechanisms.
- Review price lists, catalogs, or market prices of similar products to determine the market prices generally available to the public.

Cost Analysis.

Cost Analysis includes the review and evaluation of the separate cost elements, including labor, supplies, equipment, profit, overhead and general conditions. Grantees should prepare an independent cost analysis before receiving bids, proposals, and contract modifications. The method and degree of analysis is dependent on the facts surrounding the procurement situation. An independent estimate must be made before receiving bids or proposals if one of the following applies:

- When evaluating competitive proposals.
- When there is a sole source or non-competitive proposal.
- When only one bid is received after soliciting bids, the grantee does not have enough data to establish cost reasonableness and the grantee is considering awarding the contract to the single bidder.
- When negotiating modifications to contracts that impact on the price or estimated cost.
- When terminating a contract and the contractor is entitled to payment of reasonable costs incurred.
- When awarding a cost-reimbursement contract.

The major categories of costs include both direct costs (direct labor, equipment, supplies, travel and per diem, subcontractors, and other direct costs) and indirect costs (overhead, general and administrative expenses, and profit). In the process of analyzing costs, profit should be analyzed separately, based on complexity of the work, risk to the contractor, investment required, amount of subcontracting involved, and typical profit in the industry. The process for completing a Cost Analysis includes verifying cost data and evaluating the elements of the project as described below. Costs that can be charged against the award are the allowable direct costs and the allocable indirect costs, less any applicable credits.

- Allowable (Allowability) Costs. (2 CFR 200.403 and 24 CFR 570.207 and .610) A cost is allowable under criteria to be allowable under the CDBG program if the expenditure is:
 - Be necessary, reasonable, and directly related to the grant program.
 - Authorized by the State-administered CDBG program.
 - Not prohibited under federal, state, or local laws or regulations.

- Consistently treated.
 - Allocable to the CDBG program.
 - Be adequately documented.
 - Cost must be incurred during the approved budget period.
- Reasonable Costs. (2 CFR 200.404) For the cost to be allowable, it must also be reasonable. This term is generally defined as what a prudent business would pay in a competitive marketplace. In determining the reasonableness of a given cost, pay attention to the following:
 - Is the cost generally recognized as ordinary and necessary for the operation of your organization or the performance of the award?
 - Are the restrictions or requirements imposed by generally accepted sound business practices, arms-length bargaining, Federal and state laws and regulations, and terms and conditions of the award?
 - Are the prices or cost comparable to market prices for goods or services for the geographic area?
 - Are the individuals performing their duties with good judgment under the circumstances, considering their responsibilities to the organization, its members, employees, clients, the public-at-large, and the government?
 - Have there been significant changes from the established practices of the organization that have unreasonably increased costs?
- Allocable Costs. (2 CFR 200.405) The costs should be related to or required for the performance of the contract. Many costs may be allowable but not related to the work required under the contract, and therefore not allocable.
 - Is the cost incurred specifically for the CDBG grant?
 - Does the cost incurred benefit both the CDBG project and other projects, and can the cost be allocated pro-rata across the relevant funding sources?
 - Has an indirect cost plan been approved to allocate indirect costs?

The process for applying cost and price analysis should include the following due diligence review.

- Check the accuracy of the cost and pricing information submitted, and evaluate:
 - The necessity for proposed cost items. A cost may be allowable under the cost principles and even allocable to the type of work to be performed, but still not be necessary for the specific contract.
 - The application of audited or pre-negotiated indirect cost rates, labor and fringe benefit rates, or other factors.
 - The effect of the vendor's bid approach on potential future costs. Does the vendor have a track record of containing costs (completing contracts at or "under cost")? Do they frequently have cost overruns?
 - The projection of the vendor's cost trends. Is there any indication that the vendor's costs are likely to increase or decrease over the life of the contract?
- Compare costs proposed by the vendor with:
 - Actual costs previously incurred by the same contractor for the same or similar work. Apply any appropriate inflation factors for past work.
 - Actual costs of the same or similar work performed by other contractors.
 - Previous cost estimates from the vendor or others for the same or similar items.

- The methods proposed by the vendor with the requirements of the solicitation (i.e., do the costs reflect the technical approach proposed and the work required?).
- The grantee's independent cost estimate, either created by grantee staff or for the grantee by an independent architect, engineer, appraiser, etc.
- Verify that the vendor's cost submissions comply with the appropriate set of cost principles.

PROCUREMENT METHODS

Units of general local governments must select from one of the following procurement methods based on the type of goods and/or services being procured and their cost.

Micro-Purchases.

Units of general local government can use this method for contracts without soliciting pricing or bids if the price of the goods or services is fair and reasonable. To the extent practicable, must distribute micro-purchases among qualified suppliers.

Applies To:

- All purchases of goods and services, including construction.
- Up to the micro-purchase threshold of \$10,000.

Process:

1. Must distribute micro-purchases equitably among qualified suppliers to the extent practicable.
2. Must ensure solicitation from small, historically underutilized businesses, (HUB), minority- and women-owned enterprises (M/WBE), and Section 3 businesses.
3. Cannot divide contract to lower cost below micro-purchase threshold to avoid competitive bidding requirements.
4. If using this method for services, check for eligibility at SAM.gov and at the NC Department of Administration Debarred Vendors listing prior to finalizing the service contract.
5. Can award contract without competition if price is fair and reasonable.
6. Must document decision process for the purchase.
 - Requires needs and rationale documentation.
 - Requires cost reasonableness documentation.
 - Requires documentation of best efforts to use M/WBE firms when possible.

[Cite 2 CFR 200. There is no comparable method in State law; therefore, all purchases and service contracts that meet the above threshold must comply with this federal method.]

Small Purchases.

Units of general local government will use this method as the informal bidding process for goods and services. Units of general local government cannot divide the contract for the purpose of evading competitive (formal) bidding requirements or to get costs under the threshold.

Applies To:

- All purchases of goods and services, including construction.
- \$10,001 up to the Simplified Acquisition Threshold (now \$250,000) or the equivalent local/state threshold if more restrictive (it is for purchase of goods). **Threshold includes contract modifications that increase total cost.**
 - Construction: Cost up to \$250,000
 - Goods: Cost up to \$89,999
- Fixed price, unit price, or not-to-exceed contract types.

Process:

1. Cost or price analysis (updated cost estimate provided by the project engineer) is not required prior to soliciting bids for goods but is required for construction.
2. Obtain price or rate quotes from at least three (3) sources.
3. Must take affirmative steps to ensure solicitation from small, historically underutilized businesses (HUB), minority- and women-owned enterprises (M/WBE), and Section 3 business concerns.
4. If using this method for services, check for eligibility at SAM.gov and at the NC Department of Administration Debarred Vendors listing prior to finalizing the service contract.
5. Standard of award.
 - Award contract to the lowest responsive, responsible bidder.
6. Documentation for Files.
 - **Requires everything required by micro-purchase.**
 - **Requires documented informal solicitation of bids/prices – solicitation information should be consistent for all vendors.**
 - **Requires cost reasonable documentation.**
 - **Requires applicable federal contracting language and provisions in the written contract.**

[Cite 2 CFR §§ 200); PDAT Supplement at II-6, V-8; NCGS 143-131; NCGS 143-131(b)) Purchases and service contracts less than \$30,000 are not subject to state competitive bidding requirements. Per NCGS 143-128.2, local governments must establish good faith efforts prior to bid solicitation.]

Sealed Bids.

Units of general local government will use this formal bidding process for construction. Units of general local government cannot divide the contract for the purpose of evading competitive bidding requirements.

Applies To:

- Purchase and service contracts costing more than the Simplified Acquisition Threshold (>\$250,000) or the equivalent local/state threshold if more restrictive.
- For the CDBG-I Program, the thresholds are:
 - Construction: \$250,001 and over.
 - Goods: \$90,000 and over.
- Preferred method for construction contracts above the simplified acquisition threshold.

Requires an independent cost estimate or price analysis (updated cost estimate provided by the project engineer) is required prior to soliciting bids for all types.

Bid Alternates:

The CDBG-I program allows specific bid alternates. Bid alternates should only be used as an option to get more work done if the base bid is low enough that acceptance of an alternate(s) stays within the budget, or to receive prices for different materials, or an alternative construction method for the project.

1. An Additive bid is a body of work that the grantee may award with the base bid if there is sufficient funding after the bids are received.
2. A Deductive bid is a body of work that the owner may delete from the base bid if there is insufficient funding to award the full base bid.
 - The purpose of both Additive and Deductive bids is to build flexibility into the bidding process so that the grantee can award the maximum amount of the project possible dependent on funding available.
3. An Alternate bid is a bid in which the grantee asks for prices for an alternate method of constructing something in the base bid or using alternate materials. The alternate price would be the differential between the price included in the base bid and the price for the alternate method or material. In developing the bid form, it's important to make sure that it's clear that the alternate bid amount should be the differential price.
 - Alternates that specify a different material to stay within the budget or get more value for the dollars spent (e.g., base bid has DIP specified and associated unit price. Alternate would propose using PVC in lieu of DIP. The difference in price of the material may or may not make a difference to the owner).

Alternates should stand alone and not dependent on another alternate being accepted or rejected at the time of award. If it becomes apparent there are sufficient funds to add scope to the project, the owner must re-procure / re-bid the additional scope of work. Adding a bid alternate (i.e., increasing the scope) that was previously rejected via change order violates this procurement policy.

Alternates may not be used to help “choose the bidder” the grantees want to work with. The base bid and alternates should be evaluated in the same manner for all bidders.

Alternates should be used sparingly. Too many alternates may confuse bidders or make the project look so complicated that contractors don't bid at all. They should be limited to a reasonable number.

Process:

The following process may begin once units of general local government receive bid and design package approval from the Division.

1. Coordinate Dates.

- Contact the CDBG-I Unit Grant Representative assigned to your project to coordinate pre-bid meeting dates prior to finalizing the bid notice.
- A pre-bid meeting must be held involving all interested contractors and invested parties (CDBG-I Program Staff, Project Engineer, Grant Administrator, and local government representatives).
- The meeting must be scheduled to give contractors sufficient time to factor in the additional work required to comply with Davis-Bacon and Section 3 regulations.

2. Bid Notice.

- A complete, adequate, and realistic set of plans/specifications or purchase description is available to bidders.
- All required federal and state language must be in the bid notice. A sample bid notice can be found on the Division of Water Infrastructure website.
- A digital copy of the final bid notice must be received by the NCDEQ at the time it goes out for solicitation.
- Public advertisement of at least thirty (30) days prior to bid opening.

3. Solicitation of Bids.

- Solicit bids from an adequate number of known suppliers.
- At least three (3) direct solicitations, in addition to the public advertisement, and publication on both the state **NC eVP system** and HUB websites (this is the responsibility of the local governments not NCDEQ).
- Take affirmative steps to directly solicit bids must include qualified HUB, M/WBES, small businesses, and Section 3 business concerns in the area.
- Section 3 business concerns must meet the requirements of 24 CFR Part 75.

4. Minimum Number of Bids Needed.

- Public bid opening at date and time advertised.

- For construction, a 5% bid bond is required for all bidders; performance and payment bonds of 100% of the contract price is required of the winning bidder.
- At least two (2) bidders for the purchase of goods and services, or if the contract is a construction repair contract.
- At least three (3) bidders *minimum* are required for bid opening on the first attempt for construction.
 - If three (3) bidders DO NOT bid on the project, the bids MAY NOT be opened.
 - The grantee must then publicly advertise in a newspaper with a larger distribution for at least seven days (NCGS 143-129).
 - If two (2) or more bids are received, then bids may be opened.
 - If one (1) bid is received, then a price analysis must be conducted, and a letter sent to DEQ Division of Water Infrastructure requesting permission to move forward with sole source procurement.

5. Standard of Contract Award:

- Award to the lowest, responsive, responsible bidder. The local governing board approval is required unless the governing board has delegated award authority to an individual official or employee.
 - Determination of lowest price must include factors such as discounts, transportation costs, and lifecycle costs.
 - Determination of responsive and responsible, see the NC School of Government’s “*Awarding Competitively Bid Contracts, Lowest Responsive Responsible Bidder Flowchart.*”
- Can reject any and all bids for “sound documented reasons” – must be stated in the bid notice.
- Check for eligibility to receive federal funds at SAM.gov and at the NC Department of Administration Debarred Vendors listing prior to finalizing the construction contract.
- Contract awarded on a firm-fixed-price basis in writing with all applicable contract provisions.

6. Process after Multiple Failed Attempts

If a local government has attempted, and failed, to secure a sealed bid after two attempts, the local government must:

- Reassess and repackage (i.e., construction timeframe, scope of work, etc.) the project to fit the CDBG-I funds awarded without compromising the LMI.

- Take into consideration the plan holders' comments within your control to simplify the bids.
- If applicable, limit bid alternates no more than three (3).
- Once this is completed, approved by the NCDEQ CDBG-I Unit, the project can go out for sealed bids under this method from the beginning.

7. Overbids and Bid Negotiations

If the bids received exceed the designated budget, the grantee has the following options:

- Reject all bids and re-bid the project; or
- Accept the deductive alternates in the bid packet (if applicable); or
- Delete bid items before contract award if all bidders agree in writing to changes; or
- Accept the low bid and provide additional local funds.

Per N.C.G.S. 143-129(b), units of general local government cannot negotiate with bidders on projects in the formal bidding range unless the bid submitted by the apparent lowest responsive, responsible bidder exceeds funds available for the project. In this case, the grantee may negotiate with that bidder and make “reasonable” changes in specifications and plans to bring the contract price to within funds available, and then it may award the contract to that bidder. If negotiations are unsuccessful, the project must be re-bid.

Any redesign of the procurement project triggers the grantee to reject all bidders and start the procurement process from the beginning to ensure integrity of the process.

8. Documentation:

- **Must have a well-documented transparent and formal procurement process, including all steps and decisions on procurement (e.g., required cost reasonable and independent cost estimate, pre-bid meeting minutes, advertisement(s) with an affidavit(s) of publication, copy of each solicitation, copy of the NC eVP system and HUB postings, certified bid tabs, written construction agreement with all required applicable federal contracting language and provisions, documentation of lowest price determination, bid negotiation if applicable).**

[Cite 2 CFR §200; NCGS 143-129; NCGS 143-128.2(e). Per NCGS 143-128.2, local governments must establish good faith efforts prior to bid solicitation.]

Competitive Proposals for Professional Services. (Request for Proposals / RFPs).

Units of general local government are required to use this method for specific professional services where price is one of the rating criteria.

Applies To:

- Procurement of grant administrators, lawyers, planners, accountants, etc. for the project, regardless of the size of the contract.
- A contract costs more than the simplified acquisition threshold (now \$250,000).
- Situations where conditions are not appropriate for the use of sealed bids.

The following process may begin once the units of general local government have received an award letter from the Division. Units of general local government may begin this process prior to applying to the Division for funding, if the request for proposals have specific language in it in case the funding application is not awarded.

Process:

1. Appoint a Local Selection Review Committee and/or Person.
 - Each local government needs to appoint a local selection review committee and /or person responsible for developing the RFP, receiving the submitted RFPs, reviewing, and evaluating the submissions, and recommending a firm/business to the local governing body.
 - Must have written method for conducting technical evaluations of proposals and contractor selection.
2. Development of Request for Proposals (RFP).
 - Must clearly and accurately state the technical requirements and scope of work for goods and/or services required.
 - Evaluation criteria and relative importance is identified in the RFP.
 - If local government is giving a preference to Section 3 businesses, this must be stated in the RFP.
 - The author of the RFP may not respond to the same RFP. They are ineligible for consideration due to conflict of interest.
 - RFP templates are available on the Division of Water Infrastructure website to assist with RFP development.
3. Solicitation for Proposals.
 - The Request for Proposals (RFP) must be publicly advertised in a newspaper of general circulation. There must be an adequate number of days (at least fifteen (15) business days starting on the date of publication) from the time of advertised notice and submission deadline to allow time for respondents to receive a detailed RFP (if applicable), prepare and submit their proposal.

- There is a short-form RFP local governments may use in a newspaper as a cost saving measure. However, a more detailed RFP must be done.
 - In addition, the detailed RFP must be published on the **NC eVP** system and HUB website (all this is the responsibility of the local governments not NCDEQ).
 - The detailed RFP must be directly solicited from at least three sources (responsibility of each local government not NCDEQ).
 - Direct solicitations must include qualified HUB, M/WBEs, small businesses, and Section 3 businesses in the area to comply with direct solicitation requirements.
 - Section 3 businesses must meet the requirements of 24 CFR Part 75.
4. Minimum Number of Proposals Needed.
- Must have a minimum of two (2) respondents to move forward with a contract.
 - If there is only one (1) respondent, the RFP must be republished in a newspaper of wider distribution for fifteen business days: in addition to, an expanded direct solicitation effort.
 - If only one firm responds again, request permission in writing from the DEQ CDBG-I Supervisor to use sole source procurement.
5. Review and Rate Received Proposals.
- Any responses to the publicized RFP must be considered to the maximum extent practical.
 - Evaluations of each proposal must be in writing and dated. Those evaluations must be maintained in the project files.
6. Standard of Award.
- Responsible firm with the most advantageous proposal, considering price and other factors identified in the RFP.
 - Check for eligibility to receive federal funds at SAM.gov and at the NC Department of Administration Debarred Vendors listing PRIOR to finalizing the services contract (e.g., grant administrative services, accounting, planning, legal services, etc.).
 - Either a fixed price (a specified price to be paid when the items or services are delivered and accepted) or a cost-reimbursement / “not-to-exceed” (price is usually reimbursed as costs are incurred) contract.
 - **The service contract should contain four parts:**
 - **Part I – Agreement with Effective Dates**
 - **Part II – Scope of Work and Milestones**
 - **Part III – Payment Schedule**
 - **Part IV – Terms and Conditions (includes federal provisions and clauses)**

7. Documentation.

- **Must have a well-documented transparent** procurement process including, but not limited to advertisement(s) of RFP, affidavit of publication(s) of RFP, **NC eVP** system and HUB postings, direct solicitation documentation, evaluation criteria, evaluations of every candidate, responses to proposal received, reason for final selection, council/commission meeting minutes of award.

[Cite 2 CFR §200, No similar procedure in state statute that generally applies to procurement]

Competitive (Proposals) Qualifications for Professional Architectural and Engineering (A/E) Services. (Request for Qualifications / RFQs).

Units of general local government are required to use this method for any qualification-based solicitation and selection, where price cannot be a factor in the evaluation.

Applies To:

- Procurement of architectural, engineering, construction management at-risk services and surveying services for the project, regardless of the size of the contract.
- This process may not be used for procurement of grant administrators.

The following process may begin once the units of general local government have received an award letter from the Division. Units of general local government may begin this process prior to applying to the Division for funding, if the request for proposals have specific language in it in case the funding application is not awarded.

Requires cost reasonableness and independent cost estimate.

Process:

1. Appoint a Local Selection Review Committee and/or Person.
 - Each local government needs to appoint a local selection review committee and /or person responsible for developing the RFQ, receiving the submitted RFQs, reviewing and evaluating the submissions, and recommending a firm/business to the local governing body.
 - Must have written method for conducting technical evaluations of qualifications and contractor selection.
2. Development of Request for Proposals (RFQ).
 - Must clearly and accurately state the technical requirements and scope of work for goods and/or services required.
 - Evaluation criteria and relative importance must be identified in the RFQ; however, price is not a factor in the initial selection of the most qualified firm.

- If local government is giving a preference to Section 3 businesses, this must be stated in the RFQ.
- May use local geographic preferences for the procurement of these specific services, provided that this leaves an appropriate number of qualified firms (three) given the nature and size of the project, to compete for the contract.
- The author of the RFP may not respond to the same RFQ. They are ineligible for consideration due to conflict of interest.
- RFQ templates are available on the Division of Water Infrastructure website to assist with RFQ development.

3. Solicitation for Proposals/Qualifications.

- The Request for Qualifications (RFQ) must be publicly advertised in a newspaper of general circulation. There must be an adequate number of days (at least fifteen (15) business days starting on the date of publication) from the time of advertised notice and submission deadline to allow time for respondents to receive a detailed RFP (if applicable), prepare and submit their proposal.
 - There is a short-form RFQ units of local governments may use in a newspaper as a cost saving measure. However, a more detailed RFP must be done.
- The detailed RFQ must be published on the **NC eVP system** and HUB website (all this is the responsibility of the local governments not NCDEQ).
- The detailed RFQ must be directly solicited from at least three sources (responsibility of each local government not NCDEQ).
 - Direct solicitations must include qualified HUB, M/WBEs, small businesses, and Section 3 businesses in the area to comply with direct solicitation requirements.
 - Section 3 businesses must meet the requirements of 24 CFR Part 75.

4. Minimum Number of Proposals Needed.

- Must have a minimum of two (2) respondents to move forward with a contract.
 - If there is only one (1) respondent, the RFQ must be republished in a newspaper of wider distribution for at least 15 business days; in addition to an expanded direct solicitation effort.
 - If only one (1) firm responds the second time, request permission in writing from the DEQ CDBG-I Supervisor to use sole source procurement.

5. Review and Rate Received Proposals.

- Any responses to the publicized RFQ must be considered to the maximum extent practical.
- Qualifications of respondents are evaluated to select the most qualified firm.
- Evaluations of each proposal must be in writing and dated. Those evaluations must be maintained in the project files.

6. Standard of Award.

- The most qualified firm, where price is not an evaluation factor in the RFQ.
- Once the most qualified firm is selected, fair and reasonable compensation can then be negotiated.
- Check for eligibility to receive federal funds at www.SAM.gov and at the NC Department of Administration Debarred Vendors listing PRIOR to finalizing the engineering services contract (e.g., engineering services).
- State licensure requirements apply.
- Either a fixed price (a specified price to be paid when the items or services are delivered and accepted) or a cost-reimbursement / “not-to-exceed” (price is usually reimbursed as costs are incurred) contract. **The service contract should contain four parts:**
 - Part I – Agreement with Effective Dates
 - Part II – Scope of Work and Milestones
 - Part III – Payment Schedule
 - Part IV – Terms and Conditions (includes federal provisions and clauses)

9. Documentation.

- **Must have a well-documented transparent** procurement process including, but not limited to **cost reasonableness and independent cost estimate**, advertisement of RFQ, affidavit of publication of RFQ, **NC eVP system** and HUB postings, direct solicitation documentation, evaluation criteria, evaluations of every candidate, responses to the request for qualifications received, reason for final selection, council/commission meeting minutes of award, **written contract with all required applicable federal contracting language and provisions.**

[Cite 2 CFR §§200; 200.320(d)(5); NCGS 143-64.31]

Non-Competitive Procurement Method.

Units of general local government may request the use of this method. **Must be thoroughly documented with written approval from the NCDEQ CDBG-I Unit.**

Applies To:

- **Noncompetitive procurement can only be awarded if one or more of the following circumstances apply.**

Applies When:

- **The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold; or**
- **The item is available from only one source: or**
- **The public exigency or emergency for the requirement will not permit a delay that would result from publicizing a competitive solicitation; or**
- **After solicitation of a number of sources, competition is determined inadequate; or**
- **Award agency expressly authorizes noncompetitive procurement in response to a written request. *The CDBG-I Program will approve the use of the non-competitive proposal procedure on a case-by-case basis only.***

Process:

1. Perform **independent cost estimate** or price analysis if procurement is above the simplified acquisition threshold (now \$250,000) or the equivalent local/state threshold if more restrictive.
2. If after the initial solicitation of proposals/qualifications only one response was received, the unit of local government is required to broaden their initial publication and direct solicitation by republishing in a larger circulation newspaper and expanding direct solicitation efforts. If after the second attempt only one response is received:
 - Submit procurement documentation to **the NCDEQ CDBG-I Unit** to use sole-source procurement.
 - Negotiate profit as a separate element of the contract price.
3. Check for the firm's eligibility to receive federal funds at SAM.gov and at the NC Department of Administration Debarred Vendors listing prior to finalizing the contract.
4. Documentation.
 - All required documentation as listed above, plus a copy of the letter to the DEQ CDBG-I Supervisor requesting permission to use sole source procurement and the response from the DEQ. Also, a copy of the price analysis performed.

[Cite 2 CFR §200); NCGS 143-129(e)(2)]

CONTRACT MODIFICATIONS

To maintain maximum full and open competition with procurement, this policy addresses what type of contract modifications are allowed and not allowed.

Change Orders.

Units of general local government can address an unforeseen problem during the progress of a construction project that was originally bid formally (sealed bids) or informally (small purchases) through change orders instead of using a procurement method. In other words, if a grantee bids out a construction or repair project, and then, during the project, discovers an unanticipated problem that will require additional work (and increased cost), the local government does not have to bid out that additional work.

Though, to maintain the integrity of the bidding process, the change order exception must only be used when (1) the change order work fits within the scope of the original project and (2) the reason for the change is something that was unanticipated or unforeseen at the time the original contract was awarded.

Thus, allowable change orders include:

1. Change orders to account for cost for unforeseen conditions, such as rock or undercut.
2. Change orders may be used for a minor redesign of a project if the redesign is required because of an unforeseeable problem with the original design.
3. Change order to adjust bid quantities to match those installed. Also known as a final adjusting change order.
4. Change order to account for a change of material, such as changing from DIP to PVC.
5. Change order to add minor scopes of work to the project if they are under the threshold for micro purchases.

The following will not be allowed:

- Change orders to add scope of work to a project more than a micro purchase.
- Change orders that exceed 15% of the total construction cost. Change orders should account for no more than 15% of the total project cost unless they represent items 1 and 3 under the above allowable change orders.
- Change orders that appear to circumvent procurement rules for fair and open bidding, etc. (e.g., trying to change order in a bid alternate that was not accepted by the grantee at the time they awarded the contract).
- Change orders whose purpose is to spend excess funds from the grant (i.e., doing additional paving just because “we have extra money”).

- Change orders that are under the scope of the general contractor but require materials or a subcontractor not procured during the bidding process.
- Change orders cannot be used to take advantage of a good deal on a construction project.
- Change orders cannot be used for fundamental redesign of a project and cannot be used to “fix” problems in the project specifications if the unit of local general government was aware of the problems before awarding the contract.

Other Contract Amendments.

As necessary, units of general local government may conduct contract amendments on professional service contracts due to unanticipated circumstances. Any contract amendments that include an increase in costs will not be paid for with CDBG-I grant funds. Grantees must be ready to pay local funds for said contract amendments.

POLICY HISTORY:

Version / Date:	Name / Changes
V.0 / 9/12/2017	Procurement Policy
V.1 / 4/30/2019	Procurement Policy for the CDBG-I Program
V.2 / 7/10/2019	Procurement Policy for the CDBG-I Program / Change in Simplified Thresholds
V.3 / 2/1/2021	Procurement Policy for the CDBG-I Program / Expanded on processes and steps
V.4 / 6/9/ 2021	Procurement Policy for the CDBG-I Program / Clarification on solicitation of HUB, M/WBE and Section 3
V.5 / 4/28/2023	CDBG-I Program Procurement Policy / Reformate, clarification
V.6 / 12/20/2023	Updated for new NC digital system for procurement, what needs to happen after multiple failed seal bidding attempts, clarification on cost reasonable requirements, clarification on change orders and contract amendments, and bid negotiations.



Regular City Council Meeting Memorandum

Prepared By: Joe Gates

Request to Set Public Hearing - LDO Text Amendment - Article 17 Sign Regulations

Meeting	Agenda Group	
Tuesday, March 12, 2024, 6:00 PM	New Business	Item: 6B
Reference File	Presented By	

To: Scott Attaway, City Manager
From: Tyler Cobb, Planner
Date: Wednesday, March 6th, 2024
Re: Request to set public hearing. FILE ZTA24-01: Amending multiple sections of Article 17 - Sign Regulations, of the Lowell Development Ordinance to allow for more sign area on wall signs, increased eligibility for Master Sign Plan and modifying Section 17.13 Nonconforming Signs

PUBLIC HEARING REQUEST:

During their March 5th, 2024 regular meeting, the Lowell Planning Board reviewed proposed text amendments to Article 17 initiated by City Council and Planning Staff. After reviewing the application and deliberating on the matter, the Planning Board unanimously approved the proposed amendments as presented and is recommending approval of the proposed amendments.

Staff requests that the City Council set a public hearing to review these text amendments at there next regularly scheduled meeting on **Tuesday, April 9th, 2024.**

STAFF REPORT

PROPOSED TEXT AMENDMENTS TO LOWELL DEVELOPMENT ORDINANCE - SECTION 17.7-1 REQUIREMENTS FOR PERMANENT SIGNS REQUIRING APPROVAL OF A ZONING PERMIT, TABLE 17.1 - PERMANENT SIGNS, SECTION 17.10-12 MASTER SIGN PLAN-APPLICATION AND SECTION 17.13 NONCONFORMING SIGNS

On February 6th, 2024, staff expressed a directive from the City Council to revise the Sign Regulations in the Lowell Development Ordinance, Article 17. After some discussion, the Planning Board made the following recommendations for staff to implement in their material in the next meeting (March 5th, 2024). The following areas were selected as topics that could be amended to address the desired outcome of the City Council. The attached amendments achieve the goals stated by council and accomplish the following:

- Allow for more wall sign area for larger properties and buildings located in our commercial & industrial districts.
- Modify language for nonconforming signs to allow them to be replaced without meeting new/current standards.
- Increases the amount of properties that are eligible to use the "Master Sign Plan" process.




Attachments

March 24 CC Meeting Material - Sign Regualtions.pdf

17.7 Requirements for Permanent *Signs* Requiring an Approval of a Zoning Permit

17.7-1 Permanent *sign* requirements. The following tables and text provide the design and dimensional requirements for permanent *signs* that require a permit. Requirements include copy area, number, type of illumination, and letter height for both attached and freestanding *signs*. Setback and height requirements are established for freestanding *signs* and detailed design requirements are provided for monument and pole *signs*.

(A.) ~~Only one general attached *sign* (blade, V-type, or flat) is allowed per street or parking frontage.~~ RESERVED

Sign Type	Sign Copy Area Allowance (sq. ft.)	Sign Illumination	Minimum Letter Size	Maximum Number	Other Requirements	
Permanent Attached Signs – General						
Blade* (or Projecting)		32**	Ambient External Internal		One per street or parking frontage per occupancy	Only one sign (blade, V-type or flat sign) allowed per occupancy per street or parking frontage
V-type*						
Flat* (or Wall)				6"		

*May encroach into adjoining street right-of-way in the Main Street (MS) and Mixed Use (MU) Districts pursuant to an encroachment agreement subject to the provisions of Sections 17.5(G) and 17.7-1(I) of this Article.

For buildings located in the **Mixed-Use District (MU-2), Interstate Highway 85 Commercial District (C-85), US Highway 74 Commercial District (C-74) or the Industrial District (IND), allowed sign area shall be calculated at 10% of the eligible wall area, ~~not to exceed 100 square feet.~~

17.10 Master *Sign Plan*

17.10-2 Application. Master *sign* plans may be submitted for the following types of developments:

- (A.) Traditional Neighborhood Development (TNDO) projects, in accordance with the provisions of Article 8 of this Ordinance.
- (B.) Commercial, institutional, industrial, or mixed-use developments containing ~~three~~ two (2) or more acres in area.

17.13 Nonconforming *Signs*

(C.) A permanent *sign* which does not comply with one or more of the requirements of this Article shall be grandfathered (deemed a vested right) ~~until such *sign* is removed, physically altered beyond maintenance (as defined), relocated, damaged or destroyed, after which it shall be brought into compliance with all requirements of this Article.~~ Such signs may be replaced or modified if such installation or modification does not increase the existing nonconformity, as determined by the *Planning, Zoning & Subdivision Administrator*. Nonconforming temporary *signs* shall not be grandfathered and shall be brought into compliance with all requirements of this Article within ten (10) days from the date of notification by the *Planning, Zoning & Subdivision Administrator* or duly authorized code enforcement agent of the City.



Prepared By: Jamie Watkins

Update to Interlocal Agreement for Enforcement Services of Gaston County Soil and Erosion and Sediment Control Ordinance

Meeting	Agenda Group
Tuesday, March 12, 2024, 6:00 PM	New Business Item: 6C
Reference File	Presented By

To: Scott Attaway, City Manager
From: Jamie Watkins, Stormwater Administrator
Date: 28 February 2024
Re: Interlocal Agreement with Gaston County Natural Resources

The City of Lowell has an interlocal agreement with Gaston County Natural Resources for enforcement of soil erosion and sediment control on active construction sites. The updated agreement contains language that clarifies the scope of the services provided by GCNR.

Attachments

LOWELL Draft Soil Erosion Interlocal Agreement 2024.pdf

**NORTH CAROLINA
GASTON COUNTY**

**INTERLOCAL AGREEMENT FOR ENFORCEMENT SERVICES OF THE GASTON
COUNTY SOIL EROSION AND SEDIMENT CONTROL ORDINANCE**

This Agreement made and entered into on the 12th day of March, 2024, by and between **GASTON COUNTY** a corporate and political body and a subdivision of the State of North Carolina, hereafter referred to as "County", and the City of Lowell, NC, a municipal corporation having a charter granted by the State of North Carolina, hereinafter referred to as "Municipality".

WITNESSETH:

WHEREAS, Article 20 of Chapter 160A of the North Carolina General Statutes authorizes the contractual exercise by one unit of local government for one or more other units of any administrative or governmental power, function, public enterprise, right, privilege, or immunity of local government; and,

WHEREAS, Article 6 of Chapter 153A of the North Carolina General Statutes authorizes the governing board of any City to permit any ordinance adopted by a County to be applicable within the City; and,

WHEREAS, the Municipality has requested that the County provide enforcement services within the corporate boundaries of the Municipality for the Gaston County Soil Erosion and Sedimentation Control Ordinance; and,

WHEREAS, pursuant to N.C. Gen Stat. Chapter 160A, Article 20 upon official request of the governing body of any municipality within the County, the Gaston County Board of Commissioners may by agreement exercise enforcement powers within said municipality and upon such direction may do so until such time as the Municipal governing body officially withdraws its request; and,

WHEREAS, the Gaston County Board of Commissioners upon approval of a resolution, and with written notice, may withdraw the offering of the service to the Municipality.

WHEREAS, the, Lowell, NC, City Council upon approval of a resolution, and with written notice, may withdraw the offering of the service from the County.

NOW, THEREFORE, it is agreed by the parties hereto that the County through the Gaston County Department of Natural Resources will provide enforcement services for Gaston County Soil Erosion and Sedimentation Control Ordinance in the corporate limits of the Municipality on the terms and conditions set forth below:

1. Purpose. The purpose of this Agreement is to set forth the terms and conditions for the Municipality to contract with the County for enforcement services for Gaston County Soil Erosion and Sedimentation Control Ordinance inside its corporate limits and to confer to the

County the necessary geographical and subject matter jurisdiction to carry out the intent of this Agreement.

2. **Term.** The term of this Agreement is March 12, 2024, through June 30, 2025. This Agreement shall automatically renew each year hereafter for successive one-year terms unless terminated as provided herein.

3. **Responsibilities.**

A. **Municipality.** The Municipality agrees to:

- (1) adopt County Fee Schedule with regards to Erosion and Sedimentation Control items;
- (2) allow the County to retain any fees or fines collected in accordance with the adopted schedule and in accordance with the law;
- (3) perform a preliminary submittal review before allowing plans to be submitted to County. Preliminary review will be to ensure items of concern to the Municipality or otherwise regulated by Municipal Ordinance (example: Driveway, tree save, etc.) are addressed prior to issuance of permit.
- (4) any erosion control measures that are added as part of conditions from a Conditional Rezoning, that are outside of the scope of the adopted Gaston County Soil Erosion and Sediment Control Ordinance will be the sole responsibility of the Municipality to enforce and maintain.
- (5) defend all claims against it and its employees for incidents related to the enforcement activities to be conducted pursuant to this Agreement that occur prior to the date of this Agreement and indemnify and hold the County harmless from any judgments against it and said employees. The County agrees to defend all claims against the Municipality arising out of like incidents that occur from and after the date of this Agreement, and further agrees to indemnify and hold the Municipality harmless from any judgments against the Municipality resulting therefrom, unless the claims or liability arise solely from the actions of the Municipality;

B. **County.** The County through the County Department of Natural Resources agrees to:

- (1) review plans submitted pursuant to the Gaston County Soil Erosion and Sediment Control Ordinance for compliance therewith and issue permits for those plans found to be in compliance.
- (2) ensure that all construction activities disturbing one acre or more and are

subject to the scope of the Gaston County Soil Erosion and Sediment Control Ordinance, obtain an NCDEQ required NCG01 Permit for the construction activity. During scheduled erosion control inspections, monitor project site for NCG01 Permit compliance and report reoccurring non-compliance issues to NCDEQ and Municipality.

- (3) provide adequate enforcement staff to be able to effectively enforce the Gaston County Soil Erosion and Sedimentation Control Ordinance within the Municipality's corporate limits; this includes responding to citizen and municipal complaints within a 48-hour window of time from the receipt of the complaint;
- (4) seek civil and criminal enforcement of the law when necessary in the County's discretion.

4. Geographic and Subject Matter Jurisdiction. To the fullest extent permitted by the laws of the State of North Carolina and the United States, the Municipality hereby grants to the County the authority to enforce the Gaston County Soil Erosion and Sedimentation Control Ordinance as it now exists, or may be amended from time to time, and the County accepts the authority herein granted and agrees fully and faithfully to perform the duties and responsibilities implied by the acceptance of this grant subject to the terms and conditions of this Agreement.

5. Amendment. This Agreement may only be amended in writing upon the signature of both parties. No oral agreements or resolutions shall have any effect.

6. Entire Agreement. This Agreement is the only agreement between the parties and contains all the terms agreed upon and replaces any previous agreements regarding the subject matter. This Agreement has no effect upon enforcement of codes or ordinances not specifically mentioned. If any part of this Agreement is held invalid such decision shall not render the document invalid.

7. Governing Law & Forum:

This Agreement shall be deemed to have been made in the State of North Carolina, and its validity, construction and effect shall be governed by the laws of the State of North Carolina. The parties hereto agree that any action brought by either party to enforce the terms of this Agreement shall be filed in the Superior Court of Gaston County, State of North Carolina.

Dispute Resolution. In addition to and prior to litigation, the parties shall endeavor to settle disputes first by negotiation between the parties, and, if negotiation is unsuccessful, then by non-binding mediation. Demand for mediation shall be filed in writing with the other party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of repose or

limitations. Each party hereto submits to the exclusive jurisdiction in the state and federal courts having jurisdiction in Gaston County, North Carolina and irrevocably waives any defenses to such venue including any defense based upon the principles of forum non conveniens.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate for themselves for their duly authorized officers of the day and year first above written.

GASTON COUNTY

By: _____
County Manager

ATTEST:

Clerk to the Board

APPROVED AS TO FORM:

County Attorney

(CITY OF LOWELL, NC)

By: _____
Mayor Larry Simonds

ATTEST:

Clerk Cheryl Ramsey

File: IntlocAgreeSoilEros&SedContOrd.mw



Regular City Council Meeting Memorandum

Prepared By: Jamie Watkins

Update to Interlocal Agreement for Enforcement Services of the Gaston County Stormwater Ordinance

Meeting	Agenda Group	
Tuesday, March 12, 2024, 6:00 PM	New Business	Item: 6D
Reference File	Presented By	

To: Scott Attaway, City Manager
From: Jamie Watkins, Stormwater Administrator
Date: 28 February 2024
Re: Interlocal Agreement with Gaston County Natural Resources

The City of Lowell has an interlocal agreement with Gaston County Natural Resources for enforcement of stormwater control and best management practices on active construction sites. The updated agreement contains language that clarifies the scope of the services provided by GCNR.

Attachments

LOWELL Draft Stormwater Ordinance Interlocal Agreement 2024.pdf

**NORTH CAROLINA
GASTON COUNTY**

**INTERLOCAL AGREEMENT FOR ENFORCEMENT SERVICES
OF THE GASTON COUNTY STORMWATER ORDINANCE**

This agreement made and entered into on the 12th day of March, 2024, by and between **GASTON COUNTY**, a corporate and political body and a subdivision of the State of North Carolina, hereinafter referred to as “County”, and the City of Lowell, NC, a municipal corporation having a charter granted by the State of North Carolina, hereinafter referred to as “Municipality”.

WITNESSETH:

WHEREAS, Article 20 of Chapter 160A of the North Carolina General Statutes authorizes the contractual exercise by one unit of local government for one or more other units of any administrative or governmental power, function, public enterprise, right, privilege, or immunity of local government; and

WHEREAS, Article 6 of Chapter 153A of the North Carolina General Statutes authorizes the governing board of any City to permit any ordinance adopted by a County to be applicable within the City; and,

WHEREAS, the Municipality has requested that the County provide plan review and permitting within the corporate boundaries of the Municipality for the post-construction portion of the Gaston County Stormwater Ordinance; and

WHEREAS, pursuant to N.C. General Stature Chapter 160A, Article 20, upon official request of the governing body of any municipality within the County, the Gaston County Board of Commissioners may through agreement exercise enforcement powers within said municipality and upon such direction may do so until such time as the Municipal governing body officially withdraws its request; and

WHEREAS, the Gaston County Board of Commissioners, upon approval of a resolution, and with written notice, may withdraw the offering of the services to the Municipality.

WHEREAS, the Lowell, NC, City Council, upon approval of a resolution, and with written notice, may withdraw the offering of the services from the County.

NOW THEREFORE, it is agreed by the parties hereto that the County through the Gaston County Department of Natural Resources will provide plan review and permitting for post-construction stormwater portion of the Gaston County Stormwater Ordinance in the corporate limits of the Municipality on the terms and conditions set forth below:

- 1. Purpose.** The purpose of this Agreement is to set forth the terms and conditions for the Municipality to contract with the County for plan review, permitting, and enforcement services for the Gaston County Stormwater Ordinance inside its corporate limits and to confer to the County the necessary geographical and subject matter jurisdiction to carry out the intent of this Agreement.
- 2. Term.** The term of this Agreement is March 12, 2024, through June 30, 2025. This Agreement shall automatically renew each year thereafter for successive one (1) year terms unless terminated as provided herein.

3. Responsibilities.

A. **Municipality.** The Municipality agrees to:

- (1) adopt the County Fee Schedule with regards to Stormwater items;
- (2) allow the County to retain any plan review and Permitting fees for Post-Construction Stormwater per the County Fees Schedule;
- (3) defend all claims against it and its employees for incidents that occur prior to the date of this Agreement and indemnify and hold the County harmless from any judgements against it and said employees. The County agrees to defend all claims against the Municipality arising out of like incidents that occur from and after the date of this Agreement and further agrees to indemnify and hold the Municipality harmless from any judgements against the Municipality resulting therefrom, unless the claims or liability arise solely from the actions of the Municipality.
- (4) withhold applicable permits and approvals, including but not limited to zoning permits and final plat approvals, until notified of compliance with the Stormwater Ordinance;
- (5) obtain performance surety bonds on all proposed Stormwater Control Measures. These bonds shall be held until all final documentation for completed Stormwater Control Measures have been received by the County;
- (6) any Stormwater Control measures that are added as part of conditions from a conditional rezoning, that are outside of the scope of the adopted Gaston County Stormwater Ordinance will be the sole responsibility of the municipality to enforce;
- (7) administer the Municipality's Stormwater Management Program including programs addressing the Six Minimum Measures of the Municipality's NPDES MS4 Permit;
 - a) Public Involvement and Participation,
 - b) Public Education and Outreach,
 - c) Construction Site Runoff: County is responsible for plan review, permitting, inspection, and enforcement of Soil Erosion & Sedimentation Control Ordinance on all land disturbance activities (minor / major subdivisions and single lot permits) via the respective Soil Erosion & Sedimentation Control Ordinance Interlocal Agreement.
 - d) Post-Construction Site Runoff: County is responsible for only the responsibilities listed below in Part 3.B of this Interlocal Agreement. The Municipality is responsible for all remaining NPDES MS4 Permit Post-Construction Runoff requirements.
 - e) Illicit Discharge Detection and Elimination,
 - f) Good Housekeeping Pollution Prevention
 - g) any applicable Total Maximum Daily Load (TMDLs) requirements

B. **County.** The County, through the Gaston County Department of Natural Resources, agrees to:

- (1) review plans submitted pursuant to the Gaston County Stormwater Ordinance for compliance therewith and issue permits for those plans found to be in compliance;
 - a. coordinate with Municipality on final review of plan submittals to verify acceptance of proposed proprietary Stormwater Control Measure(s) by Municipality.
- (2) inspect construction sites, and monitor Stormwater Control Measure(s) to completion of construction, to determine compliance with approved and permitted stormwater management plans;
- (3) notify Municipality of any violations of the Stormwater Ordinance during, and to the completion of, the construction process and the final design engineer certification;
- (4) collect all final Stormwater Control Measure(s) documentation; As part of this process, Gaston County will coordinate with Municipality for the release of any bonds for such infrastructure;
- (5) convey all final Stormwater Control Measure(s) documentation as outlined in the Gaston County Stormwater Control Measure Close Out Report to Municipality for record keeping and the Municipality's continuing enforcement of the post-construction portion of the Stormwater Management Ordinance per the Municipality's NPDES MS4 Permit;
- (6) Seek Civil and Criminal enforcement of the law in the mutual discretion of the County and the Municipality.

4. **Geographic and Subject Matter Jurisdiction.** To the fullest extent permitted by the laws of the State of North Carolina and the United States, the Municipality hereby grants to the County the authority to perform the herein described services and, to that extent, to enforce the County Stormwater Management Ordinance as it now exists, or may be amended from time to time, and the County accepts the authority herein granted and agrees fully and faithfully to perform the duties and responsibilities implied by the acceptance of this grant subject to the terms and conditions of this agreement.

5. **Amendment.** This Agreement may only be amended in writing upon the signature of both parties. No oral agreements or resolutions shall have any effect.

6. **Entire Agreement.** This Agreement is the only agreement between the parties, contains all the terms agreed upon, and replaces any previous agreements regarding the subject matter. This Agreement has no effect upon enforcement of codes or ordinances not specifically mentioned. If any part of this Agreement is held invalid, such decision shall not render the document invalid.

7. **Governing Law & Forum:**

This Agreement shall be deemed to have been made in the State of North Carolina, and its validity, construction and effect shall be governed by the laws of the State of North Carolina. The parties hereto

agree that any action brought by either party to enforce the terms of this Agreement shall be filed in the Superior Court of Gaston County, State of North Carolina.

Dispute Resolution. In addition to and prior to litigation, the parties shall endeavor to settle disputes first by negotiation between the parties, and, if negotiation is unsuccessful, then by non-binding mediation. Demand for mediation shall be filed in writing with the other party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of repose or limitations. Each party hereto submits to the exclusive jurisdiction in the state and federal courts having jurisdiction in Gaston County, North Carolina and irrevocably waives any defenses to such venue including any defense based upon the principles of forum non conveniens.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate for themselves for their duly authorized officers of the day and year first above written.

GASTON COUNTY

By: _____
County Manager

ATTEST:

Clerk to the Board

APPROVED AS TO FORM:

County Attorney

(CITY OF LOWELL, NC)

By: _____

Mayor Larry Simonds

ATTEST:

Clerk Cheryl Ramsey

File: IntlocAgreeSoilEros&SedContOrd.mw



Regular City Council Meeting Memorandum

Prepared By: Scott Attaway

Discussion of Lowell Police K-9 Program

Meeting	Agenda Group	
Tuesday, March 12, 2024, 6:00 PM	New Business	Item: 6E
Reference File	Presented By	

To: Lowell Mayor and City Council
From: Scott Attaway, City Manager
Date: March 6, 2024
Re: Discussion of Lowell Police K-9 Program

Council has asked staff to pause the K-9 program and wait on dog selection until after this could be brought for discussion at this Council meeting. Staff has provided the City Council with the relevant K-9 expenses that we have incurred or are obligated to pay via purchase order issuance. A summary of those expenses are below.

Expenses:

Patches have been paid for totaling \$545.70.

Ronin Dog & training PO issued for \$15,000.00.

Up fit for Ford has been paid \$7,497.51.

Without a K-9 Program we must upfit for the ability to haul a prisoner. Turning this vehicle back to patrol is quoted at \$7,368.08.