### CITY OF NEW BERN BOARD OF ALDERMEN MEETING OCTOBER 22, 2019 – 6:00 P.M. CITY HALL COURTROOM 300 POLLOCK STREET

- 1. Meeting opened by Mayor Dana E. Outlaw. Prayer Coordinated by Alderman Bengel. Pledge of Allegiance.
- 2. Roll Call.

### Consent Agenda

- 3. Consider Adopting a Resolution to Close Specific Streets for Beary Merry Light Up the Season Event.
- 4. Consider Adopting a Resolution to Close Specific Streets for the 2019 New Year's Eve Block Party.
- 5. Approve Minutes.

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- 6. Presentation by Citizens Advocating Resiliency and Education ("CARE") Group.
- 7. Conduct a Public Hearing and Consider Adopting an Ordinance to Annex Two Well Sites Identified as Parcel ID Numbers 8-209-12004 and 8-209-12005.
- 8. Conduct a Public Hearing and Consider Adopting an Ordinance Amending Section 15-146 "Table of Permissible Uses" of the Land Use Ordinance Regarding Special Use Permits for Bed and Breakfast Establishments.
- 9. Consider Adopting a Resolution to Request an Amendment to the Land Use Ordinance Regarding Tobacco and Vape Shops in C-3/C-3H Zones.
- 10. Consider Adopting an Ordinance to Amend Appendix A of the Land Use Ordinance Regarding the Board of Adjustment.
- 11. Consider Adopting a Resolution Approving a Sewer-Use Agreement for 618 West Thurman Road.
- 12. Consider Adopting a Resolution Approving a Revised Lease Agreement with State Employees' Credit Union for the ATM Located in the Parking Lot at the Corner of Pollock and Craven Streets.
- 13. Consider Adopting a Budget Ordinance Amendment for FY2019-2020 Operating Budget.

- 14. Presentation on Old Airport Road Project and Consider Adopting a Budget Ordinance Amendment for the Project.
- 15. Consider Adopting a Resolution to Approve a Contract with S.T. Wooten Corp. to Widen Old Airport Road and Authorize the City Manager to Sign the Contract and Any Change Orders Within the Budgeted Amount
- 16. Consider Adopting a Resolution to Approve a Contract with Barnhill Contracting Company to Resurface Old Airport Road and Authorize the City Manager to Sign the Contract and Any Change Orders Within the Budgeted Amount.
- 17. Consider Adopting a Resolution Designating Agents for Hurricane Dorian Assistance.
- 18. Consider Adopting a Resolution to Approve Grant Agreement with Woda Cooper Equities.
- 19. Consider Approving the 2020 Holiday Calendar.
- 20. Consider Approving the 2020 Board of Aldermen Meeting Roster.
- 21. Appointment(s).
- 22. Attorney's Report.
- 23. City Manager's Report.
- 24. New Business.
- 25. Closed Session.
- 26. Adjourn.

Aldermen

Sabrina Bengel Jameesha Harris Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Jeffrey T. Odham



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000 Dana E. Outlaw Mayor Mark A. Stephens City Manager Brenda E. Blanco City Clerk Joseph R. Sabatelli Director of Finance

Memo to: Mayor and Board of Aldermen

From: Mark A. Stephens, City Manager

Hall He

Date: October 17, 2019

Re: October 22, 2019 Agenda Explanations

- 1. Meeting opened by Mayor Dana E. Outlaw. Prayer Coordinated by Alderman Bengel. Pledge of Allegiance.
- 2. Roll Call.

### Consent Agenda

### 3. Consider Adopting a Resolution to Close Specific Streets for Beary Merry Light Up the Season Event.

(Ward 1) Amanda Banks, Event Chair for the Downtown Council, has requested to close the 200 block of Middle Street and the 400 block of Pollock Street for Light Up the Season on November 29, 2019 from 2:30 p.m. to 10 p.m. for the Beary Merry Christmas Celebration. A memo from Foster Hughes, Director of Parks and Recreation, is attached.

# 4. Consider Adopting a Resolution to Close Specific Streets for the 2019 New Year's Eve Block Party.

(Ward 1) The City's second annual New Year's Eve Celebration is scheduled for December 31, 2019. As a result, it is requested the 200 block of Pollock Street from the entrance of the Dunn Building's parking lot to Craven Street be closed to vehicular traffic from 7:30 a.m. on December 31, 2019 until 8 a.m. on January 1, 2020. Additionally, it is requested the 300 block of Pollock Street, a portion of the 200 block of Craven Street beginning at Morgan's Tavern & Grill, and the 300 block of Craven Street be closed from 2:30 p.m. on December 31, 2019 until 3 a.m. on January 1, 2020. A memo from Mr. Hughes is attached.

### 5. Approve Minutes.

Minutes from the October 8, 2019 meeting are attached for review and approval.

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## 6. Presentation by Citizens Advocating Resiliency and Education ("CARE") Group.

Nelson McDaniel and Bill Sherratt will make a presentation on behalf of the CARE Group.

### 7. Conduct a Public Hearing and Consider Adopting an Ordinance to Annex Two Well Sites Identified as Parcel ID Numbers 8-209-12004 and 8-209-12005.

(Ward 4) In December 2012, an area defined as Craven 30 was annexed into the municipal city limits. Excluded from the annexation were two well sites owned by the City. To clarify the city limits in this particular area, staff has recommended the two well sites also be annexed. After conducting a public hearing, the Board is asked to consider adopting an ordinance to annex the property. A memo from Alice Wilson, GIS Manager, is attached.

### 8. Conduct a Public Hearing and Consider Adopting an Ordinance Amending Section 15-146 "Table of Permissible Uses" of the Land Use Ordinance Regarding Special Use Permits for Bed and Breakfast Establishments.

(Ward 1) At its September 10, 2019 regular meeting, the Governing Board discussed special-use permits for bed and breakfast establishments in R-6, R-8 and R-10 zones. At the conclusion of the discussion, the Board adopted a resolution to request the Planning and Zoning Board consider an amendment to the land-use ordinance to eliminate such establishments in these zones. Subsequently on September 24, 2019, a resolution was adopted to call for a public hearing on October 22, 2019 for the Governing Board to receive public input on the matter.

At their October 1, 2019 meeting, the Planning and Zoning Board voted 5-1 against the request to remove special-use permits in the above zones for bed and breakfast and other temporary residences renting rooms for short periods. A memo from Jeff Ruggieri, Director of Development Services, is attached.

## 9. Consider Adopting a Resolution to Request an Amendment to the Land Use Ordinance Regarding Tobacco and Vape Shops in C-3/C-3H Zones.

At its October 8, 2019, interest was expressed by the Board of Aldermen to consider adding the definition of Tobacco and Vape Shops to the Table of Permissible Uses in the Code of Ordinances. Additionally, interest was expressed to allow for this use in the C-3/C-3H commercial districts. This resolution confirms that request and asks the Planning and Zoning Board to review the request and make a recommendation. A memo from Mr. Ruggieri is attached.

## 10. Consider Adopting an Ordinance to Amend Appendix A of the Land Use Ordinance Regarding the Board of Adjustment.

After the City Attorney announced the difficulty with the Board of Adjustment conducting meetings due to a lack of a quorum, the Board of Aldermen adopted a resolution on September 10, 2019 requesting the Planning and Zoning Board consider decreasing the number of members on the Board of Adjustment and the quorum requirement. At its October 1, 2019 meeting, Planning and Zoning considered the request and unanimously approved it. The final step in implementing this change requires the Board of Aldermen to amend Appendix A of the Land Use Ordinance to reflect the decrease in numbers. A memo from Mr. Ruggieri is attached.

## 11. Consider Adopting a Resolution Approving a Sewer-Use Agreement for 618 West Thurman Road.

The owners of 618 West Thurman Road propose to develop a single-family residential home on the property, which is currently outside of New Bern's municipal city limits. The development will have a calculated average daily sewer demand of 480 gallons per day. To facilitate the development, a standard sewer service connection can be provided to the property without the need for a sewer main extension. Section 74-74 of the Code of Ordinances requires the property owners to enter into a written agreement with the City for water and sewer use. A memo from Jordan Hughes, City Engineer, is attached.

# 12. Consider Adopting a Resolution Approving a Revised Lease Agreement with State Employees' Credit Union for the ATM Located in the Parking Lot at the Corner of Pollock and Craven Streets.

(Ward 1) On June 25, 2019, the Board adopted a resolution approving a lease with the State Employees' Credit Union for the ATM site located in the city's parking lot at 302 Craven Street. Subsequent to the adoption of that resolution, the Credit Union requested minor changes and corrections to the agreement, which are identified in the attached copy. The terms of the lease were not modified. The Credit Union also pointed out Exhibit B was not included with the lease. The proposed resolution approves the lease with these changes. A memo from Matt Montanye, Director of Public Works, is attached.

## 13. Consider Adopting a Budget Ordinance Amendment for FY2019-2020 Operating Budget.

This budget ordinance amends the FY2019-20 operating budget to reestablish encumbrances from the previous year that remained outstanding as of June 30, 2019. It also transfers funds to projects and allocates funds for grants. A memo from Joseph R. Sabatelli, Director of Finance, is attached.

### 14. Presentation on Old Airport Road Project and Consider Adopting a Budget Ordinance Amendment for the Project.

(Ward 3) Prior to considering a budget ordinance amendment, Mr. Montanye will share a presentation on the proposed work for the Old Airport Road project. After reviewing the PowerPoint, the Board is asked to consider a budget ordinance amendment to appropriate \$2,250,000 for the Old Airport Road Improvements. This appropriation will be funded by a transfer of \$920,000 from the General Fund, \$1,180,000 from debt proceeds, and a reallocation of \$150,000 from the existing 2017 Roadway Improvements Project Fund. A memo from Mr. Sabatelli with additional details is attached.

### 15. Consider Adopting a Resolution to Approve a Contract with S.T. Wooten Corp. to Widen Old Airport Road and Authorize the City Manager to Sign the Contract and Any Change Orders Within the Budgeted Amount

(Ward 3) Staff has been working on the design of the Old Airport Road improvements for the past year. The widening portion of the project was advertised and bids were sought for the 1.39 miles of roadway between Taberna Circle and Landscape Drive. Three qualified bids were received, and S.T. Wooten Corporation offered the lowest bid at \$2,588,826.50. The proposed resolution awards the contract to this bidder and authorizes the City Manager to sign the contract and any change orders within the budgeted amount. A memo from Mr. Montanye is attached.

### 16. Consider Adopting a Resolution to Approve a Contract with Barnhill Contracting Company to Resurface Old Airport Road and Authorize the City Manager to Sign the Contract and Any Change Orders Within the Budgeted Amount.

(Ward 3) As indicated in the previous item, staff has been working on the design of the Old Airport Road improvements for the past year. The resurfacing portion of the project will cover 1.08 miles between Landscape Drive and the bridge located south of the Evans Mill Subdivision. Bids were sought and five responses were received. Barnhill Contracting Company offered the lowest bid at \$546,015.00. The proposed resolution awards the contract to this bidder and authorizes the City Manager to sign the contract and any change orders within the budgeted amount. A memo from Mr. Montanye is attached.

## 17. Consider Adopting a Resolution Designating Agents for Hurricane Dorian Assistance.

FEMA requires the Governing Board designate authorized agents for the purpose of executing and filing applications for federal and/or state assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The proposed resolution names the City's primary and second agents for seeking assistance associated with Hurricane Dorian. A memo from Mr. Sabatelli is attached.

## 18. Consider Adopting a Resolution to Approve Grant Agreement with Woda Cooper Equities.

(Ward 4) The Board previously approved the submission of a \$350,000 grant application to the NC Department of Commerce to assist with public infrastructure improvements necessary for the Tate Commons project at 1025 Karen Drive. The project is a 68-unit multifamily development that received 9% tax credits in 2018 from the NC Housing Finance Agency. Grant funds have been awarded to the City and require no match. The resolution approves a grant agreement between the City and Woda Cooper Equities, LLC, the developer. A memo from Sabatelli is attached.

### **19.** Consider Approving the 2020 Holiday Calendar.

Annually, the Board approves a holiday calendar reflecting the holidays to be observed and dates for which City offices will be closed. The proposed calendar for 2020 mirrors the 11 days that will be observed by Craven County. Of note, the State of North Carolina will observe 12 days in 2020, which includes an additional day off for Christmas. A memo from Sonya Hayes, Director of Human Resources, is attached.

### 20. Consider Approving the 2020 Board of Aldermen Meeting Roster.

The Board adopts a meeting roster for each calendar year. The proposed roster identifies the  $2^{nd}$  and  $4^{th}$  Tuesdays of each month as well as two additional days in May to review the budget. All meetings will begin at 6 p.m., unless otherwise announced.

### 21. Appointment(s).

Jerry Walker's first term on the Planning & Zoning Board expired June 30, 2019. Alderman Bengel made a motion to reappoint him for an additional term, but he has respectfully declined. Therefore, Alderman Bengel is asked to make a new appointment to serve a three-year term.

### 22. Attorney's Report.

### 23. City Manager's Report.

- 24. New Business.
- 25. Closed Session.
- 26. Adjourn.



### **Agenda Item Title:**

Consider adopting a Resolution to close the 200 block of Middle Street and the 400 block of Pollock Street.

Ward # if applicable: Ward 1
Person Submitting Item: Foster Hughes, CPRE
Date of Public Hearing:

Explanation of Item:	Amanda Banks, Event Chair has requested to close the 200 block of Middle Street and the 400 block of Pollock Street for Light Up the Season on November 29, 2019 from 2:30-10:00 p.m. for the Beary Merry Christmas Celebration.
Actions Needed by Board:	Adopt the Resolution
Backup Attached:	Resolution – Memo- Application- Summary of Anticipated Usage

Is item time sensitive? □Yes ⊠No	
Will there be advocates/opponents at the meeting?  Set Yes  No	:

### Cost of Agenda Item: If this requires an expenditure, has it been budgeted and are funds available and certified by the Finance Director? □Yes □ No

### RESOLUTION

THAT WHEREAS, the Downtown Council of the New Bern Chamber of Commerce has requested that the 200 block of Middle Street and the 400 block of Pollock Street be closed to vehicular traffic from 2:30 p.m. until 10:00 p.m. on Friday, November 29, 2019 for a Light Up the Season Beary Merry Christmas event; and

# NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

That the 200 block of Middle Street and the 400 block of Pollock Street be closed to vehicular traffic from 2:30 p.m. until 10:00 p.m. on November 29, 2019 for a Light Up the Season Beary Merry Christmas event.

ADOPTED THIS 22<sup>nd</sup> DAY OF OCTOBER 2019.

DANA E. OUTLAW, MAYOR

BRENDA E. BLANCO, CITY CLERK

#### **CITY OF NEW BERN**

#### APPLICATION FOR PUBLIC ASSEMBLY, PARADE & SPECIAL EVENTS IN CITY PARKS

This application is hereby made for a permit to hold a Public Assembly and/or Parade as described in the City of New Bern

Code of Ordinances (Sec. 66-85; 66-86; and 66-87) - Public Assemblies and Parades. This application along with

#### attachments must be presented at least <u>60 days prior</u> to the event date.

<u>Festival</u> – A concert, fair, festival, exhibit, athletic event, promotion, community event, block party, or similar event. <u>Parade</u> – A march, ceremony, pageant, procession or other similar activities consisting of persons, animals, vehicles or things, or any combination thereof, that disrupts the normal flow of traffic upon any public street.

<u>Public Assembly</u> – A festival or demonstration which is reasonably anticipated to obstruct the normal flow of traffic upon any public street and that is collected together in one place; or a festival in any city-controlled park.

Name of Event/Activity: Beary Merry	Christmas	
Organization Name: Downtown Count	cil - New Bern Area Chamber c	of Commerce
Responsible Contact: Amanda Banks		
Address: 316 S Front St		
City: <u>New Bem</u>	State: <u>NC</u>	Zip code:
Phone: 252-671-1196	Alternate Phone:	
Email: info@bearymerrychristmas.com		
Type of Event: Den	nonstration EFestiva	al 🗆 Parade
Date of Event: <u>Nov 29 - Dec 31</u>	Prop	posed Rain Date:
Event Set up time:	<b>Event Tear Dow</b>	n Completed Time:
Event Start Time:	Event End Time:	
What is the specific location and/or See attached	route of the proposed of	event? (Attach additional information if needed,

Note: A detailed map of the proposed route as well as a specific list of streets is required. The specific location of the Public Assembly must include the aerial overview with location marked. *Festivals/Events require detailed aerial map with complete layout.* 

What is the purpose of this event? Please be detailed in your description - (Attach additional information if needed) See attached

\*Note: If more than 1,000 in attendance is expected 1) <u>Proof of Crowd Manager Training Certification is regulred</u>. Training is available at the following link: <u>http://www.newbernnc.gov/departments/fire\_department/crowd\_manager\_training.php</u> 2) Public Safety Plan is required. Information must be submitted with application. For additional info, please contact the Fire Marshall at 252-639-2931.

Tents # Sizes \_\_\_\_\_ Provide additional info as needed (Note: Tents 700 sq. ft. or bigger must be inspected by Fire Marshall.

#### How will you handle trash generated from the event?

We are requesting # \_\_\_\_\_ trash cans.

We will provide our own bags & dispose of any trash generated ourselves.

□We request that City Staff dispose of all trash generated. We understand additional fees will be charged for this service, including the cost of labor, and materials (bags, etc.) used.

Are you requesting any City of New Bern Street Closures? *Any street closures require approval of the Board of Aldermen. Street closures must be received a consideration. Street closures require barricades. A fee of \$5.00 per barricade must be paid 48 busi *What Street(s) are you requesting to close? Be specific: Nov 29, 2019	iness hours prior to the event.
200 Block of Craven Street + 400 Block of Pollock St	
2:30 - 10:00pm	
Are you requesting any State Road or Bridge closures? Yes* *If yes, a 90 day notice and application is required by the NCDOT for in order to consider state roads please call NCDOT Office at 252-439-2816. The State Road/Bridge Closure permit must be attached If this event includes the use of floats, vehicles, placards, loud speakers, or mechanical devidet detailed explanation of their use, purpose and number.	to this application. vices of any type, please provide a
Will Inflatables or other Play features be part of this event? EYes INC Will Food Vendors or Commercial/Non-Profit vendors be part of this even (If you answered YES, Additional Fees apply. A detailed list of all vendors is required.) The following items are required and must be attached <u>at the time of Application</u> :	
□ A detailed map – including the location, route with beginning and ending point and stre	et names included.
Petition of Signatures – of business/residents affected – If roads are closed.	
The following items are required within two (2) business days of the event or event shall	l be cancelled:
Certificate of Insurance – Listing the City of New Bern, PO Box 1129, New Bern, NC as "	
□ List of all food/commercial/non-profit vendors.	
Payment in full of applicable fees and charges.	
I attest that I om authorized on behalf of this group/organization to request the permit for the activi that this application must be submitted with full details and attachments. I understand that addition Those charges include set-up tear down time for staff, rental of barricades, Public Safety, Trash colle understand that failure to provide the requested information within the specified timelines shall resu to indemnify and hold harmless the City of New Bern, its departments, agents, employees, officials a damage to person or property during this activity.	nal fees and charges may be incurred. ction, damages, etc. I further ilt in application being denled. I agree
	Total Anticipated Charges
The following items must be submitted with Application:  Completed & Signed Application	Dominada a M
Detailed maps of parade route and/or festival layout	Barricades: #
Petition of signatures (if road closure is requested)	\$
Proof of Crowd Manager training & Public Safety Plan (if attendance is 1,000 or more)	
And Ralling valuation	Trash Collection:
Amandontanty 10/10/19	P
Authorized Signature Date	City Staff: #
All documents have been provided and this application is recommended for approval	\$
	ə <u> </u>
Uuronicuté Mattocho 10/11/19	Vendor Fees #
Administrative Support Supervisor Date	\$
	Park/Facility Rental:
This application has been approved.	Ś
Fat H 10-11-19	*
Director of Parks & Recreation Date	Total Due:
Have HOA's been notified?  Yes     Spoke with:	······
Approved by Department     Date: Staff Initials:	City Sponsored Event
Submitted for Board Approval Date: Staff Initials:	
All Paperwork collected Date: Staff Initials:	
All fees collected \$ Date: Staff initials:	

#### Downtown Christmas Event – Beary Merry Christmas November 29 – December 31, 2019

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#### Summary of Anticipated Usage:

Bear Plaza – Delivery & take down determined by city staff
 Decoration of House & Bear Plaza by Downtown Committee
 Santa House is open from Nov 29<sup>rd</sup> until Dec 24th free of charge; \$6 for picture with Santa
 House is removed by City Staff – date TBD by City Staff

Friday, November 29, 2019	2:30pm – 10:00pm	7.5 hours	Street closure request
200 Block of Middle Street 4 400	Block of Ph	lock.	
Light Up the Season – Santa's			19 5:00pm until 8:00pm
200 Block of Middle Street clos	ed from 2:30pm until 1	0:00pm	
Kick off to Christmas Season to	include sledding, activi	ties for children	, entertainment and the arrival of Santa to
Bear Plaza where he will light i	t up!!		

Friday, November 29, 20191:00pm - 6:00pm5 hours Park closedUnion Point ParkCommunity Christmas Tree Lighting - Friday, November 29, 2018 4:30pm - 5:30pmFood vendors will be on site selling various food for purchase



## Agenda Item Title:

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Person Submitting Item: Foster Hughes, CPRE
Date of Public Hearing:

Explanation of Item:	The Parks and Recreation Department has made a request to close portions of Pollock and Craven Streets for the second annual New Year's Eve Celebration
Actions Needed by Board:	Adopt the Resolution
Backup Attached:	Resolution – Memo - Map

Is item time sensitive? □Yes ⊠No	
Will there be advocates/opponents at the meeting? $\Box$ Yes $\boxtimes$ No	

Cost of Agenda Item:
If this requires an expenditure, has it been budgeted and are funds available
and certified by the Finance Director? 🗆 Yes 🗆 No



Aldermen

Sabrina Bengel Jameesha Harris Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Jeffrey T. Odham Foster Hughes, CPRE Director of Parks & Recreation



Dana E. Outlaw Mayor

Mark A. Stephens City Manager

Memo To: Mayor and Board of Aldermen

From: Foster Hughes, CPRE Director of Parks and Recreation  $( \uparrow )$ 

- 7P
- Re: Adopt the Resolution to close a specific street to vehicle traffic, the 200 block of Pollock Street from the parking lot entrance at the Dunn Building to Craven Street be closed to vehicle traffic from 7:00 a.m. Tuesday, December 31, 2019 until 8:00 a.m. on Wednesday, January 1, 2020. The 300 block of Pollock Street; a partial blockage of the 200 block of Craven Street beginning at Morgan's Tavern & Grill and the 300 block of Craven Street be closed from 2:30 p.m. on Tuesday, December 31, 2019 until 3:00 a.m. Wednesday, January 1, 2020 for the City of New Bern Second Annual New Year's Eve Celebration.

### **Background Information:**

The City of New Bern and the Parks and Recreation Director has requested the 200 block of Pollock Street from the parking lot entrance at the Dunn Building to Craven Street be closed to vehicle traffic from 7:00 a.m. Tuesday, December 31, 2019 until 8:00 a.m. on Wednesday, January 1, 2020. The 300 block of Pollock Street; a partial blockage of the 200 block of Craven Street beginning at Morgan's Tavern & Grill and the 300 block of Craven Street be closed from 2:30 p.m. on Tuesday, December 31, 2019 until 3:00 a.m. Wednesday, January 1, 2020. This family friendly event will have a variety of activities including live entertainment, food trucks, games and activities for the entire family.

#### **Recommendation:**

The Parks and Recreation Department recommends approval and request the Board adopt a Resolution approving the request. If you have any questions concerning this matter, please let me know.

> 1307 Country Club Rd New Bern, NC 28562 Office 252 639-2901 Fax 252 636-4138

### RESOLUTION

THAT WHEREAS, the City of New Bern has scheduled its second annual New Year's Eve Celebration and requests that specific streets be closed to vehicular traffic as follows:

- December 31, 2019 from 7 a.m. until January 1, 2019 at 8 a.m.: the 200 block of Pollock Street from the parking lot entrance at the Dunn Building to Craven Street; and
- December 31, 2019 from 2:30 p.m. until January 1, 2020 at 3 a.m.: the 300 block of Pollock Street, a partial blockage of the 200 block of Craven Street beginning at Morgan's Tavern & Grill, and the 300 block of Craven Street; and

WHEREAS, signage will be posted at all affected areas, and the Director of Parks and Recreation recommends the streets be closed as requested.

## NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

1. That the following streets shall be closed as indicated for the City's second annual New Year's Eve Celebration:

- a) the 200 block of Pollock Street from the parking lot entrance at the Dunn Building to Craven Street shall be closed to vehicular traffic from 7:30 a.m. on Tuesday, December 31, 2019 until 8 a.m. on Wednesday, January 1, 2020; and
- b) the 300 block of Pollock Street; a partial blockage of the 200 block of Craven Street beginning at Morgan's Tavern & Grill, and the 300 block of Craven Street shall be closed to vehicular traffic from 2:30 p.m. on Tuesday, December 31, 2019 until 3:00 a.m. on Wednesday, January 1, 2020; and
- 2. Signage shall be posted in all affected areas.

ADOPTED THIS 22<sup>nd</sup> DAY OF OCTOBER 2019.

DANA E. OUTLAW, MAYOR

BRENDA E. BLANCO, CITY CLERK



All other streets within the Event zone will close at 2:30pm and re-open at 3am.

and will re-open at 8am on January 1.



## Agenda Item Title:

Presentation by Citizens Advocating Resiliency and Education ("CARE") Group

Date of Meeting: 10/22/2019	Ward # if applicable:
Department: City Clerk	Person Submitting Item: Brenda Blanco
Call for Public Hearing: □Yes⊠No	Date of Public Hearing:

Explanation of Item:	Representatives from the CARE Group will be in attendance to make a presentation
Actions Needed by Board:	
Backup Attached:	None

Is item time sensitive? □Yes ⊠No
Will there be advocates/opponents at the meeting?  Set Yes  No

Cost of Agenda Item:
If this requires an expenditure, has it been budgeted and are funds available
and certified by the Finance Director? $\Box$ Yes $\Box$ No



Agenda Item Title: Conduct a Public Hearing & Consider Adopting an Ordinance to Annex City Well Sites

Date of Meeting: 10/22/2019	Ward # if applicable: 4
Department: Development Services	Person Submitting Item: Alice Wilson
Call for Public Hearing: ⊠Yes□No	Date of Public Hearing: 10/22/2019

Explanation of Item:	In December 2012, an area defined as "Craven 30" was annexed into the City of New Bern. Excluded from this annexation were two well sites owned by the City. To clarify the City Limits in this area, staff recommends annexation of these two well sites.
Actions Needed by Board:	Conduct a Public Hearing and Adopt an Ordinance for the annexation of the two well sites.
Backup Attached:	Memo, Ordinance; Annexation Map

Is item time sensitive? □Yes ⊠No	
Will there be advocates/opponents at the meeting? $\Box$ Yes $igtimes$	No

Cost of Agenda Item: \$0
If this requires an expenditure, has it been budgeted and are funds available
and certified by the Finance Director? $\Box$ Yes $\Box$ No

Aldermen

Sabrina Bengel Jameesha Harris Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Jeffrey T. Odham



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000 Dana E. Outlaw Mayor Mark A. Stephens City Manager Brenda E. Blanco City Clerk Joseph R. Sabatelli Director of Finance

### **MEMORANDUM**

- Memo To: Honorable Mayor and Members of the Board of Aldermen
- Memo From: Alice Wilson, AICP, GISP GIS Manager
- Date: October 11, 2019, 2019
- SUBJECT: Conduct a Public Hearing and adopt an Ordinance for the annexation of City Well Sites

### **BACKGROUND INFORMATION:**

The Board of Aldermen of the City of New Bern intends to annex the subject properties pursuant to North Carolina General Statute § 160A-31(g)

On December 11, 2012, The City of New Bern annexed approximately 361 acres known as "Craven 30" into the City Limits. With this annexation, two areas containing[AW1] well sites and owned by the City of New Bern were surrounded by corporate limits, but not a part of the City of New Bern or "islands" of unincorporated land.

Additional annexations have occurred in the same general area and staff recommends annexation of these well sites to clearly define the City Limits in this area for safety and services issues.

### **RECOMMENDATION:**

Conduct a public hearing and adopt an Ordinance to annex the two well sites.

Prepared by:

Michael Scott Davis DAVIS HARTMAN WRIGHT PLLC 209 Pollock Street New Bern, NC 28560

### AN ORDINANCE ANNEXING TO THE CITY OF NEW BERN PROPERTY OWNED BY THE CITY OF NEW BERN SITUATE ON THE NORTH SIDE OF U.S. HIGHWAY 70 AND GREENBRIER SUBDIVISION IDENTIFIED AS WELL SITE #9 CONSISTING OF 1.59 ACRES, MORE OR LESS, AND WELL SITE #10 CONSISTING OF 1.47 ACRES, MORE OR LESS

THAT WHEREAS, the City of New Bern owns two parcels of land identified as Well Site #9 consisting of 1.59 acres, more or less, which bears Craven County parcel identification number 8-209-12004, and Well Site #10 consisting of 1.47 acres, more or less, which bears Craven County parcel number 8-209-12005, both of which lie to the north of U.S. Highway 70 and Greenbrier Subdivision in Number Eight (8) Township, Craven County, North Carolina, the boundaries of which are shown on a map prepared by the Development Services Department of the City of New Bern, a copy of which is attached hereto as <u>Exhibit B</u>, and incorporated herein by reference; and

WHEREAS, on October 8, 2019, the Board of Aldermen of the City of New Bern adopted a resolution stating its intent to annex the subject properties, and calling for a public hearing on the question of the annexation to be conducted by the Board of Aldermen on October 22, 2019; and

WHEREAS, pursuant thereto, notice of a public hearing to be held at 6:00 p.m. on October 22, 2019 in the City Hall Courtroom was duly caused to be published as required by law in the *Sun Journal*, a newspaper having general circulation in the City; and

WHEREAS, on October 22, 2019 at 6:00 p.m., a public hearing on the question of annexation of the subject properties was held by the Board of Aldermen of the City of New Bern,

at which time all interested parties were given an opportunity to be heard; and

WHEREAS, it was then determined by the Board of Aldermen that the subject properties met the requirements of the General Statutes of North Carolina, and that the areas described in the October 8, 2019 resolution should be annexed; and

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

<u>Section 1</u>. That the subject properties meet the requirements of §160A-31 of the General Statutes of North Carolina, and are therefore eligible to be annexed to the primary corporate limits of the City of New Bern.

<u>Section 2</u>. That the subject properties, which are more particularly described in <u>Exhibit A</u> attached hereto and incorporated herein by reference, identified as Well Site #9 consisting of 1.59 acres, more or less, which bears Craven County parcel identification number 8-209-12004, and Well Site #10 consisting of 1.47 acres more or less, which bears Craven County parcel number 8-209-12005, lying to the north of U.S. Highway 70 and Greenbrier Subdivision in Number Eight (8) Township, Craven County, be and the same are hereby annexed to the City of New Bern.

Section 3. That the effective date of annexation shall be midnight on October 22, 2019.

Section 4. That the areas to be annexed be and the same are hereby made a part of Ward 4 of the City of New Bern.

Section 5. That this ordinance, together with a plat reflecting the area being annexed, shall be recorded forthwith in the Office of the Register of Deeds of Craven County.

ADOPTED THIS 22<sup>nd</sup> DAY OF OCTOBER, 2019.

### DANA E. OUTLAW, MAYOR

BRENDA E. BLANCO, CITY CLERK

#### EXHIBIT A

All that certain tract or parcel of land lying and being situate in Number «Township» («Township\_Number») Township, Craven County, North Carolina, and being more particularly described as follows:

Well Site #9 (Parcel No. 8-209-12004)

Beginning at an iron pipe set in the northern right-of-way line of U.S. Highway 70 Bypass, said point being the following courses and distances from N.C.G.S. Hopie AZ MK (NAD83/86) Northing 516,533.1894 US FT, Easting 2,557,072.2349 US FT: South 53° 33' 44" West 11,153.87 feet (ground), 11,152.53 feet (grid, C.F. 0.99988029) to N.C.G.S. Clarks (NAD83/86) Northing 509,909.1311 US FT, Easting 2,548,100.0088 US FT; thence South 71° 10' 32" East 15,451.95 feet (tie ground) 15,450.10 feet (grid, CF: 0.99988029); THENCE FROM SAID POINT OF BEGINNING North 19° 02' 23" East 188.53 feet to an iron pipe set; thence North 73° 43' 54" East 190.79 feet to an iron pipe set; thence South 16° 16' 06" East 189.62 feet to an iron pipe set; thence South 16° 23' 01" East 176.78 feet to an iron pipe set; thence along and with the northern right-of-way line of U.S. Highway 70 Bypass North 70° 57' 37" West 367.76 feet to the point of beginning, consisting of 1.59 acres, more or less, as appears on a survey entitled "Lot Plan for Well Site #9 for the City of New Bern" prepared by Rivers & Associates, Inc., and dated March 14, 2007, a copy of which is attached as Exhibit B-5 to a deed from Weyerhaeuser Company to the City of New Bern dated September 10, 2007, which appears of record in Book 2646 at Page 369 of the Craven County Registry.

<u>Well Site #10</u> (Parcel No. 8-209-12005)

Beginning at an iron pipe set in the northern right-of-way line of U.S. Highway 70 Bypass and located the following courses and distances from N.C.G.S. Hopie AZ MK (NAD83/86) Northing 516,533.1894 US FT, Easting 2,557,072.2349 US FT: South 53° 33' 44" West 11,153.87 feet (ground), 11,152.53 feet (grid, C.F. 0.99988029) to N.C.G.S. Clarks (NAD83/86) Northing 509,909.1311 US FT, Easting 2,548,100.0088 US FT; thence South 70° 55' 27" East 18,478.92 feet (tie only ground) 18,476.71 feet (grid, CF: 0.99988029); THENCE FROM SAID POINT OF BEGINNING North 25° 46' 54" East 254.90 feet to an iron pipe set; thence South 64° 13' 06" East 252.19 feet to an iron pipe set; thence South 25° 46' 54" West 255.57 feet to an iron pipe set in the northern right-of-way line of U.S. Highway 70 Bypass; thence along and with the northern right-of-way line of U.S. Highway 70 Bypass, a curve to the left with a delta angle of 1° 14' 46", radius 11,596.16 feet, arc length 252.19 feet, chord bearing North 64° 04' 01" West, 252.19 feet to the point of beginning, consisting of 1.47 acres, more or less, as appears on a survey entitled "Lot Plan for Well Site #10 for the City of New Bern" prepared by Rivers & Associates, Inc., and dated March 14, 2007, a copy of which is attached as Exhibit B-6 to a deed from Weverhaeuser Company to the City of New Bern dated September 10, 2007, which appears of record in Book 2646 at Page 369 of the Craven County Registry.

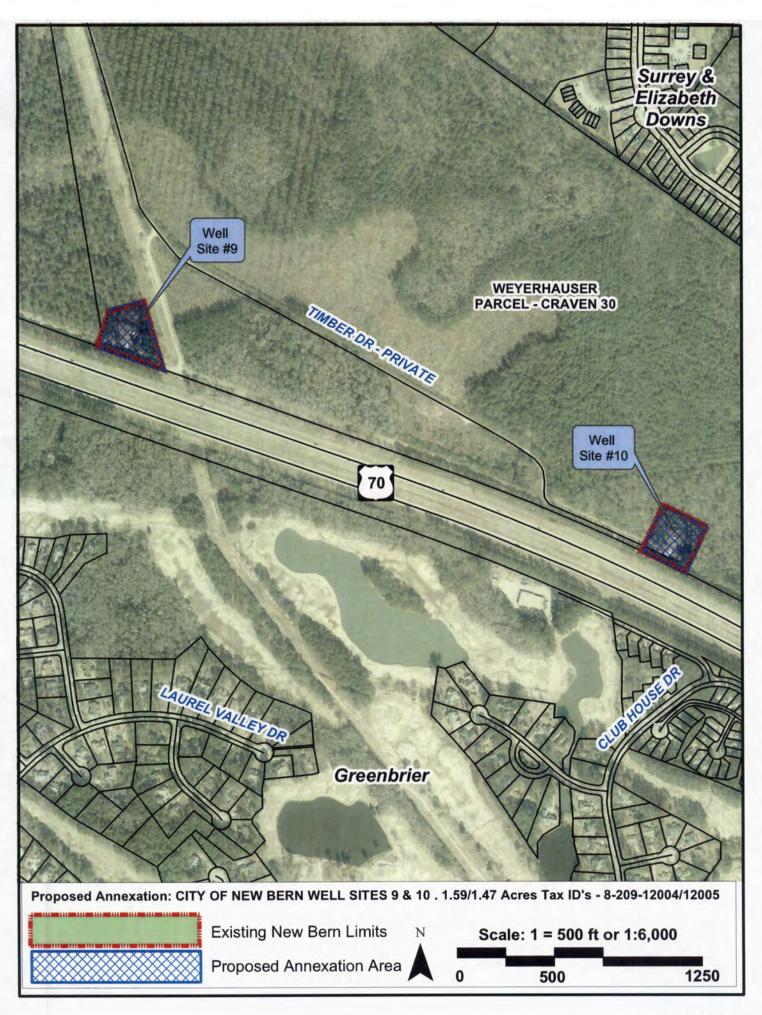


EXHIBIT B

### **Agenda Item Title:**

Conduct Public hearing and Adopt an Ordinance to amend Section 15-146 "Table of Permissible Uses" of the Land Use Ordinance

Date of Meeting: 10/22/2019	Ward # if applicable: 1
Department: Development Services	<b>Person Submitting Item:</b> Jeff Ruggieri, Director of Development Services
Call for Public Hearing: $\Box$ Yes $\Box$ No	Date of Public Hearing: 10/22/2019

Explanation of Item:	Conduct a public hearing and Adopt an Ordinance to amend Section 15-146 "Table of Permissible Uses" to remove the special use permit designation for use category 1.520 – Bed and breakfast and other temporary residences renting rooms for relatively short periods of time, in the R-6, R-8 and R-10 zones
Actions Needed by Board:	Consider an ordinance amending Section 15-146 "Table of Permissible Uses" to remove the special use permit designation for use category 1.520 – Bed and breakfast and other temporary residences renting rooms for relatively short periods of time in the R-6, R-8 and R-10 zones
Backup Attached:	Memo, Ordinance, draft minutes of P&Z Board meeting

Is item time sensitive?	
Will there be advocates/opponents at the meeting?	

**Cost of Agenda Item:** 

If this requires an expenditure, has it be budgeted and are funds available and certified by the Finance Director?  $\Box$  Yes  $\Box$  No



### MEMORANDUM

TO: Mayor Dana Outlaw, City of New Bern Board of Aldermen

**FROM:** Jeff Ruggieri, Director Development Services

**DATE:** 10/10/19

**SUBJECT:** Conduct Public Hearing to Amend Section 15-146 "Table of Permissible Uses" of Article X "Permissible Uses" of Appendix A "Land Use"

At the September 10, 2019 regular meeting, the Governing Board discussed specialuse permits for bed and breakfast establishments in R-6, R-8 and R-10 zones. At the conclusion of the discussion, the Board adopted a resolution to request an amendment to the land-use ordinance to eliminate such establishments in these zones. The Planning and Zoning Board held their regular meeting October 1<sup>st</sup> and voted 5-1 against the proposed amendment. The draft minutes of this meeting are included.

The Board of Aldermen will conduct a public hearing on October 22, 2019 to receive comments and consider amending the ordinance.

Please contact Jeff Ruggieri at 252.639.7587 should you have questions or need additional information.

## AN ORDINANCE TO AMEND APPENDIX A "LAND USE" OF THE CODE OF ORDINANCES OF THE CITY OF NEW BERN

THAT WHEREAS, the Planning and Zoning Board of the City of New Bern recommends that certain amendments regarding the issuance of special use permits for Bed and Breakfast establishments in the City's historic districts not be made to Appendix A "Land Use" of the Code of Ordinances of the City of New Bern; and

WHEREAS, the Board of Alderman of the City of New Bern deems it advisable and in the public interest to effect said revisions to Appendix A "Land Use" of the Code of Ordinances of the City of New Bern.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

<u>SECTION 1</u>. That Section 15-146. "Table of Permissible Uses" of Article X. "Permissible Uses" of Appendix A "Land Use" of the Code of Ordinances of the City of New Bern be and the same is hereby amended by removing the special use permit designation for use category 1.520 – Bed and breakfast and other temporary residences renting rooms for relatively short periods of time, in the R-6, R-8 and R-10 zones.

SECTION 2. This ordinance shall be effective from and after the date of its adoption. ADOPTED THIS 22<sup>nd</sup> DAY OF OCTOBER, 2019.

DANA E. OUTLAW, MAYOR

BRENDA E. BLANCO, CITY CLERK

### City of New Bern Planning and Zoning Board October 1, 2019 – 5:30 P.M. City Hall, Second Floor Courtroom **300 Pollock Street**

1	
2	Members Present: Chair Don Black, Anne Schout, Sonny Aluzza, Raymond Layton, Pat
3	Dougherty, Haron Beatty
4	
5	Members Absent: Margie Dunn, Marshall Ballard
6	
7	Ex-Officio Members Present:
8	
9	Staff Present: Jeff Ruggieri, Executive Director of Development Services; Nadia Abdul-hadi,
10	Planner II;
10	
	Others Present:
12	oulers present:
13	1 WELCOME AND DOLL CALL DU DON DE A
14	1. WELCOME AND ROLL CALL BY DON BLACK, BOARD CHAIR
15	Oh in Dan Dhala antha dha martina té antes et 5-20 m na Fili nalaand dhat manakan af dha mahlin
16	Chair Don Black called the meeting to order at 5:30 p.m. He relayed that members of the public
17	speaking on agenda items during the meeting are held to a four (4) minute limit.
18	
19	
20	2. <u>NEW BUSINESS</u>
21	
22	A. Consideration of a request from Tysinger Promotions, Inc., to rezone 0.17+/- acres from
23	C-4 Neighborhood Business District to C-3 Commercial District. The property is further
24	identified as Graven County Parcel Identification Number 8-043-007.
25	
26	Staff Nadia Abdul-Hadi introduced this item, relaying the physical address as 2403 Trent Road.
27	The parcel is currently a developed, 1.3 acre lot housing the Fabulous Finds Upholstery Business.
28	Ms. Abdul-Hadi relayed the existing C-4 zoning language, as well as the proposed C-3 zoning
29	language. Examples of uses allowed in the proposed C-3 zoning district include residential single
30	family, multifamily and town homes, hotels, retail, banks, restaurants, and hospitals.
31	
32	Current zoning around the parcel includes C-3, C-4 and Mixed R-8/R-10 zoning. Utilities are
33	provided by the City of New Bern. The 2010 CAMA Land Use designation classifies this area as
34	"Developed". Trent Road is classified as a major thoroughfare and is heavily trafficked. Road
35	capacity is up to 11,000 vehicles per day. Traffic counts in 2015 were 8,500 vehicles per day.
36	Based on future projections, traffic counts by the outlook year of 2040 are estimated at 9,300.
37	
38	Based on the Regional Land Use Plan regarding the environment of the parcel, there are no known
39	environmental hazards and the property is suitable for development.
40	
41	Staff recommends approval of the requested rezoning for the following reasons:

42 43	• C-3 zoning is consistent with the character of the adjacent land uses and zoning classifications
44	• The proposed rezoning is in the interest of the public
45	• The proposed rezoning is consistent with the CAMA Land Use Plan
46 47	• The proposed rezoning is consistent with the Long Range Transportation Plan
48	Chair Black opened the item up for board discussion. There were no additional comments or
49	questions from the board.
50	
51	Chair Black opened the item up for public discussion. There were no additional comments from
52	the public.
53	χ.,
54	Raymond Layton made a motion to approve the rezoning request as presented, which was
55	seconded by Pat Dougherty. The motion passed unanimously.
56	
57	*
58	Before moving on to the next item, Development Services Director Jeff Ruggieri requested the
59	board consider switching items B and C on the agenda to accommodate speakers that were arriving
60	late to the meeting.
61	· · · · · · · · · · · · · · · · · · ·
62	He requested the board make a motion to consider presenting item C before item B.
63	
64	Anne Schout made a motion to consider item C next, which was seconded by Haron Beatty.
65	The motion passed unanimously.
66	
67	
68	C. Consideration of a request from the City of New Bern Board of Aldermen to amend Part
69	III. "Board of Adjustment" of Article III. "Administrative Mechanisms" of Appendix A –
70	"Land Use" of the Code of Ordinances of the City of New Bern to (a) decrease the number
71	of regular members from ten (10) to seven (7), and the number of alternate members from
72	three (3) to two (2); and (b) decrease the quorum requirement from eight (8) members to
73	five (5) members.
74	
75	Staff Jeff Ruggieri introduced this item, relaying the request comes on behalf of the City of New
76	Bern Board of Aldermen, amending the number of Board of Adjustment members, alternate
77	members, and adjusting the number of members needed for a quorum. Mr. Ruggieri presented
78	sections of the code including Section 15-31 Appointment and terms of board of adjustment and
79	Section 15-34. – Quorum.
80	x x
81	Mr. Ruggieri advised that surveys of neighboring cities, some larger than New Bern, determined
82	the New Bern numbers to be very high. This adjustment is being presented for consideration to
83	be in line with other cities of commensurate population, or greater, in the state of North Carolina.
84	This change would also help ensure achieving a quorum during meetings.
85	
86 87	Chair Black opened the item up for board discussion. There were no additional comments or questions from the board.

- Chair Black opened the item up for public discussion. There were no additional comments fromthe public.
- 90

### Pat Dougherty made a motion to approve the adoption to the Board of Alderman, to make changes to the rules as described in item C, which was seconded by Haron Beatty. The motion passed unanimously.

- 94
- 95 C. Consideration of a request from the City of New Bern Board of Aldermen to amend Section
  96 15-146 "Table of Permissible Uses" of the Code of Ordinances of the City of New Bern to
  97 remove the special use permit designation for use category 1.520 Bed and Breakfast in
  98 the R-6, R-8 and R-10 Zones.
- 99

Staff Jeff Ruggieri introduced this item, clarifying that this request is to amend the use table to allow a Bed and Breakfast by special use permit in applicable residential zones, only within locally designated Historic Districts, including downtown New Bern and Riverside. The Table of Permissible Uses was provided to board members, and the use category 1.520 language was discussed.

105

106 Currently within the Table of Permissible Uses, Bed and Breakfasts can be requested by special 107 use permits in the R-6, R-8 and R-10 zones. The Board of Aldermen are requesting this be 108 removed, disallowing Bed and Breakfasts within residential zones throughout the city. A map of 109 affected areas was provided, outlining the historic districts of Riverside and downtown New Bern, 110 as well as depicting zones R-6, R-8 and R-10.

- 111
- 112 Chair Black opened the item up for board discussion.113

Board member Sonny Aluzzo requested clarification that this amendment would eliminate Bed and Breakfasts in the affected areas, previously depicted on a map. Mr. Ruggieri confirmed.

- 117 Raymond Layton clarified that zoning districts which would support a Bed and Breakfast are 118 commercial districts (C-1, C-2, C-3, C-4, C-5). Mr. Ruggieri confirmed.
- 119

Pat Dougherty confirmed there is one pending application for a new Bed and Breakfast, that does fall within the historic downtown district. Mr. Ruggieri confirmed, and advised the applicant will have to go before the Historic Preservation Commission as well as the Board of Adjustment with their application request. Mr. Dougherty questioned if there were requirements for parking as well as number of rooms, which Mr. Ruggieri confirmed.

125

126 Chair Black opened the item up for public discussion, reminding speakers they have a maximum127 of four (4) minutes to speak.

- 128
- 129 IN SUPPORT OF AMENDMENT
- Sherry Jones, 507 Metcalf St.
- Carolina Orman, 512 Metcalf St.
- Andrew 505 Metcalf St.
- Dave O'Connell 522 Johnson St.

134	<ul> <li>Joseph Klotz – 218 Pollock St.</li> </ul>
135	• Duncan Harkan – 519 Johnson St.
136	• Duncan Harkan – reading a letter from Tracy F. – 620 New St.
137	• James Howell – 517 New St.
138	• Zachary Orman – 512 Metcalf St., reading letter from neighbor George Bray
139	• Dave O'Connoll – reading a letter from Lorelei Chantowski – 511Metcalf St.
140	• Betty Clark – 505 E. Front St. – reading a letter from John and Beth Ann Jacobson – 508
141	Metcalf St.
142	<ul> <li>Nancy Hollows – 624-628 Hancock St. business owner</li> </ul>
143	
144	NOT IN SUPPORT OF AMENDMENT
145	• Lori Ann Prill – 212 New St. owner – consider changing definition of B&B
146	• Paige Mills – 413 Metcalf St.
147	• Marty – 317 E. Front St.
148	• Gregory Rusch – 501 Metcalf St.
149	<ul> <li>Mark Atkinson – 501 New St.</li> </ul>
150	• Rick Prill – 212 New St.
151	• Lois Ann Atkinson – 501 New St.
152	• Tamara Andrews – 316 Avenue C
153	
154	Chair Black returned the discussion to the board. Mr. Ruggieri relayed the process required for
155	those wish to have a Bed and Breakfast. This process requires the owners to attend the Site Plan
156	Review meeting which is an in-depth review with multiple departments and professional staff

Review meeting, which is an in-depth review with multiple departments and professional staff 156 157 across the City of New Bern (including Public Works, Utilities, Development Services, NCDOT representatives). Applicants are then provided time to adjust their plans as determined during the 158 Site Plan Review meeting. Once applicants address and rectify all issues, they would then make 159 160 an application to the Board of Adjustments for a special use permit for a Bed and Breakfast. Chair Black confirmed that any external changes to a structure in this historic district would require the 161 applicant to appear before the Historic Preservation Commission for approval of proposed 162 changes. Mr. Ruggieri confirmed, relaying that major external changes would require an 163 164 appearance **bef**ore the HPC **board**. Minor changes would be determined in house, with the City's HPC Administrator. Mr. Ruggieri further clarified that if HPC approval is required, the applicant 165 166 would obtain that approval prior to going before the Board of Adjustment.

167

168 Two members of the board would like additional information from the requesting Board of Alderman member, as to why they feel this amendment is needed, and when the existing language 169 was implemented. Mr. Ruggieri advised staff went as far back as 1994, and the existing language 170 existed.

- 171
- 172

Chair Black voiced concerns about the potential negative impact this adoption could have on the 173 174 community, based upon public comment from Ms. Andrews, who was able to rehabilitate her home

on Avenue C, utilizing income she generated from renting rooms to visitors, some of whom later 175

176 bought homes in New Bern based on their time in her home. Mr. Aluzzo agreed, and noted this is

177 one reason he would like additional information on why the Alderman is requesting this change.

Mr. Beatty agreed, and felt it would be a disservice to the community to make a decision on this 178

request during this meeting. Ms. Schout agreed as well, noting she did not feel they had been 179 180 given enough time to process and investigate the request before them.

181

182 Mr. Aluzzo suggested that members of the Planning and Zoning Board be given the opportunity 183 to speak with members of the Board of Alderman to answer their questions and address their concerns before the next scheduled board meeting. Mr. Ruggieri advised this may be potentially 184 difficulty but would try to coordinate. 185

186

187 Chair Black requested additional information regarding City attorney comments and questionable definitions. Mr. Ruggieri provided a review of the role of the Planning Board and noted therefore 188 is well within its right to request additional information from the Board of Aldermen. He noted 189 this could be made in their motion. 190

191

192 Mr. Layton feels a motion could be made during this meeting based on the fact that the 193 amendments would only affect a very small portion of the city, and therefore feels the impacts would be minimal. He questioned what would happen to current Bed and Breakfast owners within 194 the proposed overlay. Mr. Ruggieri advised essentially, they would be grandfathered' in. The 195 owners' special use permit would provide the ability to continue doing business in compliance, for 196 as long as they chose to operate. 197

- 198
- Zoning violations were discussed that pertain to the issue of homes and renters or multiple 199 200 dwellers.
- 201

202 The definition of Bed and Breakfast was discussed, noting the current definition is outdated and 203 doesn't accurately reflect what the use is. 204

Raymond Layton made a motion recommending approval of the changes to this ordinance, 205 to the Board of Alderman. There was no second. 206

Haron Beatty made a motion to deny approval of the changes to this ordinance, which was 208 Members in favor of this motion were Mr. Beatty, Mr. 209 seconded by Pat Dougherty. 210 Dougherty and Ms. Schout. Members against this motion were Raymond Layton. Members 211 who abstained were Sonny Aluzzo.

212

207

### 3. BOARD COMMENTS

32

213 214

215 The board discussed rules regarding electronic communication during scheduled meetings when quorums are needed. Chair Black would appreciate assistance from City staff to create language 216 for the Planning and Zoning Board to somewhat mirror that ability as laid out for the Board of 217 218 Aldermen, for members that may not be able to physically attend a meeting but could join electronically. 219

220

221 Mr. Ruggieri clarified the request of the Planning and Zoning Board is to create their own policies and procedures, similarly to what the Board of Aldermen did in 2017. One of the items in these 222

- procedures includes board members abilities to participate in meetings via telephone. Mr. Ruggieri 223
- noted he would work on this language and would present during their next scheduled meeting. 224

225	Ms. Schout relayed concern about addressing short-term rentals, and requested a sub-committee			
226	be formed to study these issues, creating recommendations that be considered moving forward			
227	Chair Black voiced concerns about staffing shortages that might provide hardships.			
228 229	Anne Schout made a motion where no more than five (5) members of the Planning an			
230	Zoning Board be formed as a sub-committee to research short-term rentals with the inter			
231	of gathering information that will be helpful in future decision making, which was seconded			
232	by Pat Dougherty. The motion passed unanimously.			
233				
234				
235	4. ADJOURN			
236				
237	Sonny Aluzzo made a motion to adjourn, which was seconded by Raymond Layton. Th			
238	motion passed unanimously.			
239				
240				
241				
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243				
244				
245	Date Approved:			
246	Don Bla <b>ck</b> , Chair			
247 248	Attest:			
249	Attest:, Recording Secretary			
213				
	and the second se			



Agenda Item Title: Consider Adopting a Resolution to Request Amendment to Land Use Ordinance Regarding C3 Zones (vaping and tobacco shops)

Ward # if applicable: N/A
Person Submitting Item: Jeff Ruggieri, Director of Development Services
<b>Date of Public Hearing:</b> N/A

Explanation of Item:	Interest has been expressed to add the definition of Tobacco and Vape Shop to the Code of Ordinances and "Table of Permissible Uses" to allow for this land use in the C-3/C-3H Commercial Districts. This ordinance will confirm the Board's desire to move forward in amending the land use ordinance in this capacity.
Actions Needed by Board:	Consider adopting a resolution
Backup Attached:	Memo, Resolution

Is item time sensitive? □Yes ⊠No	
Will there be advocates/opponents at the meeting? $\Box$ Yes $\Box$ No	

Cost of Agenda Item:
If this requires an expenditure, has it been budgeted and are funds available
and certified by the Finance Director? $\Box$ Yes $\Box$ No



### MEMORANDUM

**TO:** Mayor Dana Outlaw, City of New Bern Board of Aldermen

**FROM:** Jeff Ruggieri, Director Development Services

**DATE:** 10/10/19

**SUBJECT:** Consider Adopting a Resolution to Request Amendment to Land Use Ordinance Regarding C3 Zones (vaping and tobacco shops)

At the October 8, 2019 regular meeting, the Governing Board expressed interest in specifying Tobacco and Vape Shops in the Land Use Ordinance. Currently, the definition does not exist in the Code of Ordinances. Pursuant to Section 15-397 (a), the request is to amend Appendix A – "Land Use" Code of Ordinances of the City of New Bern to: (1) add a definition to Section 15-15 "Basic definitions and interpretations." to include Tobacco and Vape Shops; (2) to add Use 2.240 Tobacco and Vape Shops to Section 15-146 "Table of Permissible Uses"; and (3) to provide that Use 2.240 Tobacco and Vape Shops be allowed in C-3/C-3H Commercial Districts as a permissible use. The proposed Tobacco and Vape Shops use is consistent with the type of commercial uses already permitted within the C-3 zoning district. The request will be forwarded to the planning and zoning board for its review and recommendations.

Please contact Jeff Ruggieri at 252.639.7587 should you have questions or need additional information.

#### **RESOLUTION TO REQUEST AMENDMENT OF LAND USE ORDINANCE**

THAT WHEREAS, the Board of Alderman of the City of New Bern deems it advisable and in the public interest to consider amending Appendix A – "Land Use" of the Code of Ordinances of the City of New Bern to: (1) add a definition to Section 15-15 "Basic definitions and interpretations." to include Tobacco and Vape Shops; (2) to add Use 2.240 Tobacco and Vape Shops to Section 15-146 "Table of Permissible Uses"; and (3) to provide that Use 2.240 Tobacco and Vape Shops be allowed in C-3/C-3H Commercial Districts as a permisable use; and

WHEREAS, pursuant to Section 15-397(a) of the Code of Ordinance of the City of New Bern, the Board of Aldermen desires to request that the planning staff review the aforementioned request and forward it to the planning and zoning board for its review and recommendations.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

That pursuant to Section 15-397(a) of the Code of Ordinance of the City of New Bern, the Board of Aldermen hereby requests that the planning staff review the Board's request to amend Appendix A – "Land Use" of the Code of Ordinances of the City of New Bern to: (1) add a definition to Section 15-15 "Basic definitions and interpretations." to include Tobacco and Vape Shops; (2) to add Use 2.240 Tobacco and Vape Shops to Section 15-146 "Table of Permissible Uses"; and (3) to provide that Use 2.240 Tobacco and Vape Shops be allowed in C-3/C-3H Commercial Districts as a permisable use, and to forward such request to the planning and zoning board for its review and recommendations.

ADOPTED THIS 22<sup>nd</sup> DAY OF OCTOBER, 2019.

#### DANA E. OUTLAW, MAYOR

BRENDA E. BLANCO, CITY CLERK



### **Agenda Item Title:**

Consider adopting an Ordinance Amending Appendix A "Land Use" of the Code of Ordinances of the City of New Bern.

Ward # if applicable: N/A
Person Submitting Item: Jeff Ruggieri, Director of Development Services
Date of Public Hearing: N/A

Explanation of Item:	An amendment of the Land Use Ordinance is requested for Part III "Board of Adjustment" of Article III "Administrative Mechanisms" of Appendix A – "Land Use" of the Code of Ordinances of the City of New Bern. As previously discussed this Board has had difficulty in holding meetings due to a lack of a quorum.
Actions Needed by Board:	Consider adopting an Ordinance Amending Appendix A "Land Use" of the Code of Ordinances of the City of New Bern
Backup Attached:	Memo, Ordinance, P&Z draft minutes

Is item time sensitive? □Yes ⊠No	-
Will there be advocates/opponents at the meeting? $\Box$ Yes $\boxtimes$ No	

Cost of Agenda Item: N/A If this requires an expenditure, has it been budgeted and are funds available and certified by the Finance Director? Ves No



# MEMORANDUM

TO: Mayor Dana Outlaw, City of New Bern Board of Aldermen

**FROM:** Jeff Ruggieri, Director Development Services

**DATE:** 10/11/19

**SUBJECT:** Consider Adopting an Ordinance Amending Appendix A "Land Use" of the Code of Ordinances of the City of New Bern

As requested at the August 27, 2019 Board of Alderman meeting, the City Attorney discussed options related to the Board of Adjustment. This Board has had difficulty in holding meetings due to a lack of quorum. At the September 10, 2019 Board of Alderman meeting a Resolution was approved to request that the planning staff review the Board's request to amend Part III "Board of Adjustment" of Article III "Administrative Mechanisms" of Appendix A – "Land Use" of the Code of Ordinances of the City of New Bern to: (a) decrease the number of regular members from then (10) to seven (7), and the number of alternate members from three (3) to two (2); and (b) decrease the quorum from eight (8) members to five (5) members. At the October 1, 2019 Planning and Zoning Board meeting the recommendation by the Board of Alderman and City's Planning staff was presented and unanimously approved.

Please contact Jeff Ruggieri at 252.639.7587 should you have questions or need additional information.

# AN ORDINANCE TO AMEND APPENDIX A "LAND USE" OF THE CODE OF ORDINANCES OF THE CITY OF NEW BERN

THAT WHEREAS, the Planning and Zoning Board of the City of New Bern unanimously recommends that certain amendments be made to Appendix A "Land Use" of the Code of Ordinances of the City of New Bern; and

WHEREAS, the City's planning staff further recommends approval of said proposed amendments; and

WHEREAS, the Board of Alderman of the City of New Bern deems it advisable and in the public interest to effect said revisions to Appendix A "Land Use" of the Code of Ordinances of the City of New Bern.

# NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

<u>SECTION 1.</u> That Section 15-31. "Appointment and terms of board of adjustment." of Part III. "Board of Adjustment" of Article III. "Administrative Mechanisms" of Appendix A "Land Use" of the Code of Ordinances of the City of New Bern be and the same is hereby amended by deleting subsection (a) in its entirety and inserting in its stead the following:

# "Section 15-31. Appointment and terms of board of adjustment.

There shall be a board of adjustment consisting of seven (7) regular members and (a) two (2) alternate members. Six (6) regular members, appointed by the board of aldermen, shall reside within the city. One (1) regular member, appointed by the county board of commissioners. shall reside within the city's extraterritorial planning area. If the county board of commissioners fails to make an appointment within ninety (90) days after receiving a notification from the city requesting that an appointment be made, the board of aldermen may make the appointment. Upon expansion or reduction of the city's extraterritorial planning area, the board of aldermen shall review the impact of such change on the extraterritorial membership of the board of adjustment and, if necessary, make appropriate adjustments in the number of extraterritorial members. Members may be removed by the appointing authority at any time for failure to attend three consecutive meetings without excuse or for missing more than 30 percent of the meetings within any 12-month period, or for other good cause related to performance of duties. Because the board of adjustment is a "quasi-judicial" administrative body that operates between the enforcement officers and the courts, members shall have the ability to read and understand complex land ownership and development issues. Members should have backgrounds related to land ownership and development issues (i.e., law, real estate, banking, building, environmental groups, governmental agencies, community organizations, etc.).

<u>SECTION 2</u>. That Section 15-34. "Quorum." of Part III. "Board of Adjustment" of Article III. "Administrative Mechanisms" of Appendix A "Land Use" of the Code of Ordinances

. . . . "

of the City of New Bern be and the same is hereby amended by deleting Section 15-34 in its entirety and inserting in its stead the following:

# "Section 15-31. Quorum.

A quorum for the board of adjustment shall consist of five (5) members. A quorum is necessary for the board to take official action."

<u>SECTION 3</u>. Section 1 of this ordinance shall be effective July 1, 2020 such that members who are currently serving on the Board of Adjustment shall serve for their remaining terms with no new members to be appointed until July 1, 2020, unless such appointments are necessary to maintain seven (7) regular members and two (2) alternate members.

SECTION 4. Section 2 of this ordinance shall be effective from and after the date of its adoption.

ADOPTED THIS 22<sup>nd</sup> DAY OF OCTOBER, 2019.

# DANA E. OUTLAW, MAYOR

BRENDA E. BLANCO, CITY CLERK

# City of New Bern Planning and Zoning Board October 1, 2019 – 5:30 P.M. City Hall, Second Floor Courtroom 300 Pollock Street

1	
1 2 2	Members Present: Chair Don Black, Anne Schout, Sonny Aluzza, Raymond Layton, Pat
3 4	Dougherty, Haron Beatty
5	Members Absent: Margie Dunn, Marshall Ballard
6	
7	Ex-Officio Members Present:
8	<i>9</i> ,3
9	Staff Present: Jeff Ruggieri, Executive Director of Development Services; Nadia Abdul-hadi,
10	Planner II;
11	
12	Others Present:
13	4 WELCOME AND DOLL CALL DU DON DE A CEL DO ADD CHAT
14	1. WELCOME AND ROLL CALL BY DON BLACK, BOARD CHAIR
15 16	Chair Don Black called the meeting to order at 5:30 p.m. He relayed that members of the public
10 17	speaking on agenda items during the meeting are held to a four (4) minute limit.
18	speaking on agenda terns during the meeting are need to a four (4) minute mint.
19	
20	2. <u>NEW BUSINESS</u>
21	
22	A. Consideration of a request from Tysinger Promotions, Inc., to rezone 0.17+/- acres from
23	C-4 Neighborhood Business District to C-3 Commercial District. The property is further
24	identified as Craven County Parcel Identification Number 8-043-007.
25	at a final second se
26	Staff Nadia Abdul-Hadi introduced this item, relaying the physical address as 2403 Trent Road.
27	The parcel is currently a developed, 1.3 acre lot housing the Fabulous Finds Upholstery Business.
28	Ms. Abdul-Hadi relayed the existing C-4 zoning language, as well as the proposed C-3 zoning
29 20	language. Examples of uses allowed in the proposed C-3 zoning district include residential single family, multifamily and town homes, hotels, retail, banks, restaurants, and hospitals.
30 31	family, multifamily and town nomes, noters, retain, banks, restaurants, and nospitals.
32	Current zoning around the parcel includes C-3, C-4 and Mixed R-8/R-10 zoning. Utilities are
33	provided by the City of New Bern. The 2010 CAMA Land Use designation classifies this area as
34	"Developed". Trent Road is classified as a major thoroughfare and is heavily trafficked. Road
35	capacity is up to 11,000 vehicles per day. Traffic counts in 2015 were 8,500 vehicles per day.
36	Based on future projections, traffic counts by the outlook year of 2040 are estimated at 9,300.
37	
38	Based on the Regional Land Use Plan regarding the environment of the parcel, there are no known
39	environmental hazards and the property is suitable for development.
40	
41	Staff recommends approval of the requested rezoning for the following reasons:

42	• C-3 zoning is consistent with the character of the adjacent land uses and zoning classifications
43	
44	• The proposed rezoning is in the interest of the public
45	• The proposed rezoning is consistent with the CAMA Land Use Plan
46 47	• The proposed rezoning is consistent with the Long Range Transportation Plan
48	Chair Black opened the item up for board discussion. There were no additional comments or
49	questions from the board.
50	
51	Chair Black opened the item up for public discussion. There were no additional comments from
52	the public.
53	
54	Raymond Layton made a motion to approve the rezoning request as presented, which was
55	seconded by Pat Dougherty. The motion passed unanimously.
56	
57	
58	Before moving on to the next item, Development Services Director Jeff Ruggieri requested the
59	board consider switching items B and C on the agenda to accommodate speakers that were arriving
60	late to the meeting.
61	
62	He requested the board make a motion to consider presenting item C before item B.
63	
64	Anne Schout made a motion to consider item C next, which was seconded by Haron Beatty.
65	The motion passed unanimously.
65 66	
66	The motion passed unanimously. C. Consideration of a request from the City of New Bern Board of Aldermen to amend Part
66 67	<ul> <li>The motion passed unanimously.</li> <li>C. Consideration of a request from the City of New Bern Board of Aldermen to amend Part III. "Board of Adjustment" of Article III. "Administrative Mechanisms" of Appendix A –</li> </ul>
66 67 68	<ul> <li>The motion passed unanimously.</li> <li>C. Consideration of a request from the City of New Bern Board of Aldermen to amend Part III. "Board of Adjustment" of Article III. "Administrative Mechanisms" of Appendix A – "Land Use" of the Code of Ordinances of the City of New Bern to (a) decrease the number</li> </ul>
66 67 68 69	<ul> <li>The motion passed unanimously.</li> <li>C. Consideration of a request from the City of New Bern Board of Aldermen to amend Part III. "Board of Adjustment" of Article III. "Administrative Mechanisms" of Appendix A – "Land Use" of the Code of Ordinances of the City of New Bern to (a) decrease the number of regular members from ten (10) to seven (7), and the number of alternate members from</li> </ul>
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66 67 68 69 70 71	<ul> <li>The motion passed unanimously.</li> <li>C. Consideration of a request from the City of New Bern Board of Aldermen to amend Part III. "Board of Adjustment" of Article III. "Administrative Mechanisms" of Appendix A – "Land Use" of the Code of Ordinances of the City of New Bern to (a) decrease the number of regular members from ten (10) to seven (7), and the number of alternate members from</li> </ul>
66 67 68 69 70 71 72	<ul> <li>The motion passed unanimously.</li> <li>C. Consideration of a request from the City of New Bern Board of Aldermen to amend Part III. "Board of Adjustment" of Article III. "Administrative Mechanisms" of Appendix A – "Land Use" of the Code of Ordinances of the City of New Bern to (a) decrease the number of regular members from ten (10) to seven (7), and the number of alternate members from three (3) to two (2); and (b) decrease the quorum requirement from eight (8) members to</li> </ul>
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66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84	<ul> <li>The motion passed unanimously.</li> <li>C. Consideration of a request from the City of New Bern Board of Aldermen to amend Part III. "Board of Adjustment" of Article III. "Administrative Mechanisms" of Appendix A – "Land Use" of the Code of Ordinances of the City of New Bern to (a) decrease the number of regular members from ten (10) to seven (7), and the number of alternate members from three (3) to two (2); and (b) decrease the quorum requirement from eight (8) members to five (5) members.</li> <li>Staff Jeff Ruggieri introduced this item, relaying the request comes on behalf of the City of New Bern Board of Aldermen, amending the number of Board of Adjustment members, alternate members, and adjusting the number of members needed for a quorum. Mr. Ruggieri presented sections of the code including Section 15-31. – Appointment and terms of board of adjustment and Section 15-34. – Quorum.</li> <li>Mr. Ruggieri advised that surveys of neighboring cities, some larger than New Bern, determined the New Bern numbers to be very high. This adjustment is being presented for consideration to</li> </ul>
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66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84	<ul> <li>The motion passed unanimously.</li> <li>C. Consideration of a request from the City of New Bern Board of Aldermen to amend Part III. "Board of Adjustment" of Article III. "Administrative Mechanisms" of Appendix A – "Land Use" of the Code of Ordinances of the City of New Bern to (a) decrease the number of regular members from ten (10) to seven (7), and the number of alternate members from three (3) to two (2); and (b) decrease the quorum requirement from eight (8) members to five (5) members.</li> <li>Staff Jeff Ruggieri introduced this item, relaying the request comes on behalf of the City of New Bern Board of Aldermen, amending the number of Board of Adjustment members, alternate members, and adjusting the number of members needed for a quorum. Mr. Ruggieri presented sections of the code including Section 15-31. – Appointment and terms of board of adjustment and Section 15-34. – Quorum.</li> <li>Mr. Ruggieri advised that surveys of neighboring cities, some larger than New Bern, determined the New Bern numbers to be very high. This adjustment is being presented for consideration to be in line with other cities of commensurate population, or greater, in the state of North Carolina.</li> </ul>

- Chair Black opened the item up for public discussion. There were no additional comments fromthe public.
- 90

Pat Dougherty made a motion to approve the adoption to the Board of Alderman, to make changes to the rules as described in item C, which was seconded by Haron Beatty. The motion passed unanimously.

94 95

96

97

98 99

- C. Consideration of a request from the City of New Bern Board of Aldermen to amend Section 15-146 "Table of Permissible Uses" of the Code of Ordinances of the City of New Bern to remove the special use permit designation for use category 1.520 Bed and Breakfast in the R-6, R-8 and R-10 Zones.
- 100 Staff Jeff Ruggieri introduced this item, clarifying that this request is to amend the use table to 101 allow a Bed and Breakfast by special use permit in applicable residential zones, only within locally 102 designated Historic Districts, including downtown New Bern and Riverside. The Table of 103 Permissible Uses was provided to board members, and the use category 1.520 language was 104 discussed.
- 105

106 Currently within the Table of Permissible Uses, Bed and Breakfasts can be requested by special 107 use permits in the R-6, R-8 and R-10 zones. The Board of Aldermen are requesting this be 108 removed, disallowing Bed and Breakfasts within residential zones throughout the city. A map of 109 affected areas was provided, outlining the historic districts of Riverside and downtown New Bern, 110 as well as depicting zones R-6, R-8 and R-10.

- 111
- 112 Chair Black opened the item up for board discussion.
- 113

Board member Sonny Aluzzo requested clarification that this amendment would eliminate Bed
 and Breakfasts in the affected areas, previously depicted on a map. Mr. Ruggieri confirmed.

17

116
117 Raymond Layton clarified that zoning districts which would support a Bed and Breakfast are
118 commercial districts (C-1, C-2, C-3, C-4, C-5). Mr. Ruggieri confirmed.

119

Pat Dougherty confirmed there is one pending application for a new Bed and Breakfast, that does fall within the historic downtown district. Mr. Ruggieri confirmed, and advised the applicant will have to go before the Historic Preservation Commission as well as the Board of Adjustment with their application request. Mr. Dougherty questioned if there were requirements for parking as well as number of rooms, which Mr. Ruggieri confirmed.

125

126 Chair Black opened the item up for public discussion, reminding speakers they have a maximum127 of four (4) minutes to speak.

- 128
- 129
- **IN SUPPORT OF AMENDMENT**
- Sherry Jones, 507 Metcalf St.
- Carolina Orman, 512 Metcalf St.
- Andrew 505 Metcalf St.
- Dave O'Connell 522 Johnson St.

134	<ul> <li>Joseph Klotz – 218 Pollock St.</li> </ul>	
135	• Duncan Harkan – 519 Johnson St.	
136	• Duncan Harkan – reading a letter from Tracy F. – 620 New St.	
137	• James Howell – 517 New St.	
138	• Zachary Orman – 512 Metcalf St., reading letter from neighbor George Bray	
139	• Dave O'Connoll – reading a letter from Lorelei Chantowski – 511Metcalf St.	
140	• Betty Clark – 505 E. Front St. – reading a letter from John and Beth Ann Jacobson – 503	8
141	Metcalf St.	
142	<ul> <li>Nancy Hollows – 624-628 Hancock St. business owner</li> </ul>	
143		
144	NOT IN SUPPORT OF AMENDMENT	
145	<ul> <li>Lori Ann Prill – 212 New St. owner – consider changing definition of B&amp;B</li> </ul>	
146	• Paige Mills – 413 Metcalf St.	
147	• Marty – 317 E. Front St.	
148	• Gregory Rusch – 501 Metcalf St.	
149	• Mark Atkinson – 501 New St.	
150	• Rick Prill – 212 New St.	
151	• Lois Ann Atkinson – 501 New St.	
152	• Tamara Andrews – 316 Avenue C	
153		
154	Chair Black returned the discussion to the board. Mr. Ruggieri relayed the process required for	
155	those wish to have a Bed and Breakfast. This process requires the owners to attend the Site Pla	n

those wish to have a Bed and Breakfast. This process requires the owners to attend the Site Plan 155 Review meeting, which is an in-depth review with multiple departments and professional staff 156 across the City of New Bern (including Public Works, Utilities, Development Services, NCDOT 157 representatives). Applicants are then provided time to adjust their plans as determined during the 158 Site Plan Review meeting. Once applicants address and rectify all issues, they would then make 159 an application to the Board of Adjustments for a special use permit for a Bed and Breakfast. Chair 160 161 Black confirmed that any external changes to a structure in this historic district would require the applicant to appear before the Historic Preservation Commission for approval of proposed 162 changes. Mr. Ruggieri confirmed, relaying that major external changes would require an 163 appearance before the HPC board. Minor changes would be determined in house, with the City's 164 HPC Administrator. Mr. Ruggieri further clarified that if HPC approval is required, the applicant 165 would obtain that approval prior to going before the Board of Adjustment. 166

167

168 Two members of the **board would** like additional information from the requesting Board of 169 Alderman member, as to **why they** feel this amendment is needed, and when the existing language 170 was implemented. Mr. Ruggieri advised staff went as far back as 1994, and the existing language 171 existed.

171 ( 172

173 Chair Black voiced concerns about the potential negative impact this adoption could have on the 174 community, based upon public comment from Ms. Andrews, who was able to rehabilitate her home 175 on Avenue C, utilizing income she generated from renting rooms to visitors, some of whom later 176 bought homes in New Bern based on their time in her home. Mr. Aluzzo agreed, and noted this is

176 bought nomes in New Bern based on their time in her home. Mr. Aluzzo agreed, and noted this is 177 one reason he would like additional information on why the Alderman is requesting this change.

177 one reason he would like additional information on why the rinderman is requesting this entry is 178 Mr. Beatty agreed, and felt it would be a disservice to the community to make a decision on this request during this meeting. Ms. Schout agreed as well, noting she did not feel they had beengiven enough time to process and investigate the request before them.

181

Mr. Aluzzo suggested that members of the Planning and Zoning Board be given the opportunity to speak with members of the Board of Alderman to answer their questions and address their concerns before the next scheduled board meeting. Mr. Ruggieri advised this may be potentially difficulty but would try to coordinate.

186

187 Chair Black requested additional information regarding City attorney comments and questionable
188 definitions. Mr. Ruggieri provided a review of the role of the Planning Board and noted therefore
189 is well within its right to request additional information from the Board of Aldermen. He noted
190 this could be made in their motion.

191

Mr. Layton feels a motion could be made during this meeting based on the fact that the amendments would only affect a very small portion of the city, and therefore feels the impacts would be minimal. He questioned what would happen to current Bed and Breakfast owners within the proposed overlay. Mr. Ruggieri advised essentially, they would be grandfathered' in. The owners' special use permit would provide the ability to continue doing business in compliance, for as long as they chose to operate.

- 198
- 199 Zoning violations were discussed that pertain to the issue of homes and renters or multiple200 dwellers.
- 201

The definition of Bed and Breakfast was discussed, noting the current definition is outdated and
 doesn't accurately reflect what the use is.

204

Raymond Layton made a motion recommending approval of the changes to this ordinance,
 to the Board of Alderman. There was no second.

Haron Beatty made a motion to deny approval of the changes to this ordinance, which was
seconded by Pat Dougherty. Members in favor of this motion were Mr. Beatty, Mr.
Dougherty and Ms. Schout. Members against this motion were Raymond Layton. Members
who abstained were Sonny Aluzzo.

- 212
  - 3. BOARD COMMENTS
- 213 214

The board discussed rules **regar**ding electronic communication during scheduled meetings when quorums are needed. Chair Black would appreciate assistance from City staff to create language for the Planning and Zoning Board to somewhat mirror that ability as laid out for the Board of Aldermen, for members that may not be able to physically attend a meeting but could join electronically.

220

Mr. Ruggieri clarified the request of the Planning and Zoning Board is to create their own policies and procedures, similarly to what the Board of Aldermen did in 2017. One of the items in these

- 223 procedures includes board members abilities to participate in meetings via telephone. Mr. Ruggieri
- noted he would work on this language and would present during their next scheduled meeting.

225	Ms. Schout relayed concern about add	ressing short-term rentals, and requested a sub-committee		
226	be formed to study these issues, creating recommendations that be considered moving forward. Chair Black voiced concerns about staffing shortages that might provide hardships.			
227	Chair Black voiced concerns about star	ing snortages that hight provide hardships.		
228 229	Anne Schout made a motion where	no more than five (5) members of the Planning and		
230	Zoning Board be formed as a sub-co	ommittee to research short-term rentals with the intent		
231		helpful in future decision making, which was seconded		
232	by Pat Dougherty. The motion passe	d unanimously.		
233				
234				
235	4. <u>ADJOURN</u>			
236				
237		journ, which was seconded by Raymond Layton. The		
238	motion passed unanimously.			
239		* e		
240				
241 242				
242				
244				
245	Date Approved:	6		
246	2 ···· · · · · · · · · · · · · · · · ·	Don Black, Chair		
247				
248	Attest:, Recording Secretary			
249	, Recording Secretary			
	40			
	to the second			

# **AGENDA ITEM COVER SHEET**

## Agenda Item Title:

Adopt Resolution to Approving Sewer U	se Agreement with the Owners of 618 West Thurman Road.
Date of Meeting 10/22/2019	Ward # if applicable <u>N/A</u> If multiple, list:
Department Public Utilities	Person Submitting Item: Jordan Hughes
Call for Public Hearing No	Date of Public Hearing N/A

#### Explanation of Item:

The owners of 618 West Thurman Road are proposing to development a single family, residential home on the property, which is currently outside of the New Bern municipal limits. The proposed development will have a calculated average daily sewer demand of 480 gallons per day (GPD). To facilitate the proposed development, a standard sewer service connection can be provided to the property without the need for a main extension.

Per Section 74-74 of the City of New Bern Code of Ordinances, any proposed development located outside of the New Bern municipal limits requesting water and sewer capacity shall be required to enter into a written water and sewer use agreement with the City. The purpose of this agreement is to formally outline the roles and responsibilities of both, the City and the owner in establishing service for the proposed project.

### Actions Needed by Board:

Adopt Resolution to Approving Sewer Use Agreement with the Owners of 618 West Thurman Road.

### Is item time sensitive? Yes

### Will there be advocates/opponents at the meeting? <u>No</u>

#### Backup Attached:

Memo from Jordan Hughes, copy of the sewer use agreement and draft resolution for approving the agreement.

Cost of Agenda Item: n/a

If this item requires an expenditure, has it been budgeted and are funds available and certified by the Finance Director : <u>Select...</u>

### Additional notes:



# NORTH CAROLINA

Department of Public Utilities Water Resources 527 NC Highway 55 West, P.O. Box 1129 New Bern, NC 28563 (252) 639-7526

### MEMORANDUM

то:	Mayor and Board of Aldermen	. 1 -
FROM:	Jordan B. Hughes P.E., City Engineer	304
DATE:	October 10, 2019	

SUBJECT: Recommendation to Approve Sewer Use Agreement For 618 Thurman Road

### **Background Information:**

The owners of 618 Thurman Road are proposing to develop a single family, residential home on the subject property, which is currently outside of the New Bern municipal limits. The proposed development will have a calculated average daily sewer demand of 480 gallons per day (GPD). To facilitate the proposed development, a standard ewer service connection can be provided to the property without the need for a main extension.

Per Section 74-74 of the City of New Bern Code of Ordinances, any proposed development located outside of the New Bern municipal limits requesting water and sewer capacity shall be required to enter into a written water and sewer use agreement with the City. The purpose of this agreement is to formally outline the roles and responsibilities of both, the City and the owners in establishing service for the proposed project.

### **Recommendation:**

The sewer use agreement for this project has been prepared by City Attorney and executed by the owners. In order to allow the developer to proceed with the proposed construction, City Staff is recommending the Board of Aldermen approve the enclosed sewer use agreement.

Attached please find a copy of the sewer use agreement and a draft resolution for approving the agreement.

Please contact me if there are any questions or if additional information should be required.

# RESOLUTION

# BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

That the Agreement dated October 22, 2019 by and between the City of New Bern and Charles P. Riddick and spouse, Dana M. Riddick, a copy of which is attached hereto and incorporated herein by reference, be and the same is hereby approved, and the Mayor and the City Clerk are hereby authorized and directed to execute the same, in duplicate originals, for and on behalf of the City.

ADOPTED THIS 22<sup>ND</sup> DAY OF OCTOBER, 2019.

DANA E. OUTLAW, MAYOR

BRENDA E. BLANCO, CITY CLERK

# NORTH CAROLINA

#### **CRAVEN COUNTY**

#### AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 22<sup>nd</sup> day of October 2019, by and between the CITY OF NEW BERN, a North Carolina municipal corporation ("City"), and Charles P. Riddick and spouse, Dana M Riddick ("Owner").

# WITNESSETH:

THAT WHEREAS, Owner owns a tract or parcel of land located within Craven County, North Carolina, and more specifically described in Exhibit A attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Owner intends to use or develop the Property as a single-family residence requiring permitted sewerage treatment capacity of 480 gallons per day; and

WHEREAS, Owner desires to annex the Property into the City, and to connect to the City Sewer System so that the City might provide such services to the Property, subject to certain terms and conditions contained herein; and

WHEREAS, the City and Owner have reached an agreement with respect to said provision of such utility services to the Property and wish to reduce said agreement to writing.

NOW, THEREFORE, IT IS MUTUALLY AGREED by and between the City and Owner as follows:

# 1. <u>Definitions</u>

1.1. Certain terms having specific definitions are used in this Agreement, and these terms and definitions, unless the context clearly indicates to the contrary, are as set forth in this Section 1. The defined terms appearing in this Section are set forth in the Agreement in the exact capitalized form as they appear between the quotation marks. When the same term is used in this Agreement with the meaning as assigned herein, it shall appear in the identical capitalized form. Otherwise, the meaning shall be as used in the context of the sentence in which it appears and not necessarily that as defined herein.

1.1.1. "Agreement" – means this Agreement between Developer and the City.

1.1.2. "Owner" – means Charles P. Riddick and spouse, Dana M Riddick, citizens of Craven County, North Carolina.

1.1.3. "Force Majeure" - means any delay or default in performing hereunder if

such delay or default is caused by conditions beyond such party's control without its fault or negligence, including, but not limited to acts of god, government restrictions (including the denial or cancellation of any license or permit), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected, provided that, as a condition to the claim of non-liability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

1.1.4. "City" – means the City of New Bern, a municipal corporation duly established and existing pursuant to the laws of the State of North Carolina.

1.1.5. "Property" – means the real property owned by Owner located in the City of New Bern, Craven County, North Carolina, more specifically described on Exhibit A attached hereto and incorporated herein by reference.

1.1.6. "Property Sewer System" – means the unified system of pipes, conduits, lift stations, force mains, and appurtenances for collecting and transmitting sewage and other wastewater from residences, commercial establishments or any other buildings within the Property. It shall also include the rights-of-way, easements, and land parcels dedicated for the construction, operation, and maintenance of such system.

1.1.7. "City Sewer System" – means the unified system of pipes, conduits, lift stations, force mains, and appurtenances for collecting and transmitting sewage that are owned and maintained by the City of New Bern.

1.1.8. "Connection Location" – means the specific location and configuration as identified by the City, where the Owner shall cause for the Property Systems to be connected to the City Systems.

1.1.9. "NCDENR" – means the North Carolina Department of Environment and Natural Resources.

# 2. <u>City Obligations</u>

2.1. The City shall provide sewer service to the Property in an amount not to exceed 480 gallons per day (average monthly flow) of permitted sewer flow.

2.2. The City's obligation herein to provide sewer service to the Property is solely based upon permitted sewer flow, and not actual sewer flow. Additionally, the City's obligation

to provide sewer service to the Property does not constitute a transfer or sale of the City's sewer treatment capacity to Owner. Owner shall have no ownership interest in the City's sewer treatment capacity, other than Owner's contract rights established herein.

2.3. The City shall allow for the connection of the Property Sewer System to the City Sewer System at the Connection Locations as identified below:

2.3.1 The Connection Location for sewer shall be a standard service connection provided by the City along West Thurman Road.

2.4. The City shall have no obligation to pay for, fund, or finance any portion of the construction of the Property Sewer System.

2.5. The City represents and warrants that it shall reserve and guarantee sufficient sewer collection and treatment capacity to fulfill its obligations established herein pursuant to the terms and conditions contained herein, <u>SUBJECT ALWAYS</u> to a force majeure, and the rights of the State of North Carolina, or any agency or department thereof, to restrict or preclude the City's ability to comply with its obligations hereunder. In the event of a force majeure, or any limitation or moratorium imposed on the City by the State of North Carolina or any agency or department thereof that limits or precludes the City's ability to comply with its obligations hereunder, the City shall use reasonable efforts and proceed in good faith to cure its inability to comply with the terms of this Agreement as promptly as reasonably possible.

2.6. It is specifically understood and agreed between the Parties that every obligation assumed herein by the City is subject to the limitation "to the extent that it may legally do so."

# 3. **Owner Obligations**

3.1 Prior to performing any land disturbing activities on the Property, the Owner shall petition the Board of Alderman of the City of New for annexation of the Property. This action shall be performed by the Owner prior to obtaining a City of New Bern building permit and/or a City of New Bern sewer availability letter.

3.2. Owner understands and agrees that all sewer users within the Property will pay user rates, user system development fees, user connection fees, and any other applicable fees and charges established in the City Code as are established and fixed from time to time by the Board of Aldermen. Owner further understands and agrees that all sewer users within the Property will become City sewer customers subject to all of the rules and regulations applicable to City sewer customers as the same are established and fixed from time to time by the Board of Alderman of the City.

# 4. <u>Miscellaneous</u>

4.1. If any of the provisions of this Agreement shall be held by a court of competent jurisdiction to be unconstitutional or unenforceable, the decision of such court shall not affect or impair any of the remaining provisions of this Agreement, and the parties shall, to the extent they deem to be appropriate, take such actions as are necessary to correct any such unconstitutional or unenforceable provision. It is hereby declared to be the intent of the parties to this Agreement that this Agreement would have been approved and executed had such an unconstitutional or unenforceable provision been excluded therefrom.

4.2. This Agreement shall be enforceable by each party hereto by all remedies available at law or in equity, including but not limited to specific performance. Failure or delay to exercise any right, remedy or privilege hereunder shall not operate as a waiver of such right, remedy or privilege nor prevent subsequent enforcement thereof.

4.3. This Agreement shall be executed by the Parties hereto in duplicate originals, each of which, when executed, shall constitute one and the same Agreement and one of which shall be retained by each party.

4.4. This Agreement shall be governed in accordance with the laws of the State of North Carolina.

4.5. Each party agrees that from and after the date of execution hereof, each will, upon the request of the other, execute and deliver such other documents and instruments and take such other actions as may be reasonably required to carry out the purpose and intent of this Agreement.

4.6. This Agreement may not be modified or amended except by subsequent written agreement authorized and executed by each party.

4.7. This Agreement is solely for the benefit of the identified parties to the Agreement and is not intended to give any rights, claims, or benefits to third parties or to the public at large.

4.8. Owner may not assign this Agreement without the express written consent of the City.

IN TESTIMONY WHEREOF, the City has caused this instrument to be executed as its act and deed by the Mayor, and its corporate seal to be hereunto affixed, and attested by its City

Clerk, all by the authority of its Board of Aldermen; and Owner has executed or caused this document to be executed by them, all as of the day and year first above written.

# **CITY OF NEW BERN**

By:\_\_\_\_\_

MAYOR

ATTEST:

City Clerk

(CORPORATE SEAL)

**OWNER** CHARLES P. RIDDICK

Riddick DANA M. RIDDICK

I, \_\_\_\_\_\_, a notary public in and for said county and state, do hereby certify that on the \_\_\_\_\_\_day of \_\_\_\_\_\_, 20\_\_\_\_, before me personally appeared DANA E. OUTLAW with whom I am personally acquainted, who, being by me duly sworn, says that he is the Mayor and that BRENDA BLANCO is the City Clerk of the City of New Bern, the municipal corporation described in and which executed the foregoing instrument; that he knows the common seal of said municipal corporation; that the seal affixed to the foregoing instrument is said common seal; that the name of the municipal corporation was subscribed thereto by the said Mayor; that the said common seal was affixed, all by order of the Board of Aldermen of said municipal corporation; and that the said instrument is the act and deed of said municipal corporation.

WITNESS my hand and notarial seal, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.

NOTARY PUBLIC

My Commission Expires:

NORTH CAROLINA

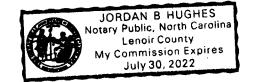
This is to certify that on the <u>11</u> day of <u>CCCSER</u>, 20<u>19</u>, before me personally appeared CHARLES P. RIDDICK and DANA M. RIDDICK with whom I am personally acquainted, who, being by me duly sworn, says:

WITNESS my hand and notarial seal, this <u>11</u> day of <u>067013en</u>, 20<u>19</u>.

NOTARY PUBLIC

My commission expires:

JULY 30, 2022



# EXHIBIT A

# 618 WEST THURMAN ROAD CRAVEN COUNTY PARCEL ID: 7-109-15001

All that certain tract or parcel of land lying and being situate in Number Seven (7) Township, Craven County, North Carolina, being more particularly described as follows:

Lot 3 (6.183 +/- acres) as depicted on a plat entitled "Survey and Division for the Estate of Sandra S. Buick," dated November 23, 2010 and prepared by James C. Simmons, Jr. PLS as recorded in Plat Cabinet H, Slide 181 F, in the Office of the Register of Deeds of Craven County, said survey incorporated herein by reference for a more accurate, detailed and precise description of the aforesaid property.

# **AGENDA ITEM COVER SHEET**



# Agenda Item Title:

Consider adopting resolution approving a revised lease agreement with SECU for ATM in parking lot located at 302 Craven Street.

Ward # if applicable: Ward 1
<b>Person Submitting Item:</b> Matt Montanye, Director of Public Works
<b>Date of Public Hearing:</b> N/A

Explanation of Item:	Consider adopting resolution approving a revised lease agreement with SECU for ATM in parking lot located at 302 Craven Street.
Actions Needed by Board:	Adopt attached resolution
Backup Attached:	Memo and Resolution

Is item time sensitive? ⊠Yes □No	
Will there be advocates/opponents at the meeting? $\Box$ Yes $oxtimes$ No	

Cost of Agenda Item:0.00If this requires an expenditure, has it been budgeted and are funds available<br/>and certified by the Finance Director?YesNoN/A

**Additional Notes:** 



Public Works Department P.O. Box 1129, 1004 S. Glenburnie Road New Bern, N.C. 28563-1129 Phone: (252) 639-7501 Fax: (252) 636-1848

October 9, 2019

Memo to: Mayor and Board of Aldermen

From: Matt Montanye, Director of Public Works

Re: Consider adopting resolution approving lease agreement with State Employee's Credit Union for ATM in parking lot located at 302 Craven Street.

# **Background Information:**

The State Employee's Credit Union, a North Carolina non-profit corporation requested the renewal of an existing lease agreement, and on June 25, 2019, the Board of Aldermen approved the renewal for the ATM that is currently located in the city's parking lot at 302 Craven Street (parcel# 8-002-A-220). Subsequently, exhibit "B" which is referenced, was omitted in the approved lease. In addition, the State Employees Credit Union has requested some minor changes that are reflected in the proposed agreement. The proposed lease agreement would be renewed for a period of twelve (12) months effective July 1, 2019, for a sum of \$225.00 per month.

### Recommendation:

The Public Works Department recommends and request the Board consider approving the proposed agreement.

If you have any questions concerning this matter, please feel free to contact me directly.

### Enclosures

Cc: Brenda Blanco, City Clerk

#### **RESOLUTION**

WHEREAS, on June 25, 2019, the Board of Aldermen adopted a resolution identified as #19-063 approving a lease agreement with the State Employees' Credit Union; and

WHEREAS, that agreement contained minor errors and did not include an attachment referenced as Exhibit B; and

WHEREAS, the needed corrections have since been made to the Agreement.

BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

That the corrected Lease Agreement dated June 25, 2019, by and between the City of New Bern and State Employees Credit Union, a copy of which is attached hereto and incorporated herein by reference, be and the same is hereby approved, and the Mayor and City Clerk are hereby authorized and directed to execute the same in duplicate originals for and on behalf of the City.

ADOPTED THIS 22<sup>ND</sup> DAY OF OCTOBER, 2019.

# DANA E. OUTLAW, MAYOR

BRENDA E. BLANCO, CITY CLERK

## **STATE OF NORTH CAROLINA**

# **COUNTY OF CRAVEN**

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#### LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this 25<sup>th</sup> day of June, 2019, by and between the CITY OF NEW BERN ("Lessor"), a North Carolina municipal corporation, and STATE EMPLOYEES' CREDIT UNION ("Lessee"), a North Carolina non-profit corporation.

## <u>WITNESSETH</u>:

THAT WHEREAS, the Lessor owns the real property located at 302 Craven Street in City of New Bern, said parcel being identified by Craven County Tax Parcel Number 8-002-A-220 ("Subject Property"); and

WHEREAS, Lessee is a North Carolina non-profit corporation which was chartered for the express purpose of operating a credit union; and

WHEREAS, the Lessor has agreed that the Lessee may lease a portion of the Subject Property for the operation of an automated teller machine, subject to the terms and conditions established herein, said portion being more specifically described in Exhibit A (the "Premises"); and

WHEREAS, the Lessor's Board of Aldermen has determined that the Premises will not be needed by the Lessor for the term of the lease; and

WHEREAS, the parties have agreed upon the terms of a one (1) year lease with options to extend the term, and wish to reduce their agreement to writing.

NOW, THEREFORE, subject to the terms and conditions hereinafter set forth, said Lessor does hereby let and lease unto said Lessee, and said Lessee does hereby accept as tenant of said Lessor, the Premises.

TO HAVE AND TO HOLD said Premises, together with all privileges and appurtenances thereunto belonging to it, the said Lessee, its successors and assigns, for the term and upon the conditions hereinafter set forth:

1. The term of this Lease shall be for a period of twelve (12) months commencing at 12:01 a.m. on July 1, 2019, and terminating at midnight on June 30, 2020.

2. During the term of this Lease, the Lessee shall be responsible for maintaining the Premises and all fixtures located thereon so that the Lessor will have no obligation whatsoever with respect to the maintenance or repair of the leased Premises during the term of this Lease. Prior to commencing any repairs to the exterior of the Premises, the Lessee shall receive the Lessor's written authorization to proceed with such repairs. All repairs initiated by the Lessee shall be completed to the Lessor's satisfaction. At the expiration of the term of this Lease

Agreement, Lessee shall be responsible for removing all fixtures from the Premises and restoring the Premises to a condition consistent with the parking lot located on the Subject Property.

3. During the term of this Lease Agreement, Lessee shall maintain comprehensive general liability insurance on an occurrence basis with maximum limits of liability in the amount of Three Hundred Thousand Dollars (\$300,000.00) for property damage, bodily injury, personal injury or death to anyone person; Lessee shall also maintain excess liability coverage with a per occurrence limit of One Million Dollars (\$1,000,000.00); and Lessee shall keep the kiosk structure on the Premises together with the equipment in said building insured against loss or damage by fire or other casualties.

4. If the Premises are wholly or partially destroyed by fire or other casualty, rental shall abate in proportion to the loss of use thereof, and Lessee shall, at its own expense, promptly restore the Premises to substantially the same condition as existed before damage or destruction, whereupon full rental shall resume.

5. As rental for the Premises, Lessee shall pay to Lessor, at the address noted below, and without notice or demand therefore, the sum of Two Hundred Twenty-five Dollars (\$225.00) per month during the term of the lease, payable monthly in advance on the first day of each calendar month. Rental payments shall be made to City of New Bern, P.O. Box 1129, New Bern, NC 28563.

6. The Lessee agrees to utilize the Premises exclusively for the operation of an automated teller machine, and in connection thereto, shall comply with all laws, ordinances, orders, or regulations of any lawful authority having jurisdiction over the premises and the use thereof.

7. The Lessee shall make no substantial modification to the exterior of the improvements located on said Premises without the prior written consent of the Lessor.

8. If the whole of the Premises, or such portion thereof as will make the Premises unsuitable for use contemplated hereby, shall be taken under the power of eminent domain (including any conveyance in lieu thereof), then the term hereof shall cease as of the date possession thereof is taken by the condemnor, and rental shall be accounted for as between Lessor and Lessee as of that date.

9. All applications in connection with necessary utility services on the demised premises shall be made in the name of Lessee only, and Lessee shall be solely liable for utility charges as they become due, including those for electricity, gas, water, sewer, and telephone services.

10. Lessee shall not assign this Lease nor sublet any part of the demised property without written consent of the Lessor.

11. It is expressly understood and agreed that if any monthly installment of rent as herein called for shall remain overdue and unpaid for ten (10) days, Lessor may, at its option, at any time during such default, declare this Lease Agreement terminated and canceled and take possession of said Premises, and require the Lessee to remove the structure from the Premises and restore the Premises to their former condition.

12. Lessee shall pay prior to delinquency all taxes and assessments of every kind and nature which may be imposed or assessed upon or with respect to the structure and equipment placed on the Premises by Lessee.

13. Lessee shall be in exclusive control and possession of the Premises, and Lessor shall not be liable for any injury or damages to any property or to any person on or about the Premises nor for any injury or damage to any property of Lessee. Lessee shall defend, indemnify and hold harmless the Lessor from and against any claims, damages, or expenses (including reasonable attorney's fees), whether due to damage to the Premises, claims for injuries to persons or property, or administrative or criminal action by governmental authority, where such claims, damages, or expenses result from the negligence, misconduct or breach of any provision of this Lease Agreement by Lessee, its agents, or employees.

14. If Lessee shall pay the rent and perform and observe all the other covenants and conditions to be performed and observed by it hereunder, Lessee shall at all times during the term hereof have the peaceable and quiet enjoyment of the Premises without interference from Lessor or any person lawfully claiming through Lessor.

15. All notices provided for in this Lease Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail addressed to Lessor at:

City Of New Bern Post Office Box 1129 New Bern, NC 28563

and to Lessee at:

State Employees' Credit Union Post Office Box 26807 Raleigh, NC 27611

16. This Lease Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina.

17. This Lease Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

This Lease contains the complete agreement of the parties regarding the terms and 18. conditions of the lease of the Premises, and there are no oral or written conditions, terms, warranties, understandings or other agreements pertaining thereto which have not been incorporated herein. This Lease Agreement may be modified only by written instrument duly executed by both parties or their respective successors in interest.

If any provision of this Lease shall be declared invalid or unenforceable, the 19. remainder of the Lease shall continue in full force and effect.

IN TESTIMONY WHEREOF, the CITY OF NEW BERN has caused this instrument to be executed in its corporate name by its Mayor and its corporate seal to be affixed and attested by its City Clerk, all by authority duly given of its Board of Aldermen; and STATE EMPLOYEES' CREDIT UNION has caused this document to be executed by its Senior Vice President and attested by its Secretary, all by authority duly given by its Board of Directors, all as of the day and year first above written; this Agreement being executed in duplicate originals, one of which is retained by each of the parties.

# **CITY OF NEW BERN**

[SEAL]

By:\_\_\_

DANA E. OUTLAW, MAYOR

ATTEST:

BRENDA E. BLANCO, CITY CLERK

# STATE EMPLOYEES' CREDIT UNION

[SEAL]

By: Karen High SENIOR VICE PRESIDENT

ATTEST:

### STATE OF NORTH CAROLINA

#### COUNTY OF CRAVEN

I, \_\_\_\_\_\_, a notary public in and for said county and state, do hereby certify that on the \_\_\_\_\_ day of October, 2019, before me personally appeared DANA E. OUTLAW with whom I am personally acquainted, who, being by me duly sworn, says that he is the Mayor and that BRENDA E. BLANCO is the City Clerk of the City of New Bern, the municipal corporation described in and which executed the foregoing instrument; that he knows the common seal of said municipal corporation; that the seal affixed to the foregoing instrument is said common seal; that the name of the municipal corporation was subscribed thereto by the said Mayor; that the said common seal was affixed, all by order of the Board of Aldermen of said municipal corporation; and that the said instrument is the act and deed of said municipal corporation.

WITNESS my hand and notarial seal, this \_\_\_\_\_ day of October, 2019.

My commission expires:

Notary Public

STATE OF NORTH CAROLINA

COUNTY OF GRAVEN WAKE

This is to certify that on the  $OB^{++}$  day of October, 2019, before me personally appeared <u>Kaven High</u> with whom I am personally acquainted, who, being by me duly sworn, says that he/she is Senior Vice President and <u>N/A</u> is the Secretary of STATE EMPLOYEES' GREDIT UNION, and that the seal affixed to the foregoing instrument is the corporate seal of the said corporation, and that said instrument was signed and sealed by him/her on behalf of the said corporation by its authority duly given, and that said instrument is the act and deed of said corporation.

WITNESS my hand and notarial seal, this  $O_{2}^{H}$  day of October, 2019.

<u>haml M. 7. Paule</u> Notary Public

NOTAAL KURLING COUNTY INTERNAL

My commission expires:

September 19,2021

Page 5 of 7

# EXHIBIT A

Commencing at the intersection of the eastern right-of-way line of Craven Street with the northern right-of-way line of Pollock Street; thence in a northerly direction along and with the eastern right-of-way line of Craven Street 24.5 feet; thence in an easterly direction parallel with the northern right-of-way line of Pollock Street 46.0 feet to the point of beginning; thence in a northerly direction parallel with the eastern right-of-way line of Craven Street 14.0 feet; thence in an easterly direction parallel with the northern right-of-way line of Pollock Street 14.0 feet; thence in a southerly direction parallel with the eastern right-of-way line of Craven Street 14.0 feet; thence in a southerly direction parallel with the eastern right-of-way line of Craven Street 14.0 feet; thence in a southerly direction parallel with the northern right-of-way line of Pollock Street 14.0 feet; thence in a point of beginning. (See Exhibit B attached hereto.)

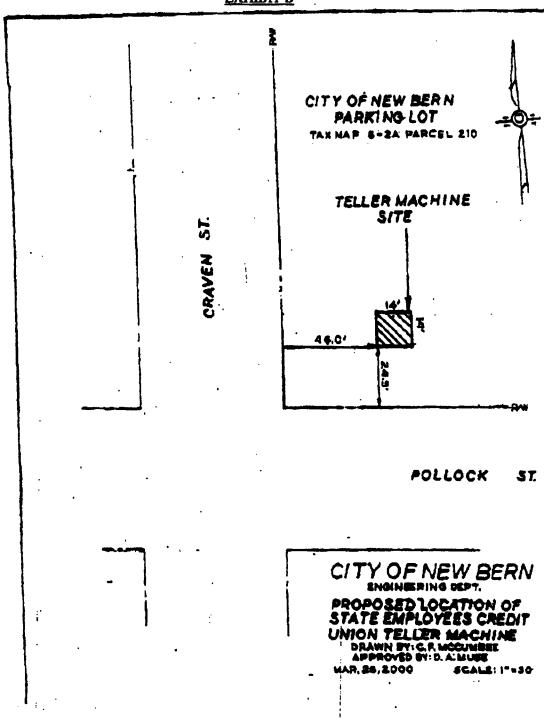


EXHIBIT B

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# RESOLUTION

BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

That the Lease Agreement dated June 25, 2019, by and between the City of New Bern and State Employees Credit Union, a copy of which is attached hereto and incorporated herein by reference, be and the same is hereby approved, and the Mayor and City Clerk are hereby authorized and directed to execute the same for and on behalf of the City.

ADOPTED THIS 25th DAY OF JUNE, 2019.

DANA E. OUTLAW, MAYOR

ERK

# STATE OF NORTH CAROLINA

#### **COUNTY OF CRAVEN**

#### LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this 25<sup>th</sup> day of June, 2019, by and between the CITY OF NEW BERN ("Lessor"), a North Carolina municipal corporation, and STATE EMPLOYEES' CREDIT UNION ("Lessee"), a North Carolina non-profit corporation, North Carolina.

# WITNESSETH:

THAT WHEREAS, the Lessor owns the real property located at 302 Craven Street in City of New Bern, said parcel being identified by Craven County Tax Parcel Number 8-002-A-220 ("Subject Property"); and

WHEREAS, Lessee is a North Carolina non-profit corporation which was chartered for the express purpose of operating a credit union; and

WHEREAS, the Lessor has agreed that the Lessee may lease a portion of the Subject Property for the operation of an automated teller machine, subject to the terms and conditions established herein, said portion being more specifically described in Exhibit A (the "Premises"); and

WHEREAS, the Lessor's Board of Aldermen has determined that the Premises will not be needed by the Lessor for the term of the lease; and

WHEREAS, the parties have agreed upon the terms of a one (1) year lease with options to extend the term, and wish to reduce their agreement to writing.

NOW, THEREFORE, subject to the terms and conditions hereinafter set forth, said Lessor does hereby let and lease unto said Lessee, and said Lessee does hereby accept as tenant of said Lessor, the Premises.

TO HAVE AND TO HOLD said Premises, together with all privileges and appurtenances thereunto belonging to it, the said Lessee, its successors and assigns, for the term and upon the conditions hereinafter set forth:

1. The term of this Lease shall be for a period of twelve (12) months commencing at 12:01 a.m. on July 1, 2019, and terminating at midnight on June 30, 2020.

2. During the term of this Lease, the Lessee shall be responsible for maintaining the Premises and all fixtures located thereon so that the Lessor will have no obligation whatsoever with respect to the maintenance or repair of the leased Premises during the term of this Lease. Prior to commencing any repairs to the exterior of the Premises, the Lessee shall receive the Lessor's written authorization to proceed with such repairs. All repairs initiated by the Lessee

shall be completed to the Lessor's satisfaction. At the expiration of the term of this Lease Agreement, Lessee shall be responsible for removing all fixtures from the Premises and restoring the Premises to a condition consistent with the parking lot located on the Subject Property.

3. During the term of this Lease Agreement, Lessee shall maintain comprehensive general liability insurance on an occurrence basis with maximum limits of liability in the amount of Three Hundred Thousand Dollars (\$300,000.00) for property damage, bodily injury, personal injury or death to anyone person; Lessee shall also maintain excess liability coverage with a per occurrence limit of One Million Dollars (\$1,000,000.00); and Lessee shall keep the kiosk structure on the Premises together with the equipment in said building insured against loss or damage by fire or other casualties.

4. If the Premises are wholly or partially destroyed by fire or other casualty, rental shall abate in proportion to the loss of use thereof, and Lessee shall, at its own expense, promptly restore the Premises to substantially the same condition as existed before damage or destruction, whereupon full rental shall resume.

5. As rental for the Premises, Lessee shall pay to Lessor, at the address noted below, and without notice or demand therefore, the sum of Two Hundred Twenty-five Dollars (\$225.00) per month during the term of the lease, payable monthly in advance on the first day of each calendar month. Rental payments shall be made to City of New Bern, P.O. Box 1129, New Bern, NC 28563.

6. The Lessee agrees to utilize the Premises exclusively for the operation of an automated teller machine, and in connection thereto, shall comply with all laws, ordinances, orders, or regulations of any lawful authority having jurisdiction over the premises and the use thereof.

7. The Lessee shall make no substantial modification to the exterior the improvements located on said Premises without the prior written consent of the Lessor.

8. If the whole of the Premises, or such portion thereof as will make the Premises unsuitable for use contemplated hereby, shall be taken under the power of eminent domain (including any conveyance in lieu thereof), then the term hereof shall cease as of the date possession thereof is taken by the condemnor, and rental shall be accounted for as between Lessor and Lessee as of that date.

9. All applications in connection with necessary utility services on the demised premises shall be made in the name of Lessee only, and Lessee shall be solely liable for utility charges as they become due, including those for electricity, gas, water, sewer, and telephone services.

10. Lessee shall not assign this Lease nor sublet any part of the demised property without written consent of the Lessor.

11. It is expressly understood and agreed that if any monthly installment of rent as herein called for shall remain overdue and unpaid for ten (10) days, Lessor may, at its option, at any time during such default, declare this Lease Agreement terminated and canceled and take possession of said Premises, and require the Lessee to remove the structure from the Premises and restore the Premises to their former condition.

12. Lessee shall pay prior to delinquency all taxes and assessments of every kind and nature which may be imposed or assessed upon or with respect to the structure and equipment placed on the Premises by Lessee.

13. Lessee shall be in exclusive control and possession of the Premises, and Lessor shall not be liable for any injury or damages to any property or to any person on or about the Premises nor for any injury or damage to any property of Lessee. Lessee shall defend, indemnify and hold harmless the Lessor from and against any claims, damages, or expenses (including reasonable attorney's fees), whether due to damage to the Premises, claims for injuries to persons or property, or administrative or criminal action by governmental authority, where such claims, damages, or expenses result from the negligence, misconduct or breach of any provision of this Lease Agreement by Lessee, its agents, employees or invitees.

14. If Lessee shall pay the rent and perform and observe all the other covenants and conditions to be performed and observed by it hereunder, Lessee shall at all times during the term hereof have the peaceable and quiet enjoyment of the Premises without interference from Lessor or any person lawfully claiming through Lessor.

15. All notices provided for in this Lease Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail addressed to Lessor at:

City Of New Bern Post Office Box 1129 New Bern, NC 28563

and to Lessee at:

State Employees' Credit Union Post Office Box 26807 Raleigh, NC 27611

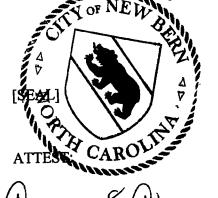
16. This Lease Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina

17. This Lease Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

18. This Lease contains the complete agreement of the parties regarding the terms and conditions of the lease of the Premises, and there are no oral or written conditions, terms, warranties, understandings or other agreements pertaining thereto which have not been incorporated herein. This Lease Agreement may be modified only by written instrument duly executed by both parties or their respective successors in interest.

19. If any provision of this Lease shall be declared invalid or unenforceable, the remainder of the Lease shall continue in full force and effect.

IN TESTIMONY WHEREOF, the CITY OF NEW BERN has caused this instrument to be executed in its corporate name by its Mayor and its corporate seal to be affixed and attested by its City Clerk, all by authority duly given of its Board of Aldermen; and STATE EMPLOYEES' CREDIT UNION has caused this document to be executed by its Senior Vice President and attested by its Secretary, all by authority duly given by its Board of Directors, all as of the day and year first above written; this Agreement being executed in duplicate originals, one of which is president by each of the parties.



ANCO.

CITY CLERK

By:

CITY OF NEW BERN B DANA E. OUTLAW, MAYOR

STATE EMPLOYEES CREDIT UNION

[SEAL]

SENIOR VICE PRESIDENT

ATTEST:

SECRETARY

# STATE OF NORTH CAROLINA

## COUNTY OF CRAVEN

I, <u>JERMAN</u> <u>B</u> <u>HUCHES</u>, a notary public in and for said county and state, do hereby certify that on the <u>2S</u> day of June, 2019, before me personally appeared DANA E. OUTLAW with whom I am personally acquainted, who, being by me duly sworn, says that he is the Mayor and that BRENDA E. BLANCO is the City Clerk of the City of New Bern, the municipal corporation described in and which executed the foregoing instrument; that he knows the common seal of said municipal corporation; that the seal affixed to the foregoing instrument is said common seal; that the name of the municipal corporation was subscribed thereto by the said Mayor; that the said common seal was affixed, all by order of the Board of Aldermen of said municipal corporation; and that the said instrument is the act and deed of said municipal corporation.

WITNESS my hand and notarial seal, this 25 day of June, 2019.

Notary Public

My commission expires:

31436,242

JORDAN B HUGHES Notary Public, North Carolina Lenoir County My Commission Expires July 30, 2022

# STATE OF NORTH CAROLINA

COUNTY OF CRAVEN

This is to certify that on the \_\_\_\_\_ day of April, 2013, before me personally appeared with whom I am personally acquainted, who, being by me duly sworn, says that he/she is Senior Vice President and \_\_\_\_\_\_ is the Secretary of STATE EMPLOYEES CREDIT UNION, and that the seal affixed to the foregoing instrument is the corporate seal of the said corporation, and that said instrument was signed and sealed by him/her on behalf of the said corporation by its authority duly given, and that said instrument is the act and deed of said corporation.

WITNESS my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Notary Public

My commission expires:

# EXHIBIT A

Commencing at the intersection of the eastern right-of-way line of Craven Street with the northern right-of-way line of Pollock Street; thence in a northerly direction along and with the eastern right-of-way line of Craven Street 24.5 feet; thence in an easterly direction parallel with the northern right-of-way line of Pollock Street 46.0 feet to the point of beginning; thence in a northerly direction parallel with the eastern right-of-way line of Craven Street 14.0 feet; thence in an easterly direction parallel with the northern right-of-way line of Pollock Street 14.0 feet; thence in a southerly direction parallel with the eastern right-of-way line of Craven Street 14.0 feet; thence in a southerly direction parallel with the eastern right-of-way line of Craven Street 14.0 feet; thence in a westerly direction parallel with the northern right-of-way line of Pollock Street 14.0 feet; thence in a westerly direction parallel with the northern right-of-way line of Pollock Street 14.0 feet; thence in a westerly direction parallel with the northern right-of-way line of Pollock Street 14.0 feet; thence in a westerly direction parallel with the northern right-of-way line of Pollock Street 14.0 feet; thence in a westerly direction parallel with the northern right-of-way line of Pollock Street 14.0 feet; thence in a westerly direction parallel with the northern right-of-way line of Pollock Street 14.0 feet; thence in a westerly direction parallel with the northern right-of-way line of Pollock Street 14.0 feet; thence in a westerly direction parallel with the northern right-of-way line of Pollock Street 14.0 feet; thence in a westerly direction parallel with the northern right-of-way line of Pollock Street 14.0 feet; thence in a westerly direction parallel with the northern right-of-way line of Pollock Street 14.0 feet; thence in a westerly direction parallel with the northern right-of-way line of Pollock Street 14.0 feet; thence in a westerly direction parallel with the northern right-of-way line of Pollock Street 14.0 f

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#### STATE OF NORTH CAROLINA

#### **COUNTY OF CRAVEN**

#### LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this 25<sup>th</sup> day of June, 2019, by and between the CITY OF NEW BERN ("Lessor"), a North Carolina municipal corporation, and STATE EMPLOYEES' CREDIT UNION ("Lessee"), a North Carolina non-profit corporation, North Carolina.

### WITNESSETH:

THAT WHEREAS, the Lessor owns the real property located at 302 Craven Street in City of New Bern, said parcel being identified by Craven County Tax Parcel Number 8-002-A-220 ("Subject Property"); and

WHEREAS, Lessee is a North Carolina non-profit corporation which was chartered for the express purpose of operating a credit union; and

WHEREAS, the Lessor has agreed that the Lessee may lease a portion of the Subject Property for the operation of an automated teller machine, subject to the terms and conditions established herein, said portion being more specifically described in Exhibit A[SN1] –(the "Premises"); and

WHEREAS, the Lessor's Board of Aldermen has determined that the Premises will not be needed by the Lessor for the term of the lease; and

WHEREAS, the parties have agreed upon the terms of a one (1) year lease with options to extend the term, and wish to reduce their agreement to writing.

NOW, THEREFORE, subject to the terms and conditions hereinafter set forth, said Lessor does hereby let and lease unto said Lessee, and said Lessee does hereby accept as tenant of said Lessor, the Premises.

TO HAVE AND TO HOLD said Premises, together with all privileges and appurtenances thereunto belonging to it, the said Lessee, its successors and assigns, for the term and upon the conditions hereinafter set forth:

1. The term of this Lease shall be for a period of twelve (12) months commencing at 12:01 a.m. on July 1, 2019, and terminating at midnight on June 30, 2020.

2. During the term of this Lease, the Lessee shall be responsible for maintaining the Premises and all fixtures located thereon so that the Lessor will have no obligation whatsoever with respect to the maintenance or repair of the leased Premises during the term of this Lease. Prior to commencing any repairs to the exterior of the Premises, the Lessee shall receive the Lessor's written authorization to proceed with such repairs. All repairs initiated by the Lessee

shall be completed to the Lessor's satisfaction. At the expiration of the term of this Lease Agreement, Lessee shall be responsible for removing all fixtures from the Premises and restoring the Premises to a condition consistent with the parking lot located on the Subject Property.

3. During the term of this Lease Agreement, Lessee shall maintain comprehensive general liability insurance on an occurrence basis with maximum limits of liability in the amount of Three Hundred Thousand Dollars (\$300,000.00) for property damage, bodily injury, personal injury or death to anyone person; Lessee shall also maintain excess liability coverage with a per occurrence limit of One Million Dollars (\$1,000,000.00); and Lessee shall keep the kiosk structure on the Premises together with the equipment in said building insured against loss or damage by fire or other casualties.

4. If the Premises are wholly or partially destroyed by fire or other casualty, rental shall abate in proportion to the loss of use thereof, and Lessee shall, at its own expense, promptly restore the Premises to substantially the same condition as existed before damage or destruction, whereupon full rental shall resume.

5. As rental for the Premises, Lessee shall pay to Lessor, at the address noted below, and without notice or demand therefore, the sum of Two Hundred Twenty-five Dollars (\$225.00) per month during the term of the lease, payable monthly in advance on the first day of each calendar month. Rental payments shall be made to City of New Bern, P.O. Box 1129, New Bern, NC 28563.

6. The Lessee agrees to utilize the Premises exclusively for the operation of an automated teller machine, and in connection thereto, shall comply with all laws, ordinances, orders, or regulations of any lawful authority having jurisdiction over the premises and the use thereof.

7. The Lessee shall make no substantial modification to the exterior <u>of</u> the improvements located on said Premises without the prior written consent of the Lessor.

8. If the whole of the Premises, or such portion thereof as will make the Premises unsuitable for use contemplated hereby, shall be taken under the power of eminent domain (including any conveyance in lieu thereof), then the term hereof shall cease as of the date possession thereof is taken by the condemnor, and rental shall be accounted for as between Lessor and Lessee as of that date.

9. All applications in connection with necessary utility services on the demised premises shall be made in the name of Lessee only, and Lessee shall be solely liable for utility charges as they become due, including those for electricity, gas, water, sewer, and telephone services.

10. Lessee shall not assign this Lease nor sublet any part of the demised property without written consent of the Lessor.

11. It is expressly understood and agreed that if any monthly installment of rent as herein called for shall remain overdue and unpaid for ten (10) days, Lessor may, at its option, at any time during such default, declare this Lease Agreement terminated and canceled and take possession of said Premises, and require the Lessee to remove the structure from the Premises and restore the Premises to their former condition.

12. Lessee shall pay prior to delinquency all taxes and assessments of every kind and nature which may be imposed or assessed upon or with respect to the structure and equipment placed on the Premises by Lessee.

13. Lessee shall be in exclusive control and possession of the Premises, and Lessor shall not be liable for any injury or damages to any property or to any person on or about the Premises nor for any injury or damage to any property of Lessee. Lessee shall defend, indemnify and hold harmless the Lessor from and against any claims, damages, or expenses (including reasonable attorney's fees), whether due to damage to the Premises, claims for injuries to persons or property, or administrative or criminal action by governmental authority, where such claims, damages, or expenses result from the negligence, misconduct or breach of any provision of this Lease Agreement by Lessee, its agents, or employees or invitees.

14. If Lessee shall pay the rent and perform and observe all the other covenants and conditions to be performed and observed by it hereunder, Lessee shall at all times during the term hereof have the peaceable and quiet enjoyment of the Premises without interference from Lessor or any person lawfully claiming through Lessor.

15. All notices provided for in this Lease Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail addressed to Lessor at:

City Of New Bern Post Office Box 1129 New Bern, NC 28563

and to Lessee at:

State Employees' Credit Union Post Office Box 26807 Raleigh, NC 27611

16. This Lease Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina.

17. This Lease Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

18. This Lease contains the complete agreement of the parties regarding the terms and conditions of the lease of the Premises, and there are no oral or written conditions, terms, warranties, understandings or other agreements pertaining thereto which have not been incorporated herein. This Lease Agreement may be modified only by written instrument duly executed by both parties or their respective successors in interest.

19. If any provision of this Lease shall be declared invalid or unenforceable, the remainder of the Lease shall continue in full force and effect.

IN TESTIMONY WHEREOF, the CITY OF NEW BERN has caused this instrument to be executed in its corporate name by its Mayor and its corporate seal to be affixed and attested by its City Clerk, all by authority duly given of its Board of Aldermen; and STATE EMPLOYEES' CREDIT UNION has caused this document to be executed by its Senior Vice President and attested by its Secretary, all by authority duly given by its Board of Directors, all as of the day and year first above written; this Agreement being executed in duplicate originals, one of which is retained by each of the parties.

#### CITY OF NEW BERN

[SEAL]

By:\_\_

DANA E. OUTLAW, MAYOR

ATTEST:

### BRENDA E. BLANCO, CITY CLERK

#### STATE EMPLOYEES' CREDIT UNION

[SEAL]

By:\_\_\_

SENIOR VICE PRESIDENT

ATTEST:

SECRETARY

#### STATE OF NORTH CAROLINA

#### COUNTY OF CRAVEN

I, \_\_\_\_\_\_, a notary public in and for said county and state, do hereby certify that on the \_\_\_\_\_ day of June, 2019, before me personally appeared DANA E. OUTLAW with whom I am personally acquainted, who, being by me duly sworn, says that he is the Mayor and that BRENDA E. BLANCO is the City Clerk of the City of New Bern, the municipal corporation described in and which executed the foregoing instrument; that he knows the common seal of said municipal corporation; that the seal affixed to the foregoing instrument is said common seal; that the name of the municipal corporation was subscribed thereto by the said Mayor; that the said common seal was affixed, all by order of the Board of Aldermen of said municipal corporation; and that the said instrument is the act and deed of said municipal corporation.

WITNESS my hand and notarial seal, this \_\_\_\_\_ day of June, 2019.

Notary Public

My commission expires:

STATE OF NORTH CAROLINA

COUNTY OF CRAVEN

This is to certify that on the \_\_\_\_\_ day of April, 2013, before me personally appeared with whom I am personally acquainted, who, being by me duly sworn, says that he/she is Senior Vice President and \_\_\_\_\_\_ is the Secretary of STATE EMPLOYEES' CREDIT UNION, and that the seal affixed to the foregoing instrument is the corporate seal of the said corporation, and that said instrument was signed and sealed by him/her on behalf of the said corporation by its authority duly given, and that said instrument is the act and deed of said corporation.

WITNESS my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Notary Public

My commission expires:

#### EXHIBIT A

Commencing at the intersection of the eastern right-of-way line of Craven Street with the northern right-of-way line of Pollock Street; thence in a northerly direction along and with the eastern right-of-way line of Craven Street 24.5 feet; thence in an easterly direction parallel with the northern right-of-way line of Pollock Street 46.0 feet to the point of beginning; thence in a northerly direction parallel with the eastern right-of-way line of Craven Street 14.0 feet; thence in an easterly direction parallel with the northern right-of-way line of Pollock Street 14.0 feet; thence in a southerly direction parallel with the eastern right-of-way line of Craven Street 14.0 feet; thence in a southerly direction parallel with the eastern right-of-way line of Craven Street 14.0 feet; thence in a southerly direction parallel with the northern right-of-way line of Craven Street 14.0 feet; thence in a point of beginning. (See Exhibit B attached hereto.)[SN2]

# **AGENDA ITEM COVER SHEET**



# Agenda Item Title:

Consider Adopting an Ordinance to Amend the FY2019-20 Operating Budget

Ward # if applicable: N/A
Person Submitting Item: Joseph R. Sabatelli, CPA, Director of Finance
Date of Public Hearing:

Explanation of Item:	The attached ordinance amends the FY2019-20 Operating Budget for various funds to reestablish encumbrances that remained outstanding as of June 30, 2019, transfer funds to projects, and allocate funds for grants.
Actions Needed by Board:	Adopt Ordinance
Backup Attached:	Memo; Budget Ordinance Amendment; Listing by Fund

Is item time sensitive? □Yes ⊠No	
Will there be advocates/opponents at the meeting? $\Box$ Yes $\boxtimes$ No	

# **Cost of Agenda Item:**

If this requires an expenditure, has it be budgeted and are funds available and certified by the Finance Director?  $\boxtimes$  Yes  $\square$  No

**Additional Notes:** 



TO:	City Manager.	Honorable	Mavor and	Members	of the E	Board of Alderme	n
· • •	ong managor,	110110101010					

FROM: Joseph R. Sabatelli, CPA - Director of Finance

DATE: October 11, 2019

RE: Amendments to the FY2019-20 Operating Budget

It is recommended the Board adopt the following amendments to the Fiscal Year 2019-20 Annual Operating Budget as follows:

## Purchase Order Rollovers

The attached ordinance amends the operating budget for Fiscal Year 2020 for the amount of appropriations necessary to reestablish encumbrances for the individual outstanding purchase orders as of June 30, 2019 that we intend to honor in the new fiscal year (FY 2020). Also, enclosed is a purchase order rollover listing by fund, which includes a brief description of the items/services to be purchased. Additionally, the \$1 million appropriation for stormwater improvements was not encumbered as of June 30, 2019 and therefore not included in the purchase orders; however, this amount is being re-appropriated in FY2020.

### Grants Fund

The ordinance recognizes a \$350,000 NC Department of Commerce Rural Development Grant and allocates the same. These funds are for the public infrastructure related to Tate Commons, a 68-unit multifamily project that has received a NC Housing Finance Agency 9% tax credits in 2017.

### Old Airport Road

The ordinance transfers \$920,000 to the 2017 Roadway Improvements Fund for the improvements to Old Airport Road. This transfer comes from reallocating portions of the 2019 and 2020 paving programs.

### **Requested Action**

It is recommended that the Board adopt the attached budget amendment at its meeting to be held on October 22, 2019.

#### CITY OF NEW BERN, NORTH CAROLINA

#### **REQUESTED AMEDMENT TO**

#### Fiscal Year 2019-2020

FROM: Joseph R. Sabatelli, CPA, Director of Finance MEETING DATE: October 22, 2019 EXPLANATION: This Amendment makes the necessary appropriations to fund Purchase Orders that remain outstanding as of June 30, 2019 in various annual operating funds, as well as \$1,000,000 for stormwater maintenance projects not encumbered as of that date. This amendment also transfers \$920,000 to the 2017 Roadway Improvements Project Fund for the Old Airport Road Project, to be funded from reallocating the remaining FY2019 and a portion of the FY2020 paving programs funds. This amendment recognizes the \$350,000 NC Department of Commerce Rural Econcomic Development Grant and allocates the same within the Grants.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN THAT THE 2019-2020 ANNUAL BUDGET ORDINANCE IS AMENDED AS FOLLOWS:

Increase:	Special Appropriation	าร	\$ 11
	Information Technolo	ogy	33,945
	Finance:	Accounting	7,100
	Human Resources		22,875
	Police		130,174
	Emergency 911 Sup	port	254
	Fire		13,530
	Parks & Recreation:	Administration	1,750
		Parks & Grounds	2,776
		Facilities	2,064
	Development Service	es	69,511
	Public Works:	Streets	1,158,765
		Stormwater Maintenance	1,000,000
	Interfund Transfers		920,000
Decrease:	Public Works:	Streets	 (920,000)
			\$ 2,442,755

Section 1 - Appropriations

Schedule A - General Fund

<u>Schedule C -</u>	Water Fund		
Increase:	Water Treatment	\$	22,714
	Water Distribution Maintenance		11,722
		\$	34,436
<u>Schedule D -</u>	Sewer Fund		
Increase:	Sewer Treatment	\$	7,012
	Sewer Collection System Maint.		7,053
		\$	14,065
<u>Schedule E -</u>	Electric Fund		
Increase:	Electric Administration	\$	4,509
	Distribution O&M		23,908
	Power Supply		17,184
	Utility Business Office		157,123
		\$	202,724
Schedule H -	Emergency Telephone System Fund		
Increase:	E-911	\$	78,477
Schedule K -	Grants Fund		
Increase:	Police - SRF	\$	732
	Development Services - SRF		350,000
		\$	350,732
	Section 2 - Estimated Revenues		
	General Fund	¢	0 440 755
Increase:	Fund Balance Appropriated	\$	2,442,755
	- Water Fund	¢	34 436
Increase:	Fund Balance Appropriated	<u>\$</u>	34,436
Schedula D	- Sewer Fund		
		\$	14,065
Increase:	Fund Balance Appropriated	<u></u>	14,000

Schedule E	- Electric Fund		
Increase:	Fund Balance Appropriated		\$ 202,724
Schedule H	<ul> <li>Emergency Telephone System Fund</li> </ul>		
Increase:	Fund Balance Appropriated	_	\$ 78,477
Schedule K	- Grants Fund		
Increase:	Fund Balance Appropriated		\$ 732
	Development Services - SRF	_	 350,000
		=	\$ 350,732

NATURE OF TRANSACTIONS:

\_\_\_\_X ADDITIONAL REVENUE AVAILABLE FOR APPROPRIATION

- \_\_\_\_\_ TRANSFER WITHIN ACCOUNTS OF SAME FUND
- \_\_\_\_X OTHER: Appropriate Fund Balance for Prior Year Encumbrance Roll

# APPROVED BY THE BOARD OF ALDERMEN AND ENTERED ON MINUTES DATED

AGENDA ITEM NUMBER

BRENDA E. BLANCO, CITY CLERK

Fund or Department	Amount	Description
Special Appropriations	\$ 11	Gaston Boulevard
Information Technology	33,945	Cybersecurity consulting, professional services, network service contract
Finance - Accounting	7,100	Actuarial services
Human Resources	22,875	Portion of roof repairs
Police	130,174	CAD upgrade, vehicles and related equipment
Emergency 911 Support	254	Supplies
Fire	13,530	Generator installation, CAD upgrade
Parks & Recreation - Admin	1,750	Concert
Parks & Recreation - P&G	2,776	Playground supplies
Parks & Recreation - Facilities	2,064	Recreation supplies
Development Services	69,511	Portion of roof repairs, GIS system
Public Works - Streets	1,158,765	Paving program, vehicle
Total General Fund	1,442,755	
Water Fund	34,436	Arc flash study, system repairs
Sewer Fund	14,065	Repairs
Electric Fund	202,724	Electric Meters, Shatterproof windows from County grant, repairs, supplies
Emergency Telephone System Fund	78,477	CAD upgrade, renovations
Grants Fund	732	Workstations
Total All Funds	\$ 1,773,189	

# City of New Bern FY19 to FY20 Purchase Order Rollover Listing

# AGENDA ITEM COVER SHEET

#### Agenda Item Title:

Consider Adopting Ordinance to Amend the 2017 Roadway Improvements Project Fund

Date of Meeting 10/22/2019	Ward # if applicable Ward 3
Department Finance	Person Submitting Item: JR Sabatelli, CPA Director of Finance
Call for Public Hearing 🗌 Yes 🖌 No	Date of Public Hearing
Explanation of Item:	
	50,000 to Old Airport Road Improvements to be funded f (\$920,000), proceeds from debt (\$1,180,000), and a 150,000).
<b>Actions Needed by Board:</b> Adopt the ordinance amending the 20	17 Roadway Improvements Project Fund
Is item time sensitive? 🔽 Yes 🗌 No	D
Will there be advocates/opponents a	at the meeting? Yes INO
Backup Attached:	
Memo, Ordinance	
Cost of Agenda Item: \$2,100,000	
If this item requires an expenditure, certified by the Finance Director :	has it been budgeted and are funds available and ]YesNo

Additional notes:



TO: City Manager, Honorable Mayor and Members of the Board of Aldermen

FROM: JR Sabatelli, CPA – Director of Finance

DATE: October 11, 2019

RE: Amend the 2017 Roadway Improvements Project Fund

### **Background**

At its meeting on July 11, 2017, the Board of Aldermen adopted an ordinance establishing the 2017 Roadway Improvements Project for improvements to roads throughout the city. Additionally, on March 13, 2018, the Board approved an agreement with North Carolina Department of Transportation (NCDOT) to accept ownership and/or maintenance responsibilities for sections of Old Airport Road between Taberna Circle and County Line Road.

### **Current**

On May 14, 2018 the Board held a budget workshop at which time they discussed moving forward with several projects. One of the projects was the paving and expansion of Old Airport Road. The design phase has been completed and the project has been let with a total cost, including contingency of approximately \$3,950,000. On June 12, 2018, the Board appropriated the original estimate of \$1,700,000 for this project, as funded by \$687,000 from NCDOT and debt service. The attached amendment appropriates the remaining funds for this project to be funded by a portion of the FY2019 and FY2020 paving programs through a transfer from the General Fund (\$920,000), additional debt service (\$1,180,000) and a reallocation within the 2017 Roadway Improvements Project Fund (\$150,000).

The future debt service payments are expected to be financed over 15 years with average annual payments of approximately \$332,000.

### **Requested Action**

It is recommended that the Board adopt the enclosed ordinance at its meeting on October 22, 2019.

#### CITY OF NEW BERN, NORTH CAROLINA REQUESTED AMENDMENT TO 2017 ROADWAY IMPROVEMENTS PROJECT FUND

FROM: Joseph R. Sabatelli, CPA, Director of Finance MEETING DATE: Oct. 22, 2019

EXPLANATION: This amendment will appropriate \$2,250,000 to Old Airport Road Improvements to be funded by a transfer from the General Fund of the remaining FY2019 and a portion of the FY2020 paving programs (\$920,000) and proceeds from debt (\$1,180,000), and a reallocation from the originally established 2017 Roadway Improvements (\$150,000).

# BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN THAT THE 2017 Roadway Improvements Project Fund ORDINANCE IS AMENDED AS FOLLOWS

#### Section 1 - Appropriations

Increase:	Old Airport Road	\$2,250,000
Decrease:	2017 Roadway Improvements	( <u>\$ 150,000)</u>
		\$2,100,000

### Section 2 - Revenues

Increase:	Transfer from General Fund	\$ 920,000
	Proceeds of Debt	<u>\$ 1,180,000</u>
		\$ 2.100.000

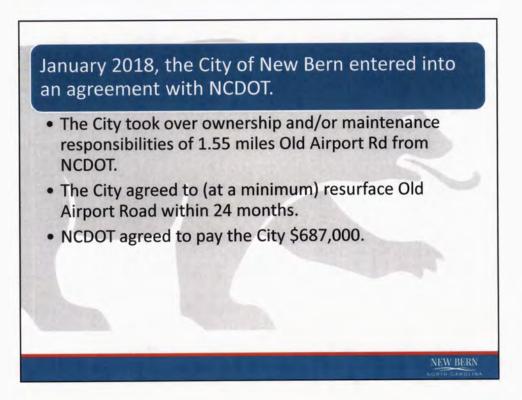
## NATURE OF TRANSACTION \_\_\_\_ADDITIONAL REVENUE AVAILABLE FOR APPROPRIATION X\_\_TRANSFER WITH ACCOUNTS OF SAME FUND

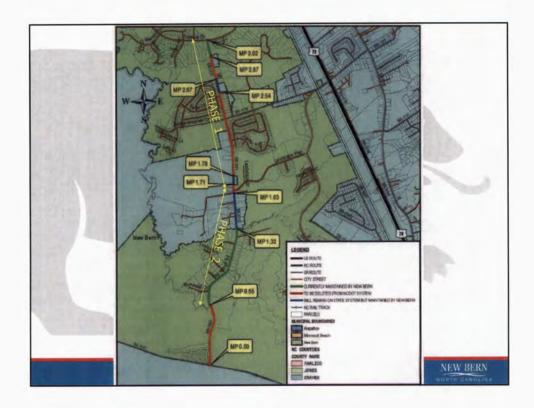
X\_OTHER: TRANSFER BETWEEN FUNDS

APPROVED BY THE BOARD OF ALDERMEN AND ENTERED ON MINUTES DATED \_\_\_\_\_\_ AGENDA ITEM NUMBER \_\_\_\_\_\_

# BRENDA E BLANCO, CITY CLERK



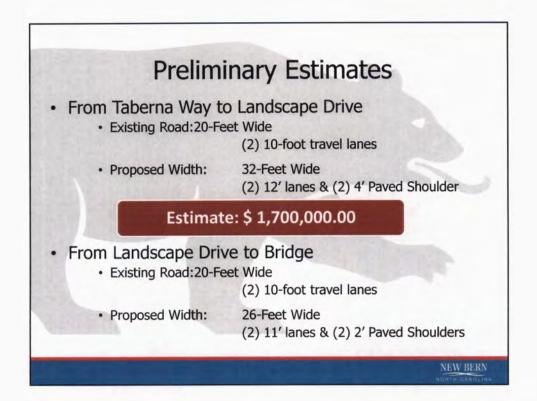




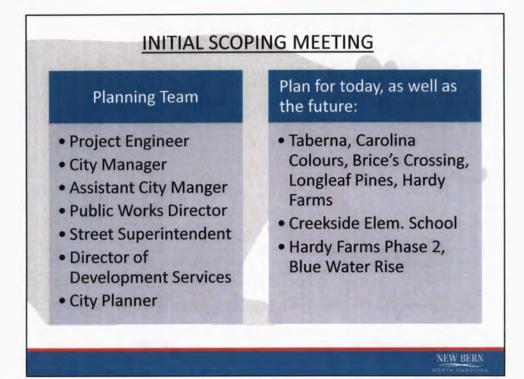
# Purpose of the Agreement

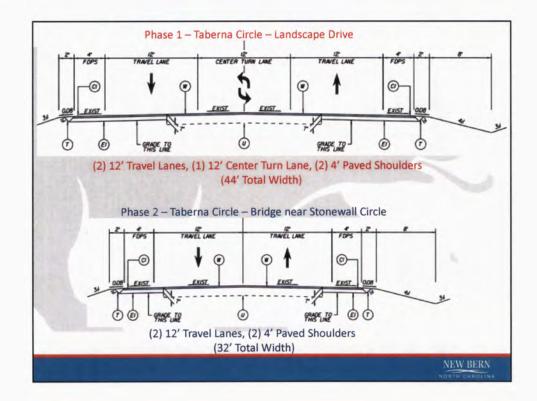
- The City of New Bern would have control of Old Airport Road from Taberna to County Line Road.
- Improvements could be made to Old Airport Road to provide safe means of travel for residents, school, bicyclists and pedestrians.
  - Ocreating wider travel lanes.
  - Adding a center turning lane between Taberna Way and Landscape Drive.
  - Ocreate wider paved shoulders for bicyclists and pedestrians.
  - Ocreate dedicated turning lanes off of Thurman Road.

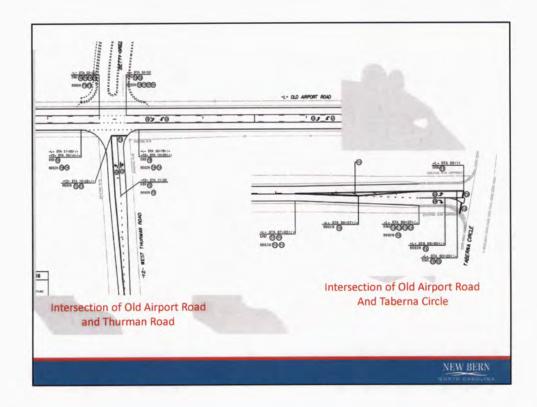
NEW BERN

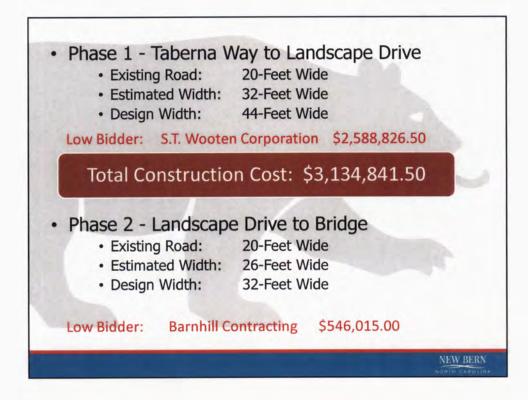




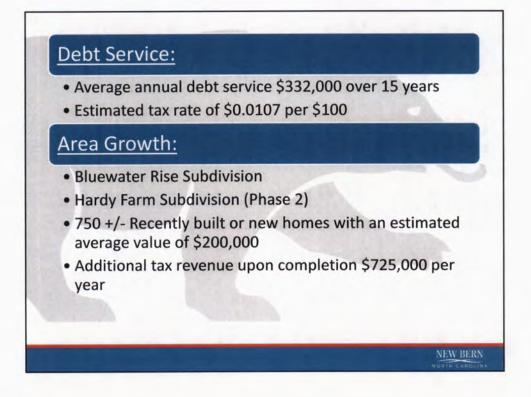








Phase 1 Construction Cost:	\$ 2,588,826.50
Phase 2 Construction Cost:	\$ 546,015.00
Project Contingencies:	\$ 307,380.62
Electrical Relocation Cost:	\$ 250,000.00
• Additional Widening (Phase 2):	\$ 100,000.00
Professional Services:	\$ 157,777.88
Total Project Cost:	\$ 3,950,000.00
roject Funding:	
NCDOT Contribution:	\$ 687,000.00
<ul> <li>FY20 Budget (Resurfacing)</li> </ul>	\$ 320,000.00
Current Paving Project	\$ 600,000.00
Financing:	\$ 2,343,000.00



State States	Agenda Items
Budget amendments	<ul> <li>Operating budget amendment reallocates PW money to the 2017 Roadway Improvements Project Fund.</li> <li>2017 Roadway Improvements Project Fund appropriates funds for the Old Airport Road project.</li> </ul>
Approve Contract with ST Wooten (Phase 1)	• Widening & resurfacing Old Airport Road between Taberna Circle and Landscape Drive from 20-feet in width to 44-feet in width.
Approve Contract with Barnhill Contracting (Phase 2)	• Widening & resurfacing Old Airport Road between Landscape Drive that the Bridge located near Stonewall Circle from 20-feet in width to 32-feet in width.



# **AGENDA ITEM COVER SHEET**



# Agenda Item Title:

Consider adopting a resolution authorizing the City Manager to execute on behalf of the City of New Bern all contract documents and change orders within the contract amount for the Old Airport Road Widening Project (Contract No. 20001).

Ward # if applicable: Ward 3				
<b>Person Submitting Item:</b> Matt Montanye, Director of Public Works				
<b>Date of Public Hearing:</b> N/A				

Over the past year, the City has been working on the design of the entire Old Airport Road project and on August 16, 2019 publicly advertised the Old Airport Road Street Widening Project (Contract No. 20001) for the widening of 1.39 miles of Old Airport Road between Taberna Circle and Landscape Drive.
Adopt attached resolution
Memo, Resolution, Bid Tabulation, Project Scope

Is item time sensitive? □Yes ⊠No	
Will there be advocates/opponents at the	he meeting? 🗆 Yes 🛛 No

**Cost of Agenda Item:** \$2,588,826.50 If this requires an expenditure, has it been budgeted and are funds available and certified by the Finance Director? Xes I No

**Additional Notes:** 



Public Works Department P.O. Box 1129, 1004 S. Glenburnie Road New Bern, N.C. 28563-1129 Phone: (252) 639-7501 Fax: (252) 636-1848

October 9, 2019

Memo to:	Mayor and Board of Aldermen
From:	Matt Montanye, Director of Public Works
Re:	Consider adopting a resolution authorizing the City Manager to execute on behalf of the City of New Bern all contract documents and change orders within the contract amount for the Old Airport Road Widening Project (Contract No. 20001).

#### **Background Information:**

In January of 2018, the City of New Bern entered into an agreement with NCDOT to accept certain sections of Old Airport Road into the City's road system in exchange for \$687,000. Over the past year the City has been working with Kimley Horne & Associates for design services related to Old Airport Road. On August 16, 2019, the City publicly advertised the Old Airport Road Street Widening Project (Contract No. 20001) for the widening and resurfacing 1.39 miles of Old Airport Road between Taberna Circle and Landscape Drive. On September 19, 2019 the City received three qualified bids, with the lowest bid being received from S.T. Wooten Corporation in the amount of \$ 2,588,826.50. A scheduled starting date has not been determined but has a contract time of 272 days for final completion.

#### Recommendation:

The Public Works Department recommends and request the Board adopt a Resolution authorizing the City Manager to execute on behalf of the City of New Bern all contract documents and any change orders for the Old Airport Road Widening Project (Contract No. 20001) within the contract amount.

If you have any questions concerning this matter, please feel free to contact me directly.

#### Enclosures

Cc: George Chiles, Staff Engineer Daryl Nelson, Streets Superintendent

#### RESOLUTION

THAT WHEREAS, the 2019 Old Airport Road Resurfacing Project (Contract 20002) was publicly advertised on August 16, 2019, and a pre-bid meeting was held on August 28, 2019; and

WHEREAS, the following three qualified bids were received on September 19, 2019:

S.T. Wooten Corp.\$ 2,588,826.50Barnhill Contracting Co.\$ 2,665,988.25Onslow Grading & Paving, Inc.Bid Withdrawn

WHEREAS, the Director of Public Works of the City of New Bern recommends the City Manager be authorized to execute contract documents with the lowest bidder, S.T. Wooten Corporation, in the amount of \$2,588,826.50, for the Old Airport Road Widening Project (Contract 20001) and any change orders within the budgeted amount.

# NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

That the City Manager is hereby authorized to execute on behalf of the City of New Bern all contract documents with S.T. Wooten Corporation for the Old Airport Road Widening Project (Contract 20001) and any change orders within the budgeted amount.

ADOPTED THIS 22<sup>nd</sup> DAY OF OCTOBER, 2019.

DANA E. OUTLAW, MAYOR

BRENDA E. BLANCO, CITY CLERK

# **BID PROPOSAL**

# ST Wooten Corporation

OLD AIRPORT ROAD WIDENING PROJECT

City of New Bern Contract No. 20001

ITEM NO.	SEC. NO	DESCRIPTION	UNITS	QTY	ITEM PRICE	UNIT TOTAL
1	800	MOBILIZATION (3% MAX.)	LS	1,	\$77,000.00	\$77,000.00
2	801	CONSTRUCTION SURVEYING	LS	1	\$50,000.00	\$50,000.00
3	225	UNDERCUT EXCAVATION	CY	450	\$35.00	\$15,750.00
4	226	GRADING	LS	1	\$700,000.00	\$700,000.00
5	265	SELECT GRANULAR MATERIAL	CY	450	\$30.00	\$13,500.00
6	300	FOUNDATION CONDITIONING MATERIAL, MINOR STRUCTURES	TON	120	\$80.00	\$9,600.00
7	300	FOUNDATION CONDITIONING GEOTEXTILE	SY	350	\$6.00	\$2,100.00
8	310	15" SIDE DRAIN PIPE	LF	320	\$157.00	\$50,240.00
9	310	18" STORMDRAIN PIPE	LF	276	\$142.00	\$39,192.00
10	310	24" SIDE DRAIN PIPE	LF	332	\$210.00	\$69,720.00
11	310	42" RCP CULVERTS, CLASS V	LF	120	\$605.00	\$72,600.00
12	340	PIPE REMOVAL	LF	1374	\$29.00	\$39,846.00
13	345	INCIDENTIAL STONE BASE	TON	250	\$44.00	\$11,000.00
14	607	INCIDENTIAL MILLING	SY	495	\$9.00	\$4,455.00
15	610	ASPHALT CONC. BASE COURSE, B25.0C	TON	4650	\$102.30	\$475,695.00
16		ASPHALT CONC. SURFACE COURSE, TYPE S9.5B W/ BINDER	TON	3770	\$103.75	\$391,137.50
17		ASPHALT PLANT MIX, PAVEMENT REPAIRS	TON	250	\$114.75	\$28,687.50
18	846	2'6" CONCRETE CURB AND GUTTER	LF	195	\$56.00	\$10,920.00
19	848	6" CONCRETE DRIVEWAYS (HIGH EARLY STRENGTH)	SY	80	\$110.00	\$8,800.00
20	852	5" MONOLITHIC CONCRETE ISLAND (KEYED IN)	SY	11	\$172.00	\$1,892.00
21	858	ADJUSTMENT OF MANHOLES	EA	1	\$5,200.00	\$5,200.00
22	858	ADJUSTENT OF METER BOXES OR WATER VALVES	EA	5	\$1,650.00	\$8,250.00
23	862	STEEL BEAM GUARDRAIL	LF	337.5	\$23.00	\$7,762.50
24	862	GUARDRAIL END UNIT, TYPE CAT-1	EA	2	\$650.00	\$1,300.00
25	SP	GUARDRAIL END UNIT, TYPE TL-2	EA	2	\$3,100.00	\$6,200.00
26	866	WOVEN WIRE FENCE, 48" FABRIC AND POST	LF	622	\$11.00	\$6,842.00
27	SP	REMOVE AND RESET DOUBLE CHAIN LINK FENCE GATE	EA	2	\$3,100.00	\$6,200.00
28	SP	REMOVE AND RESET WOOD SPLIT RAIL FENCE	LF	220	\$20.00	\$4,400.00
29	876	GEOTEXTILE FOR DRAINAGE	SY	200	\$6.30	\$1,260.00
30	SP	TRAFFIC CONTROL	LS	1	\$107,000.00	\$107,000.00
31	1205	THERMOPLASTIC PAVEMENT MARKING LINES (4", 90 MILS)	LF	31,660	\$1.20	\$37,992.00
32	1205	THERMOPLASTIC PAVEMENT MARKING LINES (12", 90 MILS)	LF	260	\$9.00	\$2,340.00
33	1205	THERMOPLASTIC PAVEMENT MARKING LINES (24", 90 MILS)	LF	170	\$17.00	\$2,890.00
34	1205	THERMOPLASTIC PAVEMENT MARKING SYMBOLS (90 MILS)	EA	33	\$120.00	\$3,960.00
35	1205	THERMOPLASTIC PAVEMENT MARKING CHARACTERS (90 MILS)	EA	12	\$145.00	\$1,740.00
36	1515	RELOCATE FIRE HYDRANT	EA	1	\$5,750.00	\$5,750.00
37	1515	RELOCATE WATER METER	EA	1	\$2,870.00	\$2,870.00
38	1605	TEMPORARY SILT FENCE	LF	3,390	\$3.00	\$10,170.00
39	1610	EROSION CONTROL STONE, CLASS A	TON	70	\$77.00	\$5,390.00
40	1610	EROSION CONTROL STONE, CLASS B	TON	895	\$60.00	\$53,700.00
41	1631	MATTING FOR EROSION CONTROL	SY	6,550	\$2.50	\$16,375.00
42	1660	SEEDING AND MULCHING	ACR	18	\$2,450.00	\$44,100.00
43	SP	EROSION CONTROL	LS	1	\$175,000.00	\$175,000.00

GRAND TOTAL:

\$2,588,826.50

# **BID PROPOSAL**

# Barhill Corporation OLD AIRPORT ROAD WIDENING PROJECT City of New Bern Contract No. 20001

ITEM NO.	SEC. NO	DESCRIPTION	UNITS	QTY	ITEM PRICE	UNIT TOTAL
1	800	MOBILIZATION (3% MAX.)	LS	1	\$52,250.00	\$52,250.00
2	801	CONSTRUCTION SURVEYING	LS	1	\$71,935.00	\$71,935.00
3	225	UNDERCUT EXCAVATION	CY	450	\$41.00	\$18,450.00
4	226	GRADING	LS	1	\$926,650.00	\$926,650.00
5	265	SELECT GRANULAR MATERIAL	CY	450	\$52.25	\$23,512.50
6	300	FOUNDATION CONDITIONING MATERIAL, MINOR STRUCTURES	TON	120	\$41.75	\$5,010.00
7	300	FOUNDATION CONDITIONING GEOTEXTILE	SY	350	\$3.60	\$1,260.00
8	310	15" SIDE DRAIN PIPE	LF	320	\$60.00	\$19,200.00
9	310	18" STORMDRAIN PIPE	LF	276	\$65.00	\$17,940.00
10	310	24" SIDE DRAIN PIPE	LF	332	\$75.50	\$25,066.00
11	310	42" RCP CULVERTS, CLASS V	LF	120	\$204.00	\$24,480.00
12	340	PIPE REMOVAL	LF	1374	\$25.00	\$34,350.00
13	345	INCIDENTIAL STONE BASE	TON	250	\$79.00	\$19,750.00
14	607	INCIDENTIAL MILLING	SY	495	\$15.25	\$7,548.75
15	610	ASPHALT CONC. BASE COURSE, B25.0C	TON	4650	\$95.25	\$442,912.50
16	610/620	ASPHALT CONC. SURFACE COURSE, TYPE S9.5B W/ BINDER	TON	3770	\$98.70	\$372,099.00
17	654	ASPHALT PLANT MIX, PAVEMENT REPAIRS	TON	250	\$240.75	\$60,187.50
18	846	2'6" CONCRETE CURB AND GUTTER	LF	195	\$45.00	\$8,775.00
19	848	6" CONCRETE DRIVEWAYS (HIGH EARLY STRENGTH)	SY	80	\$67.00	\$5,360.00
20	852	5" MONOLITHIC CONCRETE ISLAND (KEYED IN)	SY	11	\$100.00	\$1,100.00
21	858	ADJUSTMENT OF MANHOLES	EA	1	\$465.00	\$465.00
22	858	ADJUSTENT OF METER BOXES OR WATER VALVES	EA	5	\$465.00	\$2,325.00
23	862	STEEL BEAM GUARDRAIL	LF	337.5	\$23.00	\$7,762.50
24	862	GUARDRAIL END UNIT, TYPE CAT-1	ΕA	2	\$650.00	\$1,300.00
25	SP	GUARDRAIL END UNIT, TYPE TL-2	EA	2	\$3,100.00	\$6,200.00
26	866	WOVEN WIRE FENCE, 48" FABRIC AND POST	LF	622	\$11.00	\$6,842.00
27	ŞP	REMOVE AND RESET DOUBLE CHAIN LINK FENCE GATE	EA	2	\$3,100.00	\$6,200.00
28	SP	REMOVE AND RESET WOOD SPLIT RAIL FENCE	LF	220	\$20.00	\$4,400.00
29	876	GEOTEXTILE FOR DRAINAGE	SY	200	\$3.60	\$720.00
30	SP	TRAFFIC CONTROL	LS	1	\$87,500.00	\$87,500.00
31	1205	THERMOPLASTIC PAVEMENT MARKING LINES (4", 90 MILS)	LF	31,660	\$0.80	\$25,328.00
32	1205	THERMOPLASTIC PAVEMENT MARKING LINES (12", 90 MILS)	LF	260	\$3.00	\$780.00
33	1205	THERMOPLASTIC PAVEMENT MARKING LINES (24", 90 MILS)	LF	170	\$12.00	\$2,040.00
34		THERMOPLASTIC PAVEMENT MARKING SYMBOLS (90 MILS)	EA	33	\$90.00	\$2,970.00
35		THERMOPLASTIC PAVEMENT MARKING CHARACTERS (90 MILS)	EA	12	\$85.00	\$1,020.00
36		RELOCATE FIRE HYDRANT	EA	1	\$4,500.00	\$4,500.00
37		RELOCATE WATER METER	EA	1	\$800.00	\$800.00
38		TEMPORARY SILT FENCE	LF	3,390	\$3.00	\$10,170.00
39		EROSION CONTROL STONE, CLASS A	TON	70	\$47.00	\$3,290.00
40		EROSION CONTROL STONE, CLASS B	TON	895	\$41.00	\$36,695.00
41		MATTING FOR EROSION CONTROL	SY	6,550	\$2.59	\$16,964.50
42		SEEDING AND MULCHING	ACR	18	\$2,450.00	\$44,100.00
43		EROSION CONTROL	LS	10	\$255,780.00	\$255,780.00

GRAND TOTAL:

\$2,665,988.25

#### **BID PROPOSAL**

## Onslow Grading & Paving

OLD AIRPORT ROAD WIDENING PROJECT

City of New Bern Contract No. 20001

ITEM NO.	SEC. NO	DESCRIPTION	UNITS	QTY	ITEM PRICE	UNIT TOTAL
1	800	MOBILIZATION (3% MAX.)	LS	1	\$0.00	\$0.00
2	801	CONSTRUCTION SURVEYING	LS	1	\$0.00	\$0.00
3	225	UNDERCUT EXCAVATION	СҮ	450	\$0.00	\$0.00
4	226	GRADING	LS	1	\$0.00	\$0.00
5	265	SELECT GRANULAR MATERIAL	СҮ	450	\$0.00	\$0.00
6	300	FOUNDATION CONDITIONING MATERIAL, MINOR STRUCTURES	TON	120	\$0.00	\$0.00
7		FOUNDATION CONDITIONING GEOTEXTILE	SY	350	\$0.00	\$0.00
8		15" SIDE DRAIN PIPE	LF	320	\$0.00	\$0.00
9	310	18" STORMDRAIN PIPE	LF	276	\$0.00	\$0.00
10	310	24" SIDE DRAIN PIPE	LF	332	\$0.00	\$0.00
11	310	42" RCP CULVERTS, CLASS V	LF	120	\$0.00	\$0.00
12	340	PIPE REMOVAL	LF	1374	\$0.00	\$0.00
13	345	INCIDENTIAL STONE BASE	TON	250	\$0.00	\$0.00
14	607	INCIDENTIAL MILLING	SY	495	\$0.00	\$0.00
15.		ASPHALT CONC. BASE COURSE, B25.0C	TON	4650	\$0.00	\$0.00
16	610/620	ASPHALT CONC. SURFACE COURSE, TYPE S9.5B W/ BINDER	TON	3770	\$0.00	\$0.00
17	654	ASPHALT PLANT MIX, PAVEMENT REPAIRS	TON	250	\$0.00	\$0.00
18	846	2'6" CONCRETE CURB AND GUTTER	LF	195	\$0.00	\$0.00
19	848	6" CONCRETE DRIVEWAYS (HIGH EARLY STRENGTH)	SY	80	\$0.00	\$0.00
20	<b>8</b> 52	5" MONOLITHIC CONCRETE ISLAND (KEYED IN)	SY	11	\$0.00	\$0.00
21	858	ADJUSTMENT OF MANHOLES	EA	1	\$0.00	\$0.00
22	<b>8</b> 58	ADJUSTENT OF METER BOXES OR WATER VALVES	EA	5	\$0.00	\$0.00
23	<b>8</b> 62	STEEL BEAM GUARDRAIL	LF	337.5	\$0.00	\$0.00
24	862	GUARDRAIL END UNIT, TYPE CAT-1	EA	2	\$0.00	\$0.00
25	SP	GUARDRAIL END UNIT, TYPE TL-2	EA	2	\$0.00	\$0.00
26	866	WOVEN WIRE FENCE, 48" FABRIC AND POST	LF	622	\$0.00	\$0.00
27	SP	REMOVE AND RESET DOUBLE CHAIN LINK FENCE GATE	EA	2	\$0.00	\$0.00
28	SP	REMOVE AND RESET WOOD SPLIT RAIL FENCE	LF	220	\$0.00	\$0.00
29	876	GEOTEXTILE FOR DRAINAGE	SY	200	\$0.00	\$0.00
30	SP	TRAFFIC CONTROL	LS	1	\$0.00	\$0.00
31		THERMOPLASTIC PAVEMENT MARKING LINES (4", 90 MILS)	LF	31,6 <b>6</b> 0	\$0.00	\$0.00
32		THERMOPLASTIC PAVEMENT MARKING LINES (12", 90 MILS)	LF	260	\$0.00	\$0.00
33	1205	THERMOPLASTIC PAVEMENT MARKING LINES (24", 90 MILS)	LF	170	\$0.00	\$0.00
34	1205	THERMOPLASTIC PAVEMENT MARKING SYMBOLS (90 MILS)	EA	33	\$0.00	\$0.00
35	1205	THERMOPLASTIC PAVEMENT MARKING CHARACTERS (90 MILS)	EA	12	\$0.00	\$0.00
36	1515	RELOCATE FIRE HYDRANT	EA	1	\$0.00	\$0.00
37	1515	RELOCATE WATER METER	EA	1	\$0.00	\$0.00
38	1605	TEMPORARY SILT FENCE	LF	3,390	\$0.00	\$0.00
39	1610	EROSION CONTROL STONE, CLASS A	TON	70	\$0.00	\$0.00
40	1610	EROSION CONTROL STONE, CLASS B	TON	895	\$0.00	\$0.00
41	1631	MATTING FOR EROSION CONTROL	SY	6,550	\$0.00	\$0.00
42	1660	SEEDING AND MULCHING	ACR	18	\$0.00	\$0.00
43	SP	EROSION CONTROL	LS	1	\$0.00	\$0.00

Bit unburner. See Attached Contractor Request GRAND TOTAL:

\$0.00

**Onslow Grading & Paving, Inc.** 

115 Atlas Brown Drive Jacksonville, NC 28540 (910) 346-8266 ⊕ (910) 346-9555 fax

September 20, 2019

City of New Bern Public Works Department PO Box 1129 New Bern, NC 28563

To Whom It May Concern:

Please accept this letter as a formal request to withdraw our bid for the New Bern Old Airport Road Widening, Project 20001. There was a significant clerical error in the grading line item while transferring the numbers to the provided bid sheet. We hope that you will accept our request and we apologize for any inconvenience this may have caused.

Sincerely,

Juff Brown Jeff Brown

Jeff Brown President

Rec 9/20/19-64

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Public Works Department P.O. Box 1129, 1004 S. Glenburnie Road New Bern, N.C. 28563-1129 Phone: (252) 639-7501 Fax: (252) 636-1848

Atlas Jefferey Brown President Onslow Grading and Paving, Inc. 115 Atlas Brown Drive Jacksonville, NC 28450

Re: City of New Bern Contract No. 20001, Old Airport Road Widening Withdrawal of Bid

Attachment: Withdrawal of Bid Request, dated September 20, 2019

Dear Mr. Brown,

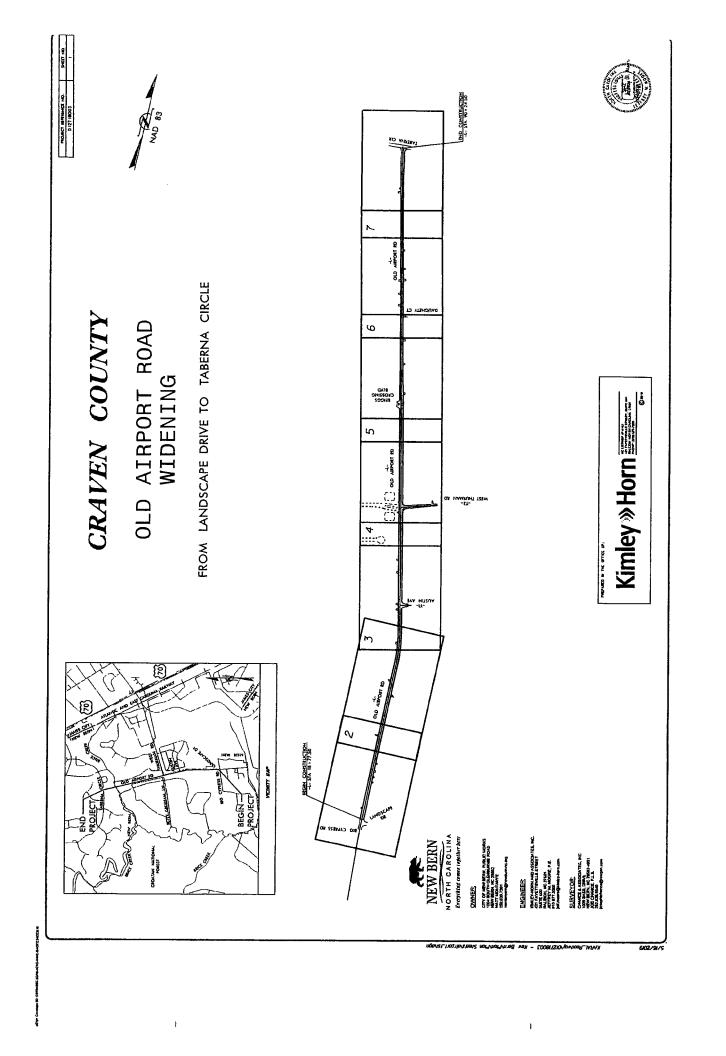
The City of New Bern Public Works Department is in receipt of your company's request of a formal bid withdrawal related to the above referenced contract. The City of New Bern accepts your request due to the finding of a substantial error, provided in good faith and was clerical in nature. The error identified specifically as *Line Item No. 4, Grading*.

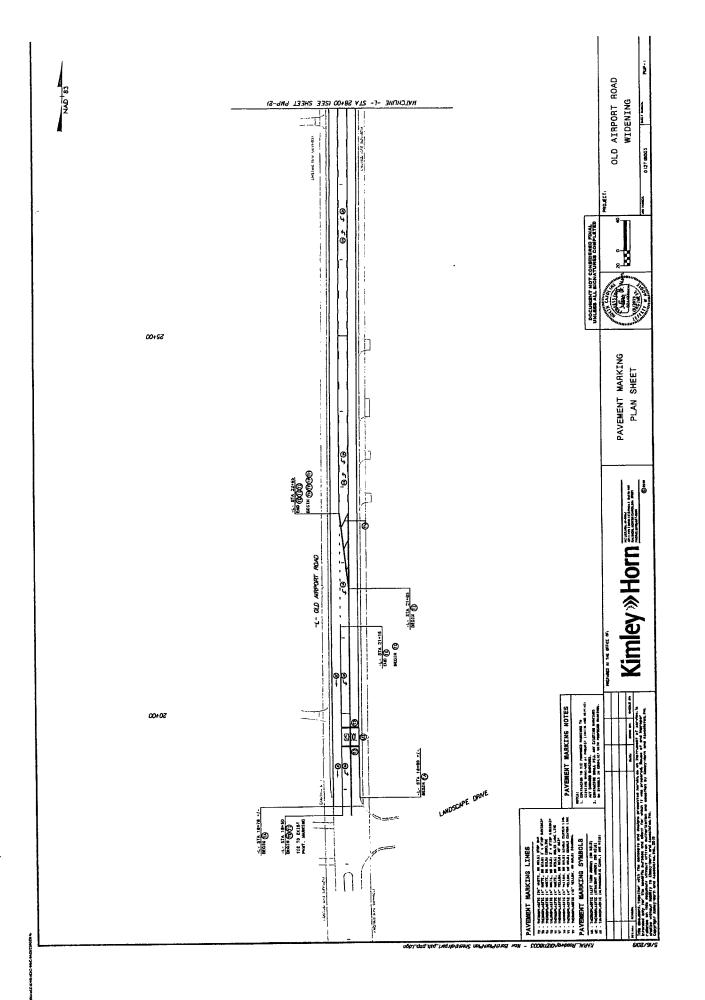
We appreciate your participation in this bid process and look forward to working with you in the future.

Regards,

Verge AlChter

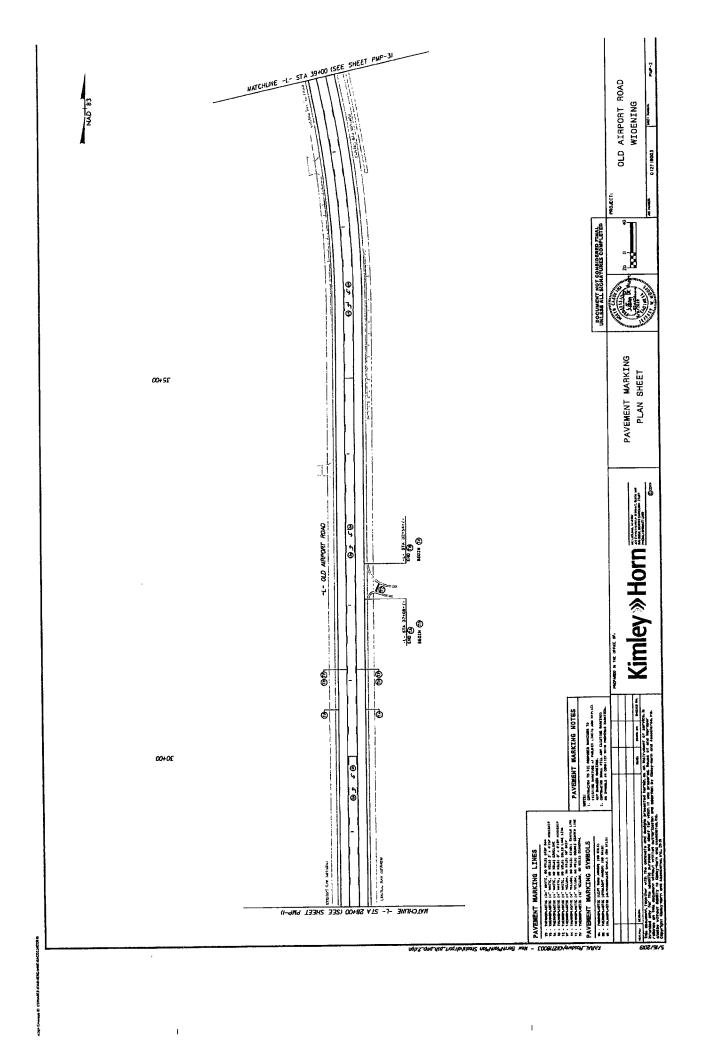
George G. Chiles Staff Engineer City of New Bern Public Works Dept.

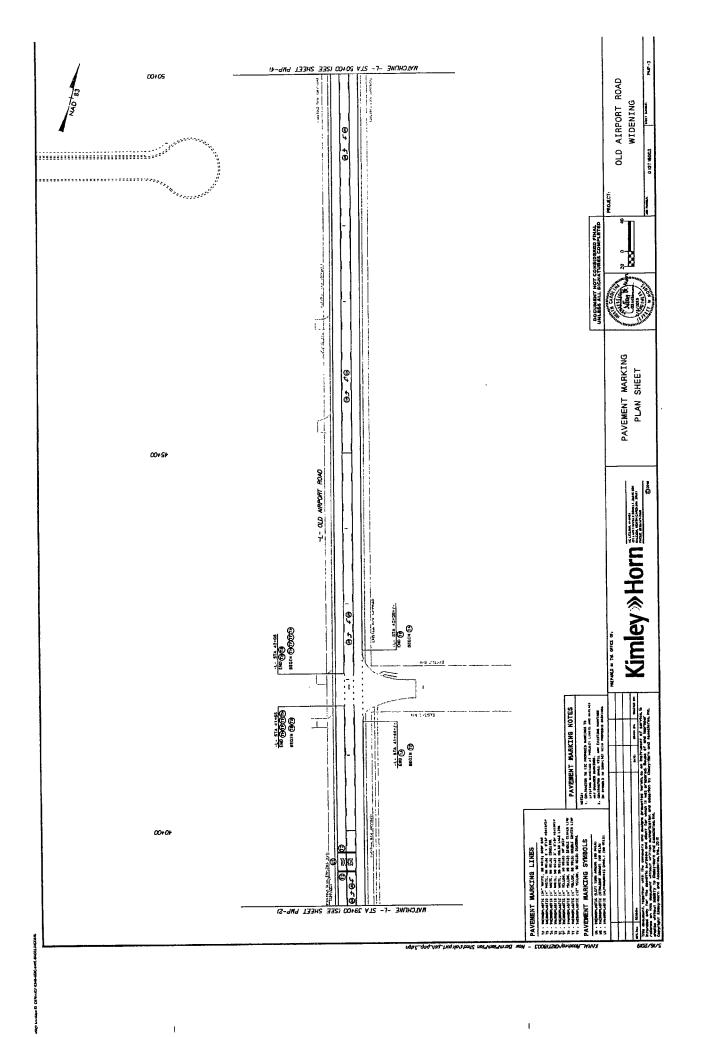


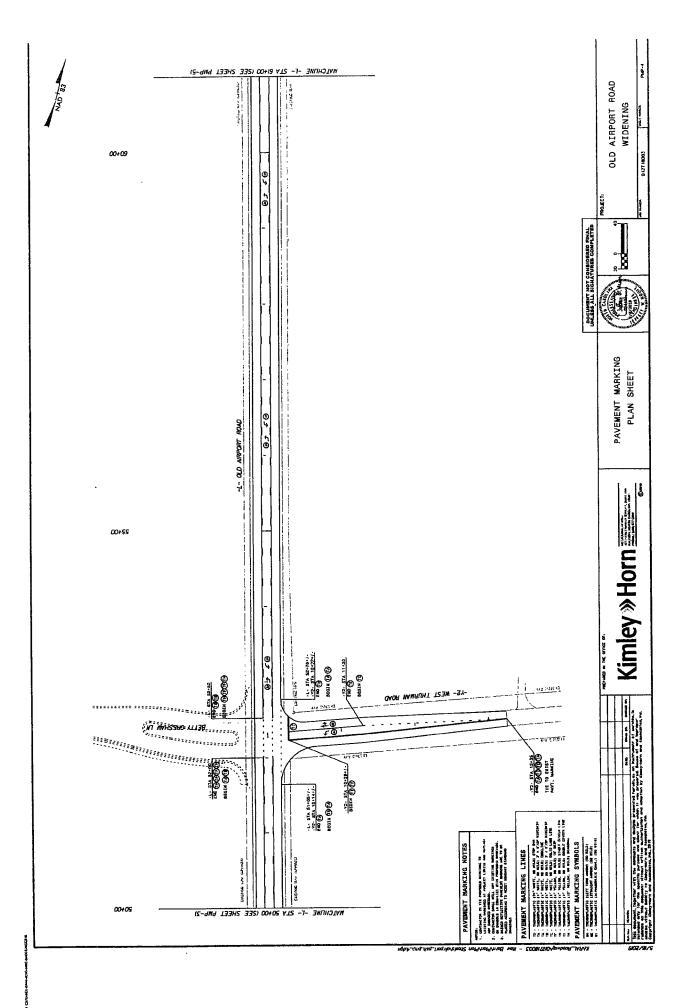


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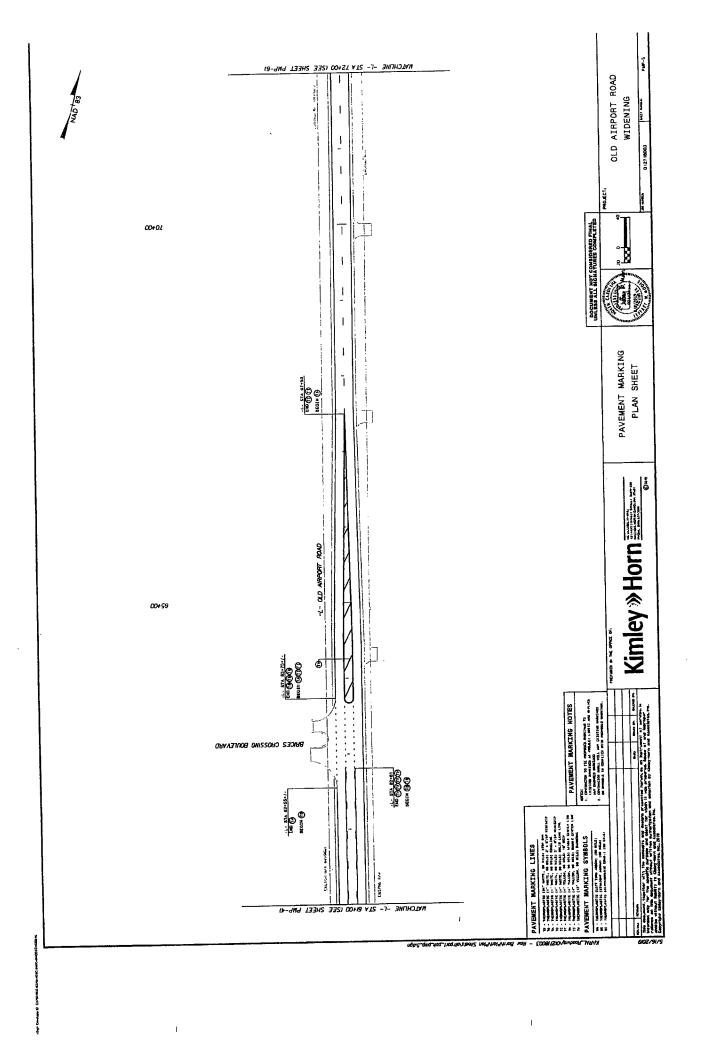


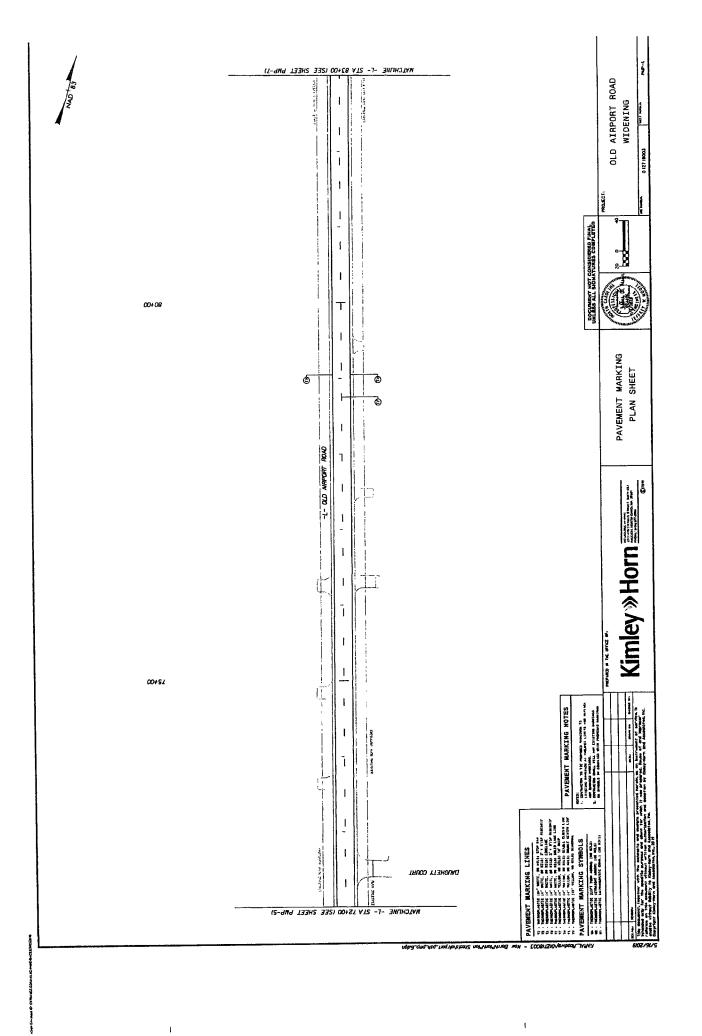


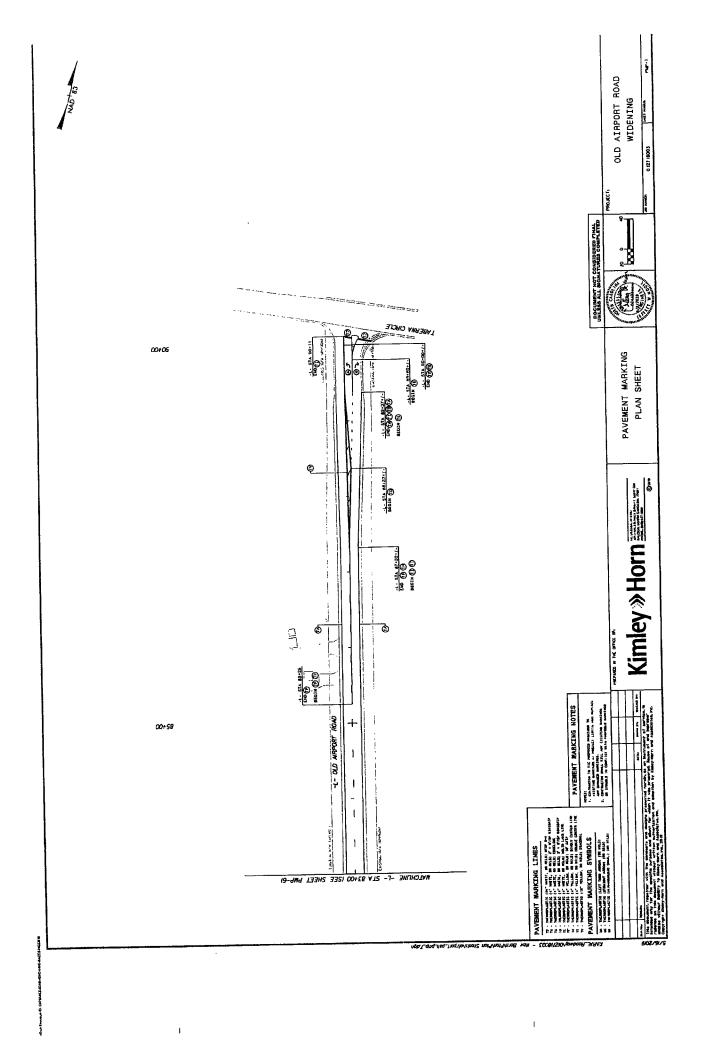


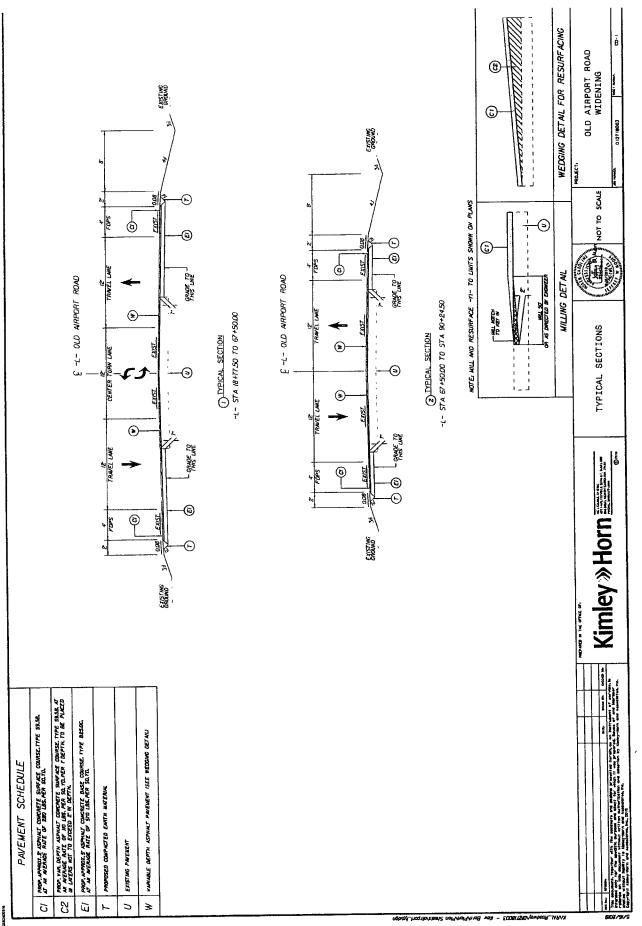
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## **AGENDA ITEM COVER SHEET**



## Agenda Item Title:

Consider adopting a resolution authorizing the City Manager to execute on behalf of the City of New Bern all contract documents and change orders within the contract amount for the Old Airport Road Resurfacing Project (Contract No. 20002).

Date of Meeting: 10/22/2019	Ward # if applicable: Ward 3
Department: Public Works	Person Submitting Item: Matt Montanye, Director of Public Works
Call for Public Hearing: □Yes⊠No	<b>Date of Public Hearing:</b> N/A

Explanation of Item:	Over the past year. the City has been working on the design of the entire Old Airport Road project and on August 16, 2019 publicly advertised the Old Airport Road Street Resurfacing Project (Contract No. 20002) for the resurfacing and shoulder widening of 1.08 miles of Old Airport Road between Landscape Drive and the bridge locates South of the Evan's Mill subdivision.
Actions Needed by Board:	Adopt attached resolution
Backup Attached:	Memo, Resolution, Bid Tabulation, Project Scope

Is item time sensitive? □Yes ⊠No	
Will there be advocates/opponents at the meeting? □Yes 🛛 No	

Cost of Agenda Item: \$546,015.00 If this requires an expenditure, has it been budgeted and are funds available and certified by the Finance Director? X Yes I No

**Additional Notes:** 



Public Works Department P.O. Box 1129, 1004 S. Glenburnie Road New Bern, N.C. 28563-1129 Phone: (252) 639-7501 Fax: (252) 636-1848

October 9, 2019

Memo to:	Mayor and Board of Aldermen
From:	Matt Montanye, Director of Public Works
Re:	Consider adopting a resolution authorizing the City Manager to execute on behalf of the City of New Bern all contract documents and change orders within the contract amount for the Old Airport Road Resurfacing Project (Contract No. 20002).

### **Background Information:**

In January of 2018, the City of New Bern entered into an agreement with NCDOT to accept certain sections of Old Airport Road into the City's road system in exchange for \$687,000. Over the past year the City has been working with Kimley Horne & Associates for design services related to Old Airport Road. On August 16, 2019, the City publicly advertised the Old Airport Road Street Resurfacing Project (Contract No. 20002) for the resurfacing and shoulder widening of 1.08 miles of Old Airport Road between Landscape Drive and the bridge located south of the Evan's Mill Subdivision. On September 19, 2019 the City received five qualified bids, with the lowest bid being received from Barnhill Contracting Company in the amount of \$546,015.00. This project is scheduled to begin within the next 30.45 days and has a contract time of 120 days for substantial completion and 150 day for final completion.

### Recommendation:

The Public Works Department recommends and request the Board adopt a Resolution authorizing the City Manager to execute on behalf of the City of New Bern all contract documents and any change orders for the Old Airport Road Resurfacing Project (Contract No. 20002) within the contract amount.

If you have any questions concerning this matter, please feel free to contact me directly.

### Enclosures

Cc: George Chiles, Staff Engineer Daryl Nelson, Streets Superintendent

## RESOLUTION

THAT WHEREAS, the 2019 Old Airport Road Resurfacing Project (Contract 20002) was publicly advertised on August 16, 2019, and a pre-bid meeting was held on August 28, 2019; and

WHEREAS, the following five qualified bids were received on September 19, 2019:

Barnhill Contracting Company	\$ 546,015.00
Onslow Grading & Paving, Inc.	\$ 612,920.00
ST Wooten Corp.	\$ 615,820.00
Tripp Bro's, Inc.	\$ 706,155.00
Morton Trucking	\$ 988,777.00

WHEREAS, the Director of Public Works of the City of New Bern recommends the City Manager be authorized to execute contract documents with the lowest bidder, Barnhill Contracting Company, in the amount of \$546,015.00, for the Old Airport Road Resurfacing Project (Contract 20002) and any change orders within the budgeted amount.

# NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

That the City Manager is hereby authorized to execute on behalf of the City of New Bern all contract documents with Barnhill Contracting Company for the Old Airport Road Resurfacing Project (Contract 20002) and any change orders within the budgeted amount.

ADOPTED THIS 22<sup>nd</sup> DAY OF OCTOBER, 2019.

DANA E. OUTLAW, MAYOR

BRENDA E. BLANCO, CITY CLERK

BID TABULATION Sept. 19, 2019 2PM

City of New Bern Old Airport Rd Resurfacing

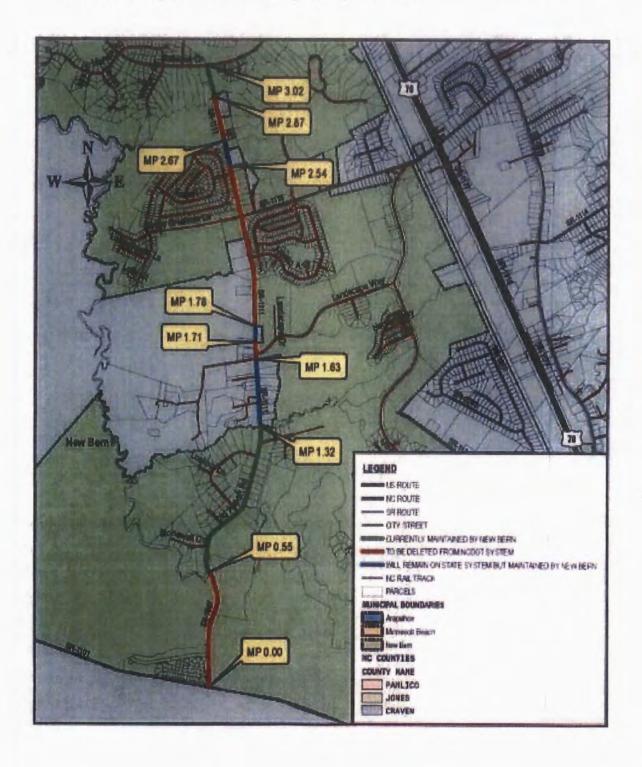
Contract No. 20002

		ddul	Iripp Brothers Inc	ž		Barnhill Contracting	oniraci	6u		CHOIN!	MOTION ILUCKING	B		OISIO	BILIAN L MOISILO			al woolen corp	eli colp	
UNIT	DESCRIPTION	PRICE	QTY		TOTAL	PRICE	ary		TOTAL	PRICE	QTY		TOTAL	PRICE	arv		TOTAL	PRICE	QTY	TOTAL
	Mobiliztion & Bonding (3% Max)	20,415.00	-	\$	20.415.00	14,000.00	-	67	14,000.00	29,660.00	-	64	29,660.00	15,000.00	-	53	15,000.00	18,500.00	-	\$ 18,500.00
TONS	2" S9.5B Asphalt Resurface	112.00	1950	5	218,400.00	00.09	1950	57	175,500.00	125.00	1950	14	243,750.00	107.00	1950	57	208, 650.00	100.00	1950	\$ 195.000.00
	Full Depth Patching	335.00	200	\$	67,000.00	220.00	200	57	44,000.00	250.00	200	69	50,000.00	198.30	200	69	39,660.00	210.00	200	\$ 42,000.00
	TONS Road Widening	150.00	1655	67	248,250.00	53.00	1655	\$	87,715.00	180.00	1655	57	297,900.00	86.00	1655	57	142,330.00	110.00	1655	\$ 182,050.00
	Shoulder Reconstruc tton	7.00	5000	147	35,000.00	1.50	5000	147	7,500.00	12.00	5000	69	60,000.00	6.50	5000	**	32.500.00	2.50	5000	\$ 12,500.00
	Drainage Ditch Re- aradina	10.00	1500	*	15,000.00	18.00	1500	57	27,000.00	30.00	1500	57	45,000.00	9.00	1500	5	13,500.00	16.42	1500	\$ 24,630.00
	Sign and/or Mailbox	250.00	52	19	13,000.00	100.001	52		5,200.00	300.00	52	14	15,600.00	10.00	52	**	520.00	150.00	52	\$ 7.800.00
	Adjustmen	500.00	-	-	500.00	260.00	-	57	260.00	500.00	-	**	500.00	120.00	-	14	120.00	4,000.00	-	\$ 4,000.00
	Thermoplastic Parkment Marking (4" 90Mils)	1.90	22200	64	42,180.00	1.20	22200	57	26.640.00	1.20	22200	17	26.640.00	1.20	22200	*	26.640.00	1.20	22200	\$ 26.640.00
	Thermoplastic pavement Marking School	1,650.00	-	**	1,650.00	1,500.00	-	67	1,500.00	1,500.000	-	44	1,500.00	1,500.00	-	**	1,500.00	1,500.00	-	\$ 1,500.00
	Thermoplastic Pavement Marking Symbols	220.00	10	5	2.200.00	120.00	10	64	1,200.00	1,200.00	10	59	12.000.00	1,200.00	0	5	12.000.00	120.00	10	\$ 1.200.00
	Erosion Control	15,000.00	-	64	15,000.00	91,500.00	-	5	91,500.00	75,000.00	-	*	75,000.00	40,000.00	-	**	40,000.00	****	-	\$ 60,000.00
	Traffic Control	27,560.00	7	69	27,560.00	64,000.00	-	67	64.000.00	131,227,00	-	67	131.227.00	80,500.00	-	\$	80.500.00	40,000.00	-	\$ 40,000.00
			TOTAL	v	704 155 00	10	TOTAL		C1201200	TOTAL		÷	00 277 000		TOTAL	÷	00000017		TOTAL	415 820 D

Page 1 of 1

### General Scope of Work:

- The scope of this project will be approximately 1.0 miles of Old Airport Road from Landscape Drive to the existing bridge located just South of Stonewall Circle.
- The project site can be identified on the map below between point MP 0.55 and MP1.63
- This project will include full depth patching, road widening, resurfacing and striping as outlined in the payment section of the project specifications.



## AGENDA ITEM COVER SHEET



## **Agenda Item Title:**

Consider Adopting a Resolution Authorizing Agents as City Representatives for Hurricane Dorian

Date of Meeting: 10/22/2019	Ward # if applicable: N/A
Department: Finance	<b>Person Submitting Item:</b> Joseph R. Sabatelli, CPA, Director of Finance
Call for Public Hearing: □Yes⊠No	Date of Public Hearing:

Explanation of Item:	FEMA requires Board appointed primary and secondary agents.
Actions Needed by Board:	Adopt Resolution
Backup Attached:	Memo; Resolution

Is item time sensitive? □Yes ⊠No	
Will there be advocates/opponents at the meeting? $\Box$	]Yes 🛛 No

Cost of Agenda Item: If this requires an expenditure, has it be budgeted and are funds available and certified by the Finance Director? A Yes A No

**Additional Notes:** 



Office of the Director of Finance

TO: City Manager, Honorable Mayor and Members of the Board of Aldermen

FROM: JR Sabatelli, CPA – Director of Finance

DATE: 10/10/2019

RE: Authorization of Agents for FEMA Reimbursement

## **Background**

Hurricane Dorian came through our area on September 4<sup>th</sup> through the 6<sup>th</sup> and as a result, the City of New Bern is eligible for reimbursements through FEMA. The City is required to designate a primary and secondary agent through a resolution approved by the Board of Aldermen. The attached form resolution provided by the North Carolina Division of Emergency Management approves the naming of as the primary agent Director of Finance JR Sabatelli and Accounting Manager Lori Mullican as the secondary agent of the City.

## **Requested Action**

That the Board of Aldermen authorize JR Sabatelli and Lori Mullican as primary and secondary agents, respectively, for the City of New Bern to execute the necessary documents for FEMA reimbursements as a result of Hurricane Dorian at its meeting on October 22, 2019.

RESOLUTION		
DESIGNATION OF A		
North Carolina Division o		
Organization Name (hereafter named Organization) City of Ne	Disaster Number:	
Applicant's State Cognizant Agency for Single Audit purposes (I	f Cognizant Agency is not assigned, please indicate):	
Applicant's Fiscal Year (FY) Start Month: July	/ Day: 1	
Applicant's Federal Employer's Identification Number 56 - 6000235		
Applicant's Federal Information Processing Standards (FIPS) Nu	mber 049 - 46340 - 00	
PRIMARY AGENT	SECONDARY AGENT	
Agent's Name Joseph R. Sabatelli	Agent's Name Lori A. Mullican	
Organization City of New Bern	Organization City of New Bern	
Official Position Director of Finance	Official Position Accounting Manager	
Mailing Address PO Box 1129	Mailing Address PO Box 1129	
City ,State, Zip New Bern, NC 28563	City ,State, Zip New Bern, NC 28563	
Daytime Telephone 252-639-2710	Daytime Telephone 252-639-2715	
Facsimile Number 252-636-4108	Facsimile Number 252-636-4108	
Pager or Cellular Number 304-288-4903	Pager or Cellular Number 252-671-1301	
BE IT RESOLVED BY the governing body of the Organization (a public that the above-named Primary and Secondary Agents are hereby authorize behalf of the Organization for the purpose of obtaining certain state and the & Emergency Assistance Act, (Public Law 93-288 as amended) or as othe agents are authorized to represent and act for the Organization in all deal Management Agency for all matters pertaining to such disaster assistance reverse side hereof. BE IT FINALLY RESOLVED THAT the above-n APPROVED this <sup>22nd</sup> day of <sup>October</sup> , 20 <sup>19</sup> .	ed to execute and file applications for federal and/or state assistance on federal financial assistance under the Robert T. Stafford Disaster Relief nerwise available. BE IT FURTHER RESOLVED that the above-named ings with the State of North Carolina and the Federal Emergency e required by the grant agreements and the assurances printed on the	
GOVERNING BODY	CERTIFYING OFFICIAL	
Name and Title Dana E. Outlaw, Mayor	Name Brenda E. Blanco	
Name and Title	Official Position City Clerk	
Name and Title	Daytime Telephone 252-639-2701	
I,, (Name) duly app of the Governing Body, do hereby certify that the above is approved by the Governing Body of of New Bern , 2019.	ICATION pointed and <u>City Clerk</u> (Title) a true and correct copy of a resolution passed and (Organization) on the <u>22nd</u> day of	
Date: Rev. 06/02	Signature: Brenda E. Blanco, City Clerk	

#### APPLICANT ASSURANCES

The applicant hereby assures and certifies that it will comply with the FEMA regulations, policies, guidelines and requirements including OMB's Circulars No. A-95 and A-102, and FMC 74-4, as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also, the Applicant gives assurance and certifies with respect to and as a condition for the grant that

1. It possesses legal authority to apply for the grant, and to finance and construct the proposed facilities; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

 It will comply with the provisions of: Executive Order 11988, relating to Floodplain Management and Executive Order 11990, relating to Protection of Wetlands.

3. It will have sufficient funds available to meet the non-Federal share of the cost for construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purpose constructed.

It will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the grant program(s) have been met.

5. It will provide and maintain competent and adequate architectural engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the Federal grantor agency may need.

6. It will operate and maintain the facility in accordance with the minimum standards as may be required or prescribed by the applicable Federal, State and local agencies for the maintenance and operation of such facilities.

7. It will give the grantor agency and the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the grant.

8. It will require the factility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped," Number A117.1-1961, as modified (41 CFR 101-17-7031). The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.

9. It will cause work on the project to be commenced within a reasonable time after receipt of notification from the approving Federal agency that funds have been approved and will see that work on the project will be prosecuted to completion with reasonable diligence.

10. It will not dispose of or encumber its title or other interests in the site and facilities during the period of Federal interest or while the Government holds bands, whichever is the longer.

11. It agrees to comply with Section 311, P.L. 93-288 and with Title VI of the Civil Rights Act of 1964 (P.L. 83-352) and in accordance with Title VI of the Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement. If any real property or structure is provided or improved with the aid of Federal financial assistance extended to the Applicant, this assurance shall oblighte the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extanded or for another purpose involving the provision of similar services or benefits.

12. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

13. It will comply with the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and Federally assisted programs.

14. It will comply with all requirements imposed by the Federal grantor agency concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with OMB Circular A-102, P.L. 93-288 as amended, and applicable Federal Regulations. 15. It will comply with the provisions of the Hatch Act which limit the political activity of employees.

16. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of State and local governments.

17. (To the best of his/her knowledge and belief) the disaster relief work described on each Federal Emergency Management Agency (FEMA) Project Application for which Federal Financial assistance is requested is eligible in accordance with the criteria contained in 44 Code of Federal Regulations, Part 206, and applicable FEMA Handbooks.

18. The emergency or disaster relief work therein described for which Federal Assistance is requested hereunder does not or will not duplicate benefits received for the same loss from another source.

19. It will (1) provide without cost to the United States all lands, easements and rights-of-way necessary for accomplishments of the approved work; (2) hold and save the United States free from damages due to the approved work or Federal funding.

20. This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, reimbursements, advances, contracts, property, discounts of other Federal financial assistance extended after the date hereof to the Applicant by FEMA, that such Federal Financial assistance will be extended in reliance on the representations and agreements made in this assurance and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear on the reverse as authorized to sign this assurance on behalf of the applicant.

21. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved Decamber 31, 1973. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Director, Federal Emergency Management Agency as an area having special flood hazards. The phrase "Federal financial assistance loan or grant, or any other form of direct or indirect Federal sesistance.

22. It will comply with the insurance requirements of Section 314, PL 93-288, to obtain and maintain any other insurance as may be reasonable, adequate, and necessary to protect against further loss to any property which was replaced, restored, repaired, or constructed with this assistance.

23. It will defer funding of any projects involving flexible funding until FEMA makes a favorable environmental clearance, if this is required.

24. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

25. It will, for any repairs or construction financed herewith, comply with applicable standards of safety, decency and sanitation and in conformity with applicable codes, specifications and standards; and, will evaluate the natural hazards in areas in which the proceeds of the grant or loan are to be used and take appropriate action to mitigate such hazards, including safe land use and construction practices.

#### STATE ASSURANCES

The State agrees to take any necessary action within State capabilities to require compliance with these assurances and agreements by the applicant or to assume responsibility to the Federal government for any deficiencies not resolved to the satisfaction of the Regional Director.

## AGENDA ITEM COVER SHEET



## **Agenda Item Title:**

Consider Adopting a Resolution to Approve a Grant Agreement with Woda Cooper Equities, LLC

Date of Meeting: 10/22/2019	Ward # if applicable: N/A
Department: Finance	Person Submitting Item: Joseph R. Sabatelli, CPA, Director of Finance
Call for Public Hearing: □Yes⊠No	Date of Public Hearing:

Explanation of Item:	This resolution approves a grant agreement for infrastructure improvements needed to construct Tate Commons, a low income housing complex, as a passthrough grant from NC Department of Commerce
Actions Needed by Board:	Adopt Resolution
Backup Attached:	Memo; Resolution, Agreement

Is item time sensitive? □Yes ⊠No	
Will there be advocates/opponents at the meeting? □Yes 🛛 No	

Cost of Agenda Item:350,000If this requires an expenditure, has it be budgeted and are funds available<br/>and certified by the Finance Director? X Yes I No

**Additional Notes:** 



TO:	City Manager, Honorable Mayor and Members of the Board of Aldermen
FROM:	Joseph R. Sabatelli, CPA - Director of Finance
DATE:	October 11, 2019
RE:	Authorize Agreement for public infrastructure for Tate Commons

## **Background**

The Board of Aldermen approved the application a grant of \$350,000 to the North Carolina Department of Commerce to assist with public infrastructure improvements necessary for the Tate Commons project at 1025 Karen Drive. Tate Commons is a 68-unit multifamily project that has received the North Carolina Housing Finance Agency 9% tax credits in 2017.

The City has been awarded the grant and it is now necessary to execute a grant agreement between the City of New Bern and Woda Cooper Equities, LLC, the project developer.

There is no City match required.

## **Requested Action**

It is recommended that the Board adopt the attached resolution at its meeting to be held on October 22, 2019.

## RESOLUTION

WHEREAS, the Board of Aldermen of the City of New Bern wishes to promote affordable housing within the City; and

WHEREAS, the City of New Bern has received notification from the North Carolina Department of Commerce that its application for grant funds for public infrastructure to support affordable residential housing development has been approved; and

WHEREAS, the grant award is in the amount of \$350,000 and requires no match from the City; and

WHEREAS, the City of New Bern has agreed to partner with Woda Cooper Equities, LLC to support the public infrastructure improvements for the Tate Commons low-income housing project.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

That the Mayor is hereby authorized to execute an agreement, in duplicate originals, between the City of New Bern and Woda Cooper Equities, LLC for an amount up to \$350,000, a copy of which is attached hereto and incorporated herein by reference. These funds will be utilized for the public infrastructure of the low-income housing project known as Tate Commons as provided in the grant agreement between the City of New Bern and the North Carolina Department of Commerce.

ADOPTED THIS 22<sup>nd</sup> DAY OF OCTOBER, 2019.

DANA E. OUTLAW, MAYOR

BRENDA E. BLANCO, CITY CLERK

## GRANT AGREEMENT TATE COMMONS

THIS GRANT AGREEMENT (this "Agreement") is made as of the 22<sup>nd</sup> day of October 2019, by and between the CITY OF NEW BERN ("Grantor"), an independent city of the State of North Carolina, and WODA COOPER EQUITIES, LLC ("Grantee"), an Ohio limited liability company.

### WITNESSETH:

WHEREAS, Grantor desires to make a grant of \$350,000 from grant funds awarded by the North Carolina Department of Commerce to Grantee pursuant to that Grant Agreement that is attached hereto at <u>Attachment A</u> (the "NC Grant") for the construction of various infrastructure improvements related to Tate Commons (the "**Property**").

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **THE GRANT**. Subject to the terms and conditions set forth herein, Grantor agrees to grant as hereafter more fully described, and Grantee agrees to accept a grant in an amount not to exceed \$350,000 (the "Grant").

2. **CONSTRUCTION**. Grantee shall cause Tate Commons Limited Partnership (the "**Owner**") to proceed forthwith with the construction of the "Project" as defined in the NC Grant.

3. **DISBURSEMENTS**. Grantor shall disburse the Grant to Grantee, funds received from the North Carolina Department of Commerce, on a reimbursement basis and in the same manner prescribed to Grantor by the NC Grant. The Grantee will cooperate in the administration of the NC Grant, and Grantor will take all steps necessary to expedite the receipt and subsequent disbursement of the Grant from the North Carolina Department of Commerce.

4. **GRANTEE'S WARRANTIES**. Grantee hereby represents and warrants to Grantor that:

(a) Grantee has the power to engage in all transactions contemplated by this Agreement;

(b) Grantee has full power, authority, and legal right to execute and deliver, and to comply with the provisions of this Agreement, which constitutes the legally binding obligations of Grantee enforceable against Grantee in accordance with its respective terms; (c) There is no suit, action or proceeding pending or, to the knowledge of Grantee, threatened against or affecting Grantee before or by any court, administrative agency, or other governmental authority, which brings into question the validity of the transactions contemplated hereby;

(d) Neither the execution nor delivery of this Agreement, will conflict with, or result in a breach of, any of the provisions of any articles of organization or operating agreement, or of any applicable law, judgment, order, writ, injunction, decree, rule, or regulation of any court, administrative agency, or other governmental authority, or of any agreement or other instrument to which Grantee is a party or by which it is bound, or constitute a default under any thereof; and

(e) No consent, approval or other authorization of or by any court, administrative agency, or other governmental authority is required in connection with the execution or delivery by Grantee of this Agreement, or compliance with the provisions hereof or thereof.

5. THIRD PARTY BENEFICIARIES. The parties do not intend the benefits of this Agreement to inure to any third party other than the parties specifically referenced herein. Notwithstanding anything contained herein, any other document executed in connection with this transaction, or any conduct or course of conduct by either or both of the parties hereto, or their respective affiliated companies, agents or employees, before or after signing this Agreement or any of the other aforesaid documents, this Agreement shall not be construed as creating any rights, claims, or causes of action against Grantor, or any of its officers, agents, or employees in favor of any prime contractor, or any other contractor, subcontractor, supplier of labor or materials, or any of their respective creditors, or any other person or entity other than Grantee.

## 6. **MISCELLANEOUS**.

(a) No change or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto.

(b) Neither the failure, nor the delay of Grantor, to exercise any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any other right, power or privilege.

(c) This Agreement shall survive the making of the Grant, and all of the obligations and undertakings of Grantee shall be continuing obligations and undertakings and shall not cease and terminate until all obligations and undertakings of Owner shall have been fully completed and discharged.

(d) If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable, it shall be ineffective only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the

balance of such provision to the extent it is not prohibited or unenforceable, nor invalidate the other provisions hereof, all of which shall be liberally construed in favor of Grantor in order to effect the provisions hereof.

(e) Grantee agrees to abide by all provisions, restrictions and covenants of the NC Grant.

7. **GOVERNING LAW**. This agreement shall be governed by the laws of the State of North Carolina.

[remainder of page intentionally left blank]

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

(CITY SEAL)

## **<u>GRANTOR</u>**:

ATTEST:

CITY OF NEW BERN

Brenda E. Blanco, City Clerk

By:

Name: Dana E. Outlaw Title: Mayor

## **GRANTEE**:

WODA COOPER EQUITIES, LLC an Ohio limited liability company

By:			
Name:			
Title:			

## FINANCE OFFICER'S CERTIFICATION STATEMENT

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

By: Name: J.R. Sabatelli Title: Director of Finance

## <u>Schedule A</u> <u>Grant Agreement</u>

The North Carolina Department of Commerce ("Commerce"), an agency of the State of North Carolina ("State"), enters into this Rural Housing Recovery - Infrastructure Grant Agreement ("Grant Agreement") with the **City of New Bern** (the "Grantee"), each being referred to individually as a "Party" and, collectively with Commerce, the "Parties".

WHEREAS, The North Carolina General Assembly ("General Assembly") has determined that it is the policy of the State to assist with disaster recovery; and

WHEREAS, Commerce, through its Rural Economic Development Division administers the Rural Housing Recovery Fund that provides grants to local governments in hurricane impacted areas to construct public infrastructure that supports affordable residential housing developments that are located outside the 100-year floodplain. For the purposes of this Grant Agreement, public infrastructure shall include water, sewer, roads, sidewalks, storm drainage, lighting, parking, broadband and other similar infrastructure projects;

WHEREAS, the Grantee has agreed to partner with an affordable residential housing project that has received a nine percent (9%) new construction low income housing tax credit from the North Carolina Housing Finance Agency ("NCHFA") for the 2016, 2017 or 2018 funding cycle and Grantee has agreed to ensure that the residential housing that is developed will remain affordable for the period required by NCHFA;

WHEREAS, the County where the Project is located has been designated as a Tier 1 or Tier 2 County pursuant to the 2019 North Carolina Development Tier Designations;

WHEREAS, without limitation, the North Carolina Secretary of Commerce has awarded the grant from the Rural Housing Recovery Fund to the Grantee for the Project based upon the Grantee's Application, any subsequent supporting materials approved by Commerce supporting the Application and the terms, conditions and representations contained in this Grant Agreement, including Exhibits A through C;

NOW, THEREFORE, in consideration of the mutual promises and such other valuable consideration as set out herein, the Parties mutually agree to the following terms and conditions:

1. Grant Agreement Documents/Scope of Project

This Grant Agreement consists of the following documents:

- (a) This Grant Agreement, including all documents incorporated by reference herein.
- (b) Grantee's Application and Scope of Project (Exhibit A).
- (c) Payment Schedule (Exhibit B).
- (d) Reporting Schedule (Exhibit C)

The Grantee agrees that it shall develop, perform and complete the work set out in the Grantee's Application and Exhibit A herein ("Project").

- 2. Changes in the Project or Other Conditions.
  - (a). A "Project Change" is any material alteration, addition, deletion or expansion of the Project, including (without limitation) material changes to construction or other infrastructure improvement, and any filing of bankruptcy by the Grantee. Prior to implementing a proposed Project Change, the Grantee shall submit the proposed Project Change in writing to Commerce for review. The failure of the Grantee to do so will subject it to the penalties and remedies set forth in Paragraph 13(b) of this Grant Agreement, unless Commerce (in its sole discretion) expressly waives this requirement of pre-implementation review in writing. In any event, there shall be no Project Changes unless expressly approved of by Commerce in its sole discretion in a separate, written agreement stating, if applicable, the costs and schedule for completing the Project Change.
  - (b). Additionally, the Grantee shall immediately notify Commerce of any change in conditions or local law, or any other event, which may significantly affect its ability to oversee, administer or perform this Grant Agreement or the Project. In its sole discretion, Commerce may deem such a change in conditions, local law or other event to constitute a Project Change.
- 3. <u>Term of Grant Agreement.</u> The effective period of this Grant Agreement shall commence on 5/13/2019 ("Effective Date") and shall terminate on 5/13/2022 unless terminated on an earlier date under the terms of this Grant Agreement (either one of which dates shall constitute the "Termination Date") or unless extended for an express term in writing by Commerce.
- 4. Funding and Administrative Expenses.
  - (a). Commerce grants to the Grantee an amount not to exceed \$350,000.00 for expenditures directly relating to the Project. If Commerce determines that the actual costs of the Project are less than the Grant amount, Commerce, in its sole discretion, may reduce the amount of the Grant accordingly. If the Grantee determines that the actual costs of the Project are less than the Grant amount, it shall report so to Commerce and return any surplus Grant funds it has received to Commerce.
  - (b). The Grantee hereby represents and warrants that all Grant funds shall be utilized exclusively for the purpose of the Project solely as set forth in Exhibit A and consistent with all applicable laws, rules, regulations and requirements, and that the Grantee shall not make or approve of any improper expenditure of Grant funds.
- 5. Independent Status of the Grantee.

The Grantee is an entity independent from Commerce. The Grant Agreement, the Project and any actions taken pursuant to them shall not be deemed to create a partnership or joint venture between or among Commerce, the Grantee or any third party. Nor shall the Grant Agreement or the Project be construed to make the Grantee (including its employees, agents, members or officials) or any third-party employees, agents, members or officials) or any third-party employees, agents, members or officials of Commerce. Neither the Grantee nor any third party shall have the ability to bind Commerce to any agreement for payment of goods or services or represent to any person that they have such ability.

- 6. <u>Method of Payment</u>. Commerce shall pay the Grant funds to the Grantee in accordance with the Payment Schedule attached hereto as Exhibit B after receipt of written requests for payment from the Grantee certifying that the conditions for such payment under this Grant Agreement have been met and that the Grantee is entitled to receive the amount so requested and any other documentation that may be required by Commerce.
- 7. <u>Obligation of Funds</u>. The Grantee shall not obligate Grant funds prior to the Effective Date or subsequent to the Termination Date of this Grant Agreement. All obligations outstanding as of the Termination Date shall be liquidated within thirty days after the Termination Date.

#### 8. Project Records.

- (a). The Grantee shall maintain full, accurate and verifiable financial records, supporting documents and all other pertinent data for the Project in such a manner as to clearly identify and document the expenditure of the State funds provided under this Grant Agreement separate from accounts for other awards, monetary contributions or other revenue sources for this Project.
- (b). The Grantee shall retain all financial records, supporting documents and all other pertinent records related to the Grant Agreement and the Project in accordance with basic State records retention policy standards for a period of five (5) years from the Termination Date. In the event such records are audited, all such records shall be retained beyond the five-year period until the audit is concluded and any and all audit findings have been resolved.
- 9. Monitoring, Reports and Auditing.
  - (a). The Grantee agrees to ensure compliance and provide its assistance with such monitoring and auditing requirements as the State may request, including following the Termination Date of this Grant Agreement. Additionally, the Grantee shall regularly monitor all performance under Grant-supported activities to ensure that time schedules are being met and other performance goals are being achieved.
  - (b). The Grantee shall furnish Commerce detailed written progress reports according to the time periods specified in Exhibit C or as otherwise requested by Commerce. Such reports should describe the progress made by the Grantee toward achieving the purpose(s) of the Project. Such descriptions should include the successes and problems encountered during the reporting period. Failure to submit a required report by the scheduled submission date will result in the withholding of any forthcoming payment until Commerce is in receipt of the delinquent report and the report meets with Commerce's approval, in Commerce's sole discretion.
  - (c). The Grantee acknowledges and agrees that, with regard to the Grant funds, Grantee will be subject to the audit and reporting requirements prescribed by N.C.G.S §159-34, Local Government Finance Act Annual independent audit; rules and regulations. Such audit and reporting requirements may vary depending upon the amount and source of Grant funding received by the Grantee and are subject to change from time to time.
  - (d). Within thirty (30) days after the Termination Date, the Grantee shall submit a final report to Commerce describing the activities and accomplishments of the Project. The final report shall include a review of performance and activities over the entire Project

period. In the final report, the Grantee should describe the Project, how it was implemented, to what degree its established objectives were met, the difficulties encountered, what was changed and the cost.

(e). The Grantee grants the State and any of its related agencies, commissions or departments (including, without limitation, Commerce, the North Carolina State Auditor and the North Carolina Office of State Budget and Management) and any of their authorized representatives, at all reasonable times and as often as necessary (including after the Termination Date), access to and the right to inspect, copy, monitor, and examine all of the books, papers, records and other documents relating to the Grant Agreement or the Project. In addition, the Grantee agrees to comply at any time, including after the Termination Date, with any requests by the State (including, without limitation, Commerce) for other financial and organizational materials to permit the State to comply with its fiscal monitoring responsibilities or to evaluate the short- and long-range impact of its programs.

#### 10. <u>Termination; Availability of Funds</u>.

- (a). If the Grantee fails to fulfill in a timely and proper manner its obligations or violates any of the covenants or stipulations under this Grant Agreement, the Grantee agrees that Commerce has the right to terminate this Grant Agreement by giving the Grantee written notice specifying the Termination Date of this Grant Agreement, which Commerce may determine in its sole discretion. Upon such termination, Commerce shall have no responsibility to make additional Grant payments. Upon such termination, the Grantee shall not expend any Grant funds without Commerce's express written authorization and shall return all unspent Grant funds to Commerce upon demand.
- (b). The obligations of Commerce to pay any amounts under this Grant Agreement are contingent upon the availability and continuation of funds for such purpose. If funds for the Grant become unavailable, the Grantee agrees that Commerce has the right to terminate this Grant Agreement by giving written notice specifying the Termination Date of this Grant Agreement, which Commerce shall determine in its sole discretion. Upon such termination, the State shall have no responsibility to make additional Grant payments. Further, upon such termination, the Grantee shall not expend any Grant funds without Commerce's express written authorization and shall return all unspent Grant funds to Commerce upon demand.
- 11. Liabilities and Loss. The Grantee hereby agrees to release, indemnify and hold harmless the State (including, without limitation, Commerce), and their respective members, officers, directors, employees, agents and attorneys (together, the "Indemnified Parties"), from any claims of third parties arising out of any act or omission of the Grantee or any third party in connection with the performance of this Grant Agreement or the Project, and for all losses arising from their implementation. Without limiting the foregoing, the Grantee hereby releases the Indemnified Parties from, and agrees that such Indemnified Parties are not liable for, and agrees to indemnify and hold harmless the Indemnified Parties against, any and all liability or loss, cost or expense, including, without limitation, reasonable attorneys' fees, fines, penalties and civil judgments, resulting from or arising out of or in connection with or pertaining to, any loss or damage to property or any injury to or death of any person occurring in connection with the Project, or resulting from any defect in the fixtures, machinery, equipment or other property used in connection with the Project or arising out of, pertaining to, or having any connection with, the Project or the financing thereof (whether arising out of acts, omissions, or

negligence of the Grantee or of any third party, or of any of their agents, contractors, servants, employees, licensees, lessees, or assignees), including any claims and losses accruing to or resulting from any and all subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project.

- 12. Grantee Representations and Warranties. The Grantee hereby represents and warrants that:
  - (a). The execution and delivery of this Grant Agreement have been duly authorized by all necessary Grantee action and are not in contravention of law or in contravention of the provisions of any indenture agreement or undertaking to which the Grantee is a party or by which it is bound.
  - (b). There is no action, suit, proceeding, or investigation at law or in equity or before any court, public board or body pending, or to the knowledge of the Grantee, threatened against or affecting it that could or might adversely affect the Project or any of the transactions contemplated by this Grant Agreement, the validity or enforceability of this Grant Agreement, or the abilities of the Grantee to discharge its obligations under this Grant Agreement. If it is subsequently found that an action, suit, proceeding, or investigation did or could threaten or affect the development of the Project, the Grantee shall be liable to Commerce for repayment of the entire amount of the Grant and this Grant Agreement may be terminated by Commerce effective upon notice.
  - (c). No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Grant Agreement by the Grantee or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. The Grantee shall provide Commerce with evidence of the existence of any such necessary consents or approvals at the time of the execution of this Grant Agreement.

#### 13. Additional Repayment Requirements and Remedies.

- (a). The repayment requirements and remedies addressed in this Paragraph 13 are in addition to those repayment requirements and other remedies set forth elsewhere in this Grant Agreement, including the requirements to repay unspent Grant funds. No remedy conferred or reserved by or to the State is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy provided for in this Grant Agreement, or now or hereinafter existing at law, in equity, or by statute, and any such right or power may be exercised from time to time and as often as may be deemed expedient.
- (b). If there is a breach of any of the requirements, covenants or agreements in this Grant Agreement, or if there are any representations or warranties which are untrue as to a material fact in this Grant Agreement or the Project (including the performance thereof), the Grantee agrees that Commerce may require repayment from the Grantee of an amount of Grant funds to be determined in Commerce's sole discretion but not to exceed the amount of Grant funds the Grantee has already received under this Grant Agreement.

- 14. <u>No Waiver by the State.</u> Failure of the State (including, without limitation, Commerce) at any time to require performance of any term or provision of this Grant Agreement shall in no manner affect the rights of the State at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of the State of any condition or the breach of any term, provision or representation contained in this Grant Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation.
- 15. Special Provisions and Conditions.
  - (a). <u>Non-discrimination</u>. The Grantee agrees not to discriminate by reason of age, race, religion, color, sex, national origin or disability related to the activities of this Grant Agreement.
  - (b). <u>Compliance with Laws</u>. The Grantee shall at all times observe and comply with all laws, regulations, codes, rules, ordinances and other requirements (together, "Laws") of the state, federal and local governments which may in any manner affect the performance of the Grant Agreement or the Project.
  - (c). <u>Non-Assignability</u>. The Grantee shall not assign or transfer any interest in the Agreement without the prior written consent of Commerce; provided, however, that claims for money due to Grantee from Commerce under this Agreement may be assigned to any commercial bank or other financial institution without such approval.
- 16. <u>Notice</u>. All notices required or permitted to be delivered hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States mails, certified, return receipt requested, first class, postage prepaid and addressed as follows:

If to Commerce:	Attn:	Melody Adams Director, Rural Grant Programs North Carolina Department of Commerce Rural Economic Development Division 301 North Wilmington Street 4346 Mail Service Center Raleigh, North Carolina 27699-4346
If to the Grantee:	Attn:	Mark A Stephens City Manager City of New Bern P.O. Box 1129 New Bern, NC 28563-1129

Any other address or notice addressed to the attention of such other individual as Commerce or the Grantee shall have specified in a notice delivered pursuant to this subsection.

17. <u>Entire Agreement</u>. This Grant Agreement supersedes all prior agreements between Commerce and the Grantee with regard to the Project and expresses their entire understanding with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to a writing signed by both Commerce and the Grantee.

- 18. <u>Execution</u>. This Grant Agreement shall be executed in digital or original format, each of which, when executed, shall be deemed an original, and such counterparts, together, shall constitute one and the same Grant Agreement which shall be sufficiently evidenced by one of such original counterparts. The highest elected official of the Grantee shall execute this Grant Agreement in its exact form (unless Commerce approves of a change to the Grant Agreement's terms in writing) and shall return one executed original Grant Agreement to Commerce in digital or original form.
- 19. Construction, Jurisdiction and Venue. This Grant Agreement shall be construed and governed by the laws of the State of North Carolina. The Grantee agrees and submits, solely for matters concerning this Grant Agreement, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purposes, that the only venue for any legal proceedings shall be Wake County, North Carolina. The place of this Grant Agreement, and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract, tort, or otherwise, relating to its validity, construction, interpretation, and enforcement, shall be determined.
- 20. <u>Severability</u>. Each provision of this Grant Agreement is intended to be severable and, if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect or impair any other provision of this Grant Agreement, but this Grant Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

City of New Bern

21. <u>Acceptance.</u> If the Grantee agrees to the Grant conditions as stated, please return the executed documents specified in Paragraph 1. This Grant may be withdrawn if Commerce has not received such documents within thirty (30) days from the date of the cover letter from Commerce to the Grantee accompanying this Grant Agreement and its Exhibits.

IN WITNESSETH WHEREOF, the parties hereto have executed this Grant Agreement as of the date first above written.

Signature:	Auto	[SEAL]
Printed Name:	Mark A. Stephens	<u></u>
Title:	City Manager	
Date:	6/3/19	

#### North Carolina Department of Commerce

George Shenill fo [SEAL] Signature: Printed Name: Anthony M. Copeland Secretary of the North Carolina Department of Commerce Title:

Date:

5/14/2019

2019-137-3215-2545

#### EXHIBIT A SCOPE OF SERVICES

Summary: This project will focus on sewer, stormwater, water, street improvements and will create 68 housing units. The NCHFA Tax Credits were awarded in 2017.

#### EXHIBIT B PAYMENT SCHEDULE

The Department of Commerce will issue grant payments up to the total grant amount upon receipt of the following:

1. A completed financial request form,

- 2. Copies of eligible project invoices that support the request amount, and
- 3. Satisfaction of all reporting requirements at the time of request.

Eligible expenditures may not be incurred prior to the effective date or subsequent to the termination date of the grant. Payments are subject to the availability of funds.

#### EXHIBIT C REPORTING SCHEDULE

Progress reports are due on January 15<sup>th</sup> and July 15<sup>th</sup> for each year that the grant remains open. The final report and job verification documentation are due at the time of project completion or no later than 30 days after the grant end-date, whichever is sooner. The reporting schedule remains in effect for the duration of the grant including time extensions.

### Failure to submit progress reports as required:

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- 1. Will result in non-payment of payment requests,
- 2. Can result in the immediate termination of the grant,
- 3. Can result in the demand for immediate repayment of any funds paid by Commerce, and
- 4. Will negatively impact the grantee's eligibility for future Commerce grants.

All forms, including reporting and request for payment, can be found on the Commerce website at <u>http://www.necommerce.com/rd/rural-grants-programs/forms</u>. Email completed forms and reports to rgpreports(a necommerce.com.

## **AGENDA ITEM COVER SHEET**

## **Agenda Item Title:**

Approve 2020 Holiday Schedule

Ward # if applicable:
Person Submitting Item: Sonya Hayes
Date of Public Hearing:

Explanation of Item:	The City of New Bern Holiday Schedule must be approved by the Board of Aldermen each year. The Holiday Schedule indicates dates the City of New Bern offices will be closed to the public in observance of designated holidays.
Actions Needed by Board:	Approval of 2020 Holiday Schedule.
Backup Attached:	Proposed 2020 Holiday Schedule and Memo from Sonya Hayes, Director of Human Resources.

Is item time sensitive? ⊠Yes □No	_
Will there be advocates/opponents at the meeting?	

Cost of Agenda Item: None If this requires an expenditure, has it be budgeted and are funds available and certified by the Finance Director? Yes No

**Additional Notes:** 





NORTH CAROLINA 303 First Street, P.O. Box 1129 New Bern, NC 28563 (252) 639-7571

- TO: Mayor and Board of Aldermen
- FROM: Sonya H. Hayes Director of Human Resources
- DATE: October 22, 2019

## SUBJECT: 2020 Holiday Schedule

Enclosed is a proposed 2020 Holiday Schedule for your review and consideration for approval.

## **Background Information**

Each year, in accordance with the Personnel Ordinance, we are required to seek approval from the Board of Aldermen for our Holiday Schedule. This has allowed us to propose a holiday calendar consistent with that of Craven County and the State of North Carolina since they normally observe many of the same holidays.

The State of North Carolina and Craven County will be observing the same holidays in 2020 with the exception Christmas. The State of NC will be closed on December 24<sup>th</sup>, 25<sup>th</sup> and 28<sup>th</sup> in observance of the Christmas Holiday. However, Craven County will be closed on December 24<sup>th</sup> and December 25<sup>th</sup> in observance of the Christmas Holiday.

The State of NC Holiday Schedule reflects the observance of 12 holidays in 2020. The Craven County Holiday Schedule reflects the observance of 11 holidays in 2020.

## **Recommendation**

It has been our practice to submit a proposed holiday schedule that aligns with Craven County's approved schedule. Therefore, we are requesting that the Board of Aldermen approve the proposed 2020 Holiday Schedule consistent with the Schedule approved by Craven County on August 19, 2019.

If you have any questions, please do not hesitate to contact me.

## Enclosure

## City of New Bern 2020 Holiday Schedule

# NEW BERN

NORTH CAROLINA Everything comes together here

Wednesday	January 1, 2020	New Year's Day
Monday	January 20, 2020	Martin Luther King, Jr. Day
Friday	April 10, 2020	Good Friday
Monday	May 25, 2020	Memorial Day
Friday	July 3, 2020	Independence Day
Monday	September 7, 2020	Labor Day
Wednesday	November 11, 2020	Veterans Day
Thursday Friday	November 26, 2020 November 27, 2020	Thanksgiving Day Day After Thanksgiving
Thursday Friday	December 24, 2020 December 25, 2020	Christmas Holiday Christmas Holiday

## **AGENDA ITEM COVER SHEET**



Agenda Item Title: Consider Approving the 2020 Board Meeting Roster

Date of Meeting: 10/22/2019	Ward # if applicable: N/A
Department: City Clerk	Person Submitting Item: Brenda Blanco
Call for Public Hearing: □Yes⊠No	Date of Public Hearing:

Explanation of Item:	The 2020 meeting roster provides for meetings on the 2nd and 4th Tuesdays of each month as well as budget meetings during the month of May.
Actions Needed by Board:	Approval of roster
Backup Attached:	Proposed roster

Is item time sensitive?  Yes  No	
Will there be advocates/opponents at the meeting?  Yes  No	

Cost of Agenda Item:
If this requires an expenditure, has it been budgeted and are funds available
and certified by the Finance Director?  Yes  No

**Additional Notes:** 

## 2020 CITY OF NEW BERN BOARD OF ALDERMEN MEETINGS

Meetings begin at 6 p.m. unless otherwise noticed

SCHEDULED BOARD MEETINGS	SCHEDULED WORK SESSIONS
January 14, 2020 January 28, 2020	
February 11, 2020 February 25, 2020	
March 10, 2020 March 24, 2020	
April 14, 2020 *April 28, 2020	
May 12, 2020 May 26, 2020	*May 5 & 6, 2020
June 9, 2020 June 23, 2020	
July 14, 2020 July 28, 2020	
August 11, 2020 August 25, 2020	
September 8, 2020 September 22, 2020	
October 13, 2020 October 27, 2020	
November 10, 2020 November 24, 2020	
December 8, 2020	

## \*FY2020-21 Budget:

April 28, 2020:	City Manager's overview and presentation of budget
May 5 & May 6, 2020:	Budget workshops

Aldermen

Sabrina Bengel Jameesha Harris Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Jeffrey T. Odham



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000 Dana E. Outlaw Mayor Mark A. Stephens City Manager Brenda E. Blanco City Clerk Joseph R. Sabatelli Director of Finance

Memo to:	Alderman Sabrina Bengel
From:	Brenda Blanco, City Clerk

Date: September 29, 2019

Re: Appointment to Planning & Zoning Board

Jerry Walker's first term on the Planning & Zoning Board expired June 30, 2019. You made a motion to reappoint Mr. Walker for an additional term. It has just been brought to my attention that Mr. Walker declined the reappointment. Therefore, you are asked to make a new appointment to serve a three-year term.