

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
Mary M. Hogan
Director of Finance

PUBLIC NOTICE OF VIRTUAL (ELECTRONIC) MEETING

In order to maintain the safety of residents, staff, and elected officials during the COVID-19 pandemic, the Board of Aldermen meeting scheduled for 6:00 p.m. on Tuesday, April 28, 2020 will be conducted electronically. The agenda is available on the City's website at www.newbernnc.gov.

The City of New Bern is making every effort to ensure that the public is able to safely view the Board of Aldermen meeting and participate in the public comment portions of the meeting, if applicable. The public may view the meeting by watching a livestream on the City's Facebook page (City of New Bern, NC Government), on Suddenlink Channel 3 (CityTV3 - the City's PEG channel), or on the City's website at www.newbernnc.gov. The public may also access the meeting by calling one of the numbers below to listen to the audio:

1-929-205-6099
1-312-626-6799
1-301-715-8592
1-346-248-7799
1-669-900-6833
1-253-215-8782

Meeting ID: 867 2517 9057
Password: 108425

NOTE: The April 28, 2020 meeting does not include any items for public comment.

**CITY OF NEW BERN
BOARD OF ALDERMEN VIRTUAL (ELECTRONIC) MEETING
CONDUCTED VIA ZOOM PLATFORM
APRIL 28, 2020 – 6:00 P.M.
CITY HALL COURTROOM
300 POLLOCK STREET**

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

Consent Agenda

3. Consider Adopting a Resolution Designating Agents for COVID-19 Assistance.
4. Approve Minutes.

5. Consider Adopting a Resolution Authorizing the City Manager to Sign a Contract with MBF Architects, PA for Architectural Services for the City Hall Annex.
6. Consider Adopting an Amendment to a Capital Project Ordinance to Rename the City Hall Elevator Project Fund as the City Hall Annex Building Project Fund.
7. Consider Adopting a Resolution Approving an Amendment to the Lease Agreement with the New Bern/Craven County Area Farmers' Market.
8. Consider Adopting a Resolution Authorizing the Mayor to Execute an Agreement for the Purchase and Sale of Real Property Located on Broad Street and Gaston Boulevard.
9. Consider Adopting a Resolution Authorizing the Mayor to Execute an Agreement for the Purchase and Sale of Real Property Located on Gaston Boulevard.
10. Appointment(s).
11. Attorney's Report.
12. City Manager's Report.
13. New Business.
14. Closed Session.
15. Adjourn.

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Memo to: Mayor and Board of Aldermen

From: Mark A. Stephens, City Manager

Date: April 21, 2020

Re: April 28, 2020 Agenda Explanations

1. Meeting opened by Mayor Dana E. Outlaw. Prayer Coordinated by Mayor Outlaw. Pledge of Allegiance.

2. Roll Call.

Consent Agenda

3. Consider Adopting a Resolution Designating Agents for COVID-19 Assistance.

North Carolina has received a major disaster declaration to assist the areas affected by COVID-19. The City must designate primary and secondary agents to execute and file applications for assistance on its behalf and to represent the City in all dealings with the State and FEMA. The designated agents will be the Accounting Manager and the Director of Finance. Previously named agents for Hurricanes Florence and Dorian will also be updated.

4. Approve Minutes.

Draft minutes of the April 14, 2020 meeting are provided for review and approval.

5. Consider Adopting a Resolution Authorizing the City Manager to Sign a Contract with MBF Architects, PA for Architectural Services for the City Hall Annex.

(Ward 1) A Request for Qualifications ("RFQ") was issued for the design and construction administration associated with the proposed City Hall Annex. After

reviewing the responses, MBF Architects, PA (“MBF”) was selected as the most qualified firm. The total cost for services is \$749,000, which represents \$524,300 for the design phase and \$224,700 for construction administration. The resolution authorizes the City Manager to execute a contract with MBF for these services. A memo from Matt Montanye, Director of Public Works, is attached.

6. Consider Adopting an Amendment to a Capital Project Ordinance to Rename the City Hall Elevator Project Fund as the City Hall Annex Building Project Fund.

(Ward 1) On May 2, 2019, an ordinance was adopted to establish a capital project fund for the design and construction of an elevator at City Hall. The scope of that project has now expanded to include an annex for City Hall. The amendment will appropriately rename the project as the City Hall Annex Building Project Fund. A memo from Mary Hogan, Director of Finance, is attached.

7. Consider Adopting a Resolution Approving an Amendment to the Lease Agreement with the New Bern/Craven County Area Farmers’ Market.

(Ward 1) The New Bern/Craven County Farmers’ Market entered into a 5-year lease with the City effective July 1, 2017 for the property located at 421 South Front Street. The lease provides for monthly rental payments of \$500. The Farmers’ Market has requested that their payments for the months of July through December 2020 be waived considering the economic impact from COVID-19. A copy of the request is attached.

8. Consider Adopting a Resolution Authorizing the Mayor to Execute an Agreement for the Purchase and Sale of Real Property Located on Broad Street and Gaston Boulevard.

(Ward 2) Staff is recommending the purchase of adjoining properties on Broad Street and Gaston Neuse Boulevard, which are identified as tax parcel numbers 8-012-12000, 8-012-131, 8-012-126, 8-012-12001 and 8-012-322, for future use. A resolution is proposed authorizing the Mayor to execute an agreement for the purchase of the property at a price of \$455,000.

9. Consider Adopting a Resolution Authorizing the Mayor to Execute an Agreement for the Purchase and Sale of Real Property Located on Gaston Boulevard.

(Ward 2) Staff has also identified a 1.08-acre parcel of land identified as tax parcel number 8-012-119 that is contiguous to the property identified in the previous item and available for purchase. A resolution is proposed authorizing the Mayor to execute an agreement for the purchase of the property at a price of \$40,000.

10. Appointment(s).

a) Joseph Cannon’s term on the Appearance Commission has expired, and he is not interested in reappointment. Foster Hughes, Director of Parks and

Recreation, has the name of someone who has expressed interest in serving on this commission. Please reach out to Mr. Hughes for additional information, if desired. Terms on the Appearance Commission are three years. When possible, appointees should have special training or experience in a design field, such as architecture, landscape design, horticulture, city planning, or a closely-related field.

- b) Ethel Staten has resigned from her seat on the New Bern-Craven County Library Board effective March 29, 2020. The Board is asked to make an appointment to fill the remainder of Ms. Staten's term, which expires on December 1, 2020.

- 11. Attorney's Report.**
- 12. City Manager's Report.**
- 13. New Business.**
- 14. Closed Session.**
- 15. Adjourn.**

AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider Adopting a Resolution Authorizing Agents as City Representatives for FEMA Claims

Date of Meeting: 04/28/2020	Ward # if applicable: N/A
Department: Finance	Person Submitting Item: Mary M. Hogan, Director of Finance
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing:

Explanation of Item:	FEMA requires the Board appoint primary and secondary agents. The attached resolution updates the prior designees for Hurricanes Florence and Dorian as well as assigns designees for COVID-19.
Actions Needed by Board:	Adopt Resolution
Backup Attached:	Memo, Resolution, NC Department of Emergency Management Designation of Applicant's Agent and Applicant Assurances for Public Assistance

Is item time sensitive? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will there be advocates/opponents at the meeting? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Cost of Agenda Item:
If this requires an expenditure, has it been budgeted and are funds available and certified by the Finance Director? <input type="checkbox"/> Yes <input type="checkbox"/> No

Additional Notes:

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

FROM: Mary M. Hogan, Director of Finance

DATE: April 17, 2020

RE: Authorization of Agents for FEMA Declarations

Background

Because of the Coronavirus Disease 2019 (COVID-19), North Carolina received major disaster declaration to assist in the areas affected by COVID-19. In order to receive assistance, the City is required to designate a primary and secondary agent through a resolution approved by the Board of Aldermen. The attached Resolution approves naming the primary agent as the Accounting Manager and the secondary agent the Director of Finance. The resolution will also update previously designated agent assignments for both Hurricanes Florence and Dorian by replacing Joseph R. Sabatelli and Mark Stephens, respectively with Mary M. Hogan. In addition to the Resolution, it is also necessary to submit the NC Department of Emergency Management Designation of Applicant's Agent and Applicant Assurances for Public Assistance form.

Requested Action

That the Board of Aldermen adopt the resolution identifying Authorized Agents for the City of New Bern to execute the necessary documents for FEMA reimbursements and reporting.

RESOLUTION DESIGNATING APPLICANT'S AGENTS

WHEREAS, North Carolina received a major disaster declaration for Coronavirus Disease 2019 (COVID-19); and

WHEREAS, FEMA requires that the City designate agents who are authorized to execute and file applications for public assistance on behalf of the City for the purpose of obtaining state and federal public assistance under the Robert T. Stafford Disaster Relief & Emergency Assistance Act or otherwise. The named agents are duly authorized under North Carolina law to act on behalf of the City in all dealings with the State of North Carolina and the Federal Emergency Management Agency for matters relating to disaster assistance; and

WHEREAS, the Board of Aldermen has reviewed the attached Designation of Applicant's Agent and Applicant Assurances for Public Assistance and desires to approve the document as completed. The document will establish agents for COVID-19 matters and update the agents previously designated for Hurricanes Florence and Dorian.

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

1. That the Designation of Applicant's Agent and Applicant Assurances for Public Assistance, which is attached hereto and incorporated herein by reference, is hereby approved; and

2. That the City Clerk is hereby authorized and directed to certify the Designation of Applicant's Agent and Applicant Assurances for Public Assistance for and on behalf of the City.

ADOPTED this 28th day of April 2020.

DANA E. OUTLAW, MAYOR

BRENDA E. BLANCO, CITY CLERK

DESIGNATION OF APPLICANT'S AGENT AND APPLICANT ASSURANCES FOR PUBLIC ASSISTANCE

ORGANIZATION NAME (HEREAFTER NAMED ORGANIZATION)

City of New Bern

PRIMARY AGENT	SECONDARY AGENT
AGENT'S NAME Lori A. Mullican	AGENT'S NAME Mary M. Hogan
ORGANIZATION City of New Bern	ORGANIZATION City of New Bern
OFFICIAL POSITION Accounting Manager	OFFICIAL POSITION Director of Finance
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 252-639-2715	DAYTIME TELEPHONE 252-639-2710
FACSIMILE NUMBER 252-636-4108	FACSIMILE NUMBER 252-636-4108
PAGER OR CELLULAR NUMBER 252-671-1301	PAGER OR CELLULAR NUMBER 740-590-5164

THE ABOVE PRIMARY AND SECONDARY AGENTS ARE HEREBY AUTHORIZED TO EXECUTE AND FILE APPLICATION FOR PUBLIC ASSISTANCE ON BEHALF OF THE ORGANIZATION FOR THE PURPOSE OF OBTAINING CERTAIN STATE AND FEDERAL FINANCIAL ASSISTANCE UNDER THE ROBERT T. STAFFORD DISASTER RELIEF & EMERGENCY ASSISTANCE ACT, (PUBLIC LAW 93-288 AS AMENDED) OR OTHERWISE AVAILABLE. THIS AGENT IS AUTHORIZED TO REPRESENT AND ACT FOR THE ORGANIZATION IN ALL DEALINGS WITH THE STATE OF NORTH CAROLINA AND THE FEDERAL EMERGENCY MANAGEMENT AGENCY FOR MATTERS PERTAINING TO SUCH DISASTER ASSISTANCE REQUIRED BY THE AGREEMENTS AND ASSURANCES PRINTED ON THE REVERSE SIDE HEREOF.

CHIEF FINANCIAL OFFICER	CERTIFYING OFFICIAL
NAME Mary M. Hogan	OFFICIAL'S NAME Brenda E. Blanco
ORGANIZATION City of New Bern	ORGANIZATION City of New Bern
OFFICIAL POSITION Director of Finance	OFFICIAL POSITION City Clerk
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 252-639-2701
FACSIMILE NUMBER 252-636-4108	FACSIMILE NUMBER 252-639-2841
PAGER OR CELLULAR NUMBER 740-590-5164	PAGER OR CELLULAR NUMBER 252-916-2455

APPLICANT'S STATE COGNIZANT AGENCY FOR SINGLE AUDIT PURPOSES (IF A 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 STATE PAYEE IDENTIFICATION NUMBER

049-46340-00

CERTIFYING OFFICIAL'S SIGNATURE

APPLICANT ASSURANCES

The applicant hereby assures and certifies that he 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 it is duly authorized pursuant to appropriate applicant authority and/or a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body and that the agents and officials designated herein are duly authorized under North Carolina law to act on behalf of the organization in all dealings with the State of North Carolina and the Federal Emergency Management Agency for all matters pertaining to the disaster assistance required by the agreements and assurances contained herein.
2. It will comply with the provisions of: Executive Order 11988, relating to Floodplain Management and Executive Order 12148, 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.
4. 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 awarding agency, the Comptroller General of the United States and, if appropriate, the State, the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
8. It will require the facility 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 ensure 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 bonds, 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. 88-352) 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 obligate 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 extended 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, as amended, 5 USC 1501 et. seq. and 7324 et. seq., 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, 29 U.S.C. Section 201 et seq., as they apply to hospital and educational institution employees of State and local governments.
17. (To the best of his 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 December 31, 1973, as amended, 42 U.S.C. 40001 et. seq.. Further, Sections 102 and 103 (42 U.S.C. 4012a and 4015) required, 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" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.
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, 54 U.S.C. 306108 (former 16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 or 1974, 54 U.S.C. 312501 et. seq. (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:

Adopt a resolution authorizing the City Manager to execute a contract with MBF Architects PA for architectural services for the City Hall Annex Building

Date of Meeting: April 28, 2020	Ward # if applicable: 1
Department: Public Works	Person Submitting Item: Matt Montanye, Director of Public Works
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing: N/A

Explanation of Item:	The City has received submittals for an RFQ for Architectural Services associated with the design and construction administration associated with the proposed City Hall Annex Building. MBF Architects, PA of New Bern NC was selected to be the most qualified firm and has submitted a proposal for architectural services for both the design and construction phases.
Actions Needed by Board:	Adopt a resolution
Backup Attached:	Memo, Resolution, RFQ Scoring Sheet, MBF Cover Letter, MBF Agreement, Resolution

Is item time sensitive? ☒ Yes ☐ No

Will there be advocates/opponents at the meeting? ☐ Yes ☒ No

Cost of Agenda Item: Design Phase: \$524,300 Construction Phase: \$224,700

If this requires an expenditure, has it been budgeted and are funds available and certified by the Finance Director? ☐ Yes ☒ 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

April 15, 2020

Memo to: Mayor and Board of Aldermen

From: Matt Montanye, Director of Public Works *Handwritten signature: Matt Montanye 4/15/20*

Re: Adopt a resolution authorizing the City Manager to execute on behalf of the City of New Bern, a contract with MBF Architects PA for architectural services associated with the proposed City Hall Annex Building.

Background Information:

As part of the February 7th Board of Aldermen Retreat, the Board viewed a presentation associated with a proposed annex building adjoining City Hall. The building was proposed to be two stories tall, approximately 22,000 square feet and house several City divisions. At the conclusion of the presentation staff was given the direction to move forward with the design phase of this project.

On March 13, 2020, request for qualification was advertised for architectural services related to the design and construction administration of the proposed annex building. After receiving five submittals from across the state, MBF Architects of New Bern North Carolina, was selected as the best qualified firm to meet the needs of the City of New Bern during both the design and construction phase of an annex building.

Staff has since met with MFB Architects and discussed cost associated with both the design and construction phases of this project as well as a timeline.

MBF Architects has submitted the following:

Fee Schedule Design Phase:

o Schematic Design	\$112,350	(15%)
o Design Development	\$149,800	(20%)
o Construction Documents	\$224,700	(30%)
o Bidding and Negotiation	\$ 37,450	(5%)
Design Phase Total:	\$524,300	(70%)

Fee Schedule Construction Phase:

o Construction Administration	\$187,250	(25%)
o Contract Closeout	\$ 37,450	(5%)
Construction Phase Total:	\$224,700	(30%)

Total Architectural Fees: \$749,000 (100%)

In addition, MBF Architects has also provided the City of New Bern with an estimated cost of construction of \$6,401,845

Timeline:

Completion of Contracts	May 2020
Schematic Design	June 2020
HPC Design Review	July 2020
Design Development	Sept. 2020
HPC – Certificate of Appropriateness	Nov. 2020
Construction Documents	Feb. 2021
Estimated Bid Opening	March 2021
Completion Construction Contracts	April 2021
Start Commencement	April 2021
Substantial Completion	April 2022

Recommendations:

The Public Works Department has reviewed the proposal for architectural services as well as the estimate for construction and recommends that the Board of Aldermen consider approving this proposal and authorizing the City Manager to execute on behalf of the City of New Bern, a contract with MBF Architects PA for architectural services associated with the proposed City Hall Annex Building.

RESOLUTION

THAT WHEREAS, a Request for Qualifications ("RFQ") for Engineering Services was publicly advertised on March 13, 2020 and submittals were received on March 23, 2020; and

WHEREAS, the following five submittals were received and scored:

MBF Architects, PA	666
C.R. Frances Architecture	637
LS3P	582
CPL	552
Creech and Associates	493

WHEREAS, the Director of Public Works of the City of New Bern has since negotiated pricing for architectural services and recommends acceptance of the proposal from MBF Architects, PA, for professional architectural services based on the attached agreement.

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

That the agreement for architectural services between The City of New Bern and MBF Architects, PA, a copy of which is attached hereto and incorporated herein by reference, is hereby accepted, and the City Manager is authorized to execute the agreement for design services and construction administration associated with the City Hall Annex Building.

ADOPTED THIS 28th DAY OF APRIL 2020.

DANA E. OUTLAW, MAYOR

BRENDA E. BLANCO, CITY CLERK



April 10, 2020, Exhibit D

Mr. Mark Stephens, PE
City Manager
City of New Bern
300 Pollock Street (28560)
PO Box 1129
New Bern, NC 28563

stephensm@newbern-nc.org

RE: City Hall Annex Building
City of New Bern
New Bern, Craven County
MBFA No: 2009

Dear Mark:

I have reviewed our file and submit Project Budget 1 summarizing the various line item expenses associated with this project. You may have other expenses or funding of which we are not aware, and I will be happy to include those at your request. Also included is Construction Cost Estimate 1.

Based on a Project Budget of \$7,450,000, we request compensation in the amount of \$749,000 for furnishing basic architectural and specialty consultant professional services. The project scope requires construction of approximately 21,484 square feet for a two story business building of conventional construction and associated site improvements. Our office billing rate is \$175 per hour should additional services beyond this scope be required.

Work effort included within the fee above is as follows:

Schematic design	15%	\$	112,350
Design development	20%	\$	149,800
Construction documents	30%	\$	224,700
Bidding & negotiation, Contractor pricing	5%	\$	37,450
Construction administration	25%	\$	187,250
Contract closeout	<u>5%</u>	<u>\$</u>	<u>37,450</u>
	100%	\$	749,000

We are engaging consultants within the fee above as follows:

Kaydos-Daniels Engineers, PLLC, Structural Engineering Consultant, 400-201 West Morgan Street, Raleigh, NC 27603
En-Tech Engineering, P.A., Plumbing, Mechanical and Electrical Engineering Consultant, PO Box 11527, Goldsboro, NC 27532

Thorburn Associates, Acoustical Consultant, Suite 800, 2500 Gateway Centre Boulevard, Morrisville, NC 27560
 Jensen Hughes, Fire Protection Engineering Consultant, Suite 580, 8000 Regency Parkway, Cary, NC 27518
 Paul F. Stephens, RA, Historic Preservation Consultant, 2116 East Kings Highway, Coatesville, PA 19320
 Avolis Engineering, P.A., Civil Engineering Consultant, PO Box 15564, New Bern, NC 28561

We recommend that 4% of the Project Budget be maintained in a contingency. These funds pay for preconstruction site assessment reporting and mapping, development permit application fees, legal advertisements, unit price compensation, concealed condition modifications and construction materials testing.

Preliminary review of the scope indicates that 9 months be allowed for architectural design production, 2 months for soliciting bids and executing contracts, and 12 months for implementing construction. Of the 9 months for preparing Instruments of Service, 4 months are allowed for receiving an HPC Certificate of Appropriateness. This proposed timeframe is conservative based on the information available to us at this time. Every effort will be made, however, to expedite design progress and to seize opportunities to accelerate scheduling.

Pending discovery of new information, our submission schedule is as follows:

Owner proposal		10-Apr-20
Completion of contract execution	1 month	1-May-20
Schematic design	1 month	1-Jun-20
HPC design reviews, public information meetings, 1-Jul-20		
Design development	3 months	1-Sep-20
HPC Certificate of Appropriateness, 1-Nov-20		
Construction documents	5 months	1-Feb-21
Estimated bid opening	1 month	1-Mar-21
Completion of construction contracts	1 month	1-Apr-21
Vacate affected staff and furniture, 1-Apr-21		
Aldermen election, 1-Nov-21		
Contract work completion	12 months	1-Apr-22

Should you find these terms to be in order, please execute the Standard Form of Agreement Between Owner and Architect for services as stated in AIA Document B101-2017 with recommended project parameters.

We look forward to working with you again, and please do not hesitate to call me if you have any questions.

Sincerely,



Darden J. Eure, III, AIA, NCARB

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MBF Architects, P.A.

Accepted by:

Mark Stephens, City Manager

City Hall Annex Building
City of New Bern
New Bern, Craven County

MBF Architects, P.A.
MBFA No: 2009
Exhibit E

Project Budget 1
Annex Addition

April 10, 2020

Funds Available:

Loan Monies:

Grant Monies:

Owner Funding/Cash Contribution: \$7,450,000

\$7,450,000

Loan Closing and Interim Interest: \$0

\$7,450,000

Land Acquisition: \$0

0.49 Acres at \$15,000 per AC

\$7,450,000

Cost Escalation* at: 0.0% \$0

Contingency** at: 4.0% \$298,000

Subtotal: \$298,000

\$7,152,000

Architectural Fee: \$749,000

(Equivalent % Fee 10.05%)

\$6,403,000

Furniture: \$0

Special Equipment: \$0

Landscaping: \$0

Subtotal: \$0

Target Contract Awards: \$6,403,000

Land Acquisition Previously Completed by Owner

*Cost escalation factors are used to approximate the increase in cost to be anticipated should the funding or design of a project be prolonged beyond one year. In general, most projects can be funded and designed in this amount of time. Otherwise, historical construction data suggests that costs increase at the rate of 4% per-year

Lump Sum

**Contingency funds are used to pay for development permit application fees, site survey assessments and mapping, soil bearing capacity testing for foundation design, legal advertisements, special project installations such as furniture, equipment or landscaping, unit price compensation, unforeseen and concealed conditions, changes following construction contract awards and materials testing during construction to demonstrate contract compliance

Cost Escalation Calculation:

(Apr '20 Origin / Mar '21 Bid Opening)

0.003333 per Month for 0 Months
OR 4% per Year

April

April

March

2020

2021

2021

Date of Estimate, Estimates Valid for One Year

Origin, Cost Escalation Begins

Target Bid Opening Date

Cost Escalation Schedule:

Estimated Value	Date of Estimate		Adjusted Value for Deferred Funding				
	Construction Funds	April 2021	Year 1 2022	Year 2 2023	Year 3 2024	Year 4 2025	Year 5 2026
	\$7,450,000	\$7,450,000	\$7,748,000	\$8,057,920	\$8,380,237	\$8,715,446	\$9,064,064

City Hall Annex Building
City of New Bern
New Bern, Craven County

MBF Architects, P.A.
MBFA No: 2009
Exhibit F

Construction Cost Estimate 1
Construction

April 10, 2020

Gross Area, Total	21,484	SF	AC	Acres
Area of Basement	0	SF	AL	Allowance
Area of First Floor	10,878	SF	CF	Cubic Feet
Area of Second Floor	9,388	SF	CY	Cubic Yards
Area of Third Floor	1,218	SF	EA	Each
Footprint Perimeter	478	LF	FL	Flight of Stairs
Lug Footer	61	LF	FX	Fixture
Strip Footer	417	LF	LF	Linear Feet
Partition Strip Footer	394	LF	LS	Lump Sum
Foundation Wall	417	LF	MH	Manhour
Foundation Wall Ht to FF	6	LF	MO	Month
Basement Wall FI to FI Ht	0	LF	SF	Square Feet
Column Spread Footers	47	EA	ST	Stall
Exterior Walls	971	LF	SY	Square Yard
Exterior Stud Wall	0	LF	TN	Ton
Exterior Masonry Wall	971	LF		
Interior Walls	2,240	LF		
Interior Stud Partition	1,406	LF		
1 Hour Stud Partition	0	LF		
2 Hour Stud Partition	0	LF		
Interior Masonry Partition	0	LF		
Interior Masonry to Deck	834	LF		
Eave Height	42	LF		
Parapet Height	6	LF		
Typ Floor to Floor Height	14	LF	Duration of Construction	12 Months
Interior Partition Height	10	LF	Target Contract Awards	\$6,400,000
Floor to Floor Height, Basement	0	LF		
Gross Roof Area	10,878	SF		
Roof Overhang & Soffit	473	LF		
Parapet Coping	126	LF		
Gross Window Area	1,987	SF		
Doors	76	EA		
Parking Stalls	0	EA		
Construction Limits	0.49	AC		
Property Acreage	0.49	AC		

Schematic Design
(AP, SD, DD, CD or BN)

Potential Tenant: Accounting, Development Services, Human Resources and Utility Billing Office
Development Concept: Achieve accessibility to administrative areas at floors one through three and the second floor courtroom
by caressing historic City Hall with an annex building having a Craven Street main entrance

Section	Description	Qty	Unit	Cost per Unit	Extension	Ck'd
GC	General Conditions (Gross Area, Total)	21,484	SF	\$2.75	\$59,081	
GC	Bond at 2.3%	1	AL	\$147,200.00	\$147,200	
GC	Insurance at 0.6%	1	AL	\$38,400.00	\$38,400	
GC	Building Permits at \$6 per \$1,000	1	AL	\$38,400.00	\$38,400	
GC	Surveying (Gross Area, Total)	21,484	SF	\$0.34	\$7,305	
GC	Temporary Utilities at \$400 per \$100,000	1	AL	\$25,600.00	\$25,600	
GC	Job Sign	1	EA	\$1,000.00	\$1,000	

GC	Job Trailer, Assign Space in Historic City Hall	12	MO	\$0.00	\$0
GC	Multi Story Equip Rent at \$2,800 per \$100,000	1	AL	\$179,200.00	\$179,200
GC	Toilet Facilities (Construction Duration)	12	MO	\$100.00	\$1,200
GC	Mobilization at \$584 per \$100,000	1	AL	\$37,376.00	\$37,376
GC	Demobilization at \$584 per \$100,000	1	AL	\$37,376.00	\$37,376
GC	Trash Removal at \$1,349 per \$100,000	1	AL	\$86,336.00	\$86,336
GC	Temporary Plastic Dust Protection	20	LF	\$20.00	\$400
GC	Final Cleaning (Gross Area, Total)	21,484	SF	\$0.41	\$8,808
GC	Contract Closeout at \$100 per \$100,000	1	AL	\$6,400.00	\$6,400
GC	Superintendent (Construction Duration)	12	MO	\$5,300.00	\$63,600
	Renovations in Adjoining City Hall for Corridor Connections	275	SF	\$250.00	\$68,750
01 50 10	Gravel Construction Entrance	19	CY	\$52.63	\$1,000
01 50 10	Silt Fencing	70	LF	\$6.98	\$489
01 50 10	Temp Seed & Mulch Construction Limits (Dress Grading)	1,163	SY	\$0.27	\$314
01 76 00	Temp Pedestrian Protection, Install & Remove, City Hall Interior	429	SF	\$0.81	\$347
01 76 00	Temp Covered Walkway Pedestrian Protection, Install & Remove, Ext	820	SF	\$3.55	\$2,911
02 40 00	Exterior Demolition, Asphalt	7,304	SF	\$1.63	\$11,906
02 40 00	Exterior Demolition, Demolish Curb	68	LF	\$10.00	\$680
03 30 00	Concrete Accessories (Gross Area, Total)	21,484	SF	\$0.30	\$6,445
03 30 10	Fiber Reinforced Vapor Barrier (First Floor Area)	10,878	SF	\$0.50	\$5,439
03 30 10	Expansion Joint Filler, 0.5 inch by 4 inch	76	LF	\$0.35	\$27
03 30 10	Sawcut Concrete Control Joints	770	LF	\$3.00	\$2,310
03 30 20	Concrete Formwork (Lug Footer)	61	LF	\$25.06	\$1,529
03 30 30	Concrete Reinforcement (Footprint Perim + Part Strip Footer)	872	LF	\$24.15	\$21,059
03 30 40	CIP, Lug Footings, 1.7 SF X-Sec (Lug Footer)	61	LF	\$136.00	\$8,296
03 30 40	CIP, Concrete Footings, 2'-2" Wide (Strip Foot Perim + Part)	811	LF	\$61.00	\$49,471
03 30 40	CIP, Spread Footings (Column Spread Footers)	47	EA	\$600.00	\$28,200
03 30 40	CIP, Elevator Pit	2	EA	\$7,000.00	\$14,000
03 30 40	CIP, Interior Steps	128	SF	\$24.24	\$3,103
03 30 40	CIP, Slab on Grade, 4 Inch (First Floor)	10,878	SF	\$7.32	\$79,627
03 30 40	CIP, Elevated Slab, 4 Inch (Sum of 2nd Floor and Up)	10,606	SF	\$4.23	\$44,863
03 31 00	Concrete Testing	1	LS	\$500.00	\$500
04 20 00	Mortar & Masonry Access (Gross Area, Total)	21,484	SF	\$1.72	\$36,952
04 20 10	Grout Column Bases (Column Spread Footers)	47	EA	\$45.00	\$2,115
04 20 10	Mortar & Masonry Access, Fill Block Core w/ Grout, to 1st FF	1,992	SF	\$11.19	\$22,290
04 20 20	Concrete Masonry Units (LF Found Wall x Typ Found Ht x 2)	5,004	SF	\$14.51	\$72,608
04 20 20	Concrete Masonry Units (LF Ext Mas Wall x Typ FI to FI Ht)	13,594	SF	\$14.51	\$197,249
04 20 20	Concrete Masonry Units (LF Int Mas Wall x Typ Part Ht)	0	SF	\$14.51	\$0
04 20 20	Concrete Mason to Deck (LF Int Mas Deck x Typ FI to FI Ht)	11,676	SF	\$14.51	\$169,419
04 20 20	Concrete Masonry Units (LF Footprint Perimeter x Typ Parapet Ht)	2,868	SF	\$14.51	\$41,615
04 20 20	Cut Masonry Control Joints (Perimeter/25)*Eave Ht	803	LF	\$8.45	\$6,786
04 20 30	Brick Units (LF Footprint Perimeter x Foundation Ht)	2,868	SF	\$15.49	\$44,425
04 20 30	Brick Units (LF Ext Wall x Typ FI to FI Ht)	13,594	SF	\$15.49	\$210,571
04 20 30	Brick Units (LF Footprint Perimeter x Typ Parapet Ht)	2,868	SF	\$15.49	\$44,425
04 20 40	Architectural Masonry	0	SF	\$3.40	\$0
04 50 00	Masonry Cleaning (LF Footprint Perimeter x Foundation Ht)	2,868	SF	\$0.40	\$1,147
04 50 00	Masonry Cleaning (LF Ext Wall x Typ FI to FI)	13,594	SF	\$0.40	\$5,438
04 50 00	Masonry Cleaning (LF Footprint Perimeter x Parapet Height)	2,868	SF	\$0.40	\$1,147
05 00 00	Miscellaneous Metal (Gross Area, Total)	21,484	SF	\$0.48	\$10,312
05 00 00	Hot Dipped Galvanized Steel Lintels	76	LF	\$25.00	\$1,900
05 10 00	Anchor Bolts, per Column (4 x Column Spread Footer)	188	EA	\$20.00	\$3,760
05 10 00	Anchor Bolts, per 4' of Lug Footer (Lug Footer / 4)+10%	17	EA	\$20.00	\$336
05 10 10	Structural Steel (First Floor)	10,878	SF	\$17.15	\$186,558
05 10 10	Structural Steel, Multiple Stories (Sum of 2nd Floor and Up)	10,606	SF	\$6.50	\$68,939
05 10 20	Open Web Steel Joists (Gross Roof Area)	10,878	SF	\$5.25	\$57,110
05 10 30	Steel Decking (Gross Roof Area)	10,878	SF	\$3.50	\$38,073
05 10 30	Steel Decking (Second Floor and Up)	10,606	SF	\$3.50	\$37,121
05 10 40	Steel Testing	1	LS	\$500.00	\$500
05 40 10	Non Structural CF Metal Framing (LF Ext Masonry * Typ Part Height)	9,710	SF	\$3.50	\$33,985
05 40 10	Non Structural CF Metal Framing (LF Int Stud * Typ Part Height)	14,060	SF	\$3.50	\$49,210
05 40 10	Non Structural CF Metal Framing, Soffits and Bulkheads	2,265	SF	\$3.50	\$7,928
05 40 20	Structural CF Metal Framing, Exterior Curtain Engineering	1	LS	\$2,000.00	\$2,000
05 40 20	Structural CF Metal Framing, Mechanical Pen	448	SF	\$10.15	\$4,547
05 40 20	Structural CF Metal Framing, Light Monitor Curbs, 2' High	420	SF	\$10.15	\$4,263

05 40 20	Structural Ceiling and Soffit Framing	280	SF	\$14.57	\$4,080
05 40 30	CF Metal Framing, LG Metal Truss Engineering	1	LS	\$2,000.00	\$2,000
05 40 30	CF Metal Framing, LG Metal Trusses, Third Floor Tower	1,218	SF	\$14.28	\$17,393
05 40 30	CF Metal Framing, LG Metal Truss Equipment	1	LS	\$2,800.00	\$2,800
05 50 00	Miscellaneous Metal Fabrications (Gross Area, Total)	21,484	LS	\$0.08	\$1,719
05 50 00	Metal Fabrications, Hand Rails	146	LF	\$95.00	\$13,870
05 50 00	Metal Fabrications, Rail Balustrades	98	LF	\$190.00	\$18,620
05 50 00	Metal Fabrications, Pipe Bollards, 6"	2	EA	\$405.50	\$811
05 50 00	Metal Fabrications, Stair Flights	9	EA	\$13,265.00	\$119,385
05 73 00	Structural Glass Balustrade, 3' Tall	227	LF	\$275.00	\$62,425
06 10 20	Eave Blocking (Roof Overhang)	473	LF	\$40.57	\$19,190
06 10 20	Parapet Blocking (Coping)	126	LF	\$16.36	\$2,061
06 10 20	Wood Roof Nailers (Gross Roof Area)	10,878	SF	\$0.80	\$8,702
06 10 20	Wood Roof Curbs (Dbl 2x12, 3 LF per Side)	4	EA	\$80.00	\$320
06 20 10	Arch Trimwork, Wood Base (LF Ext Wall + (LF Int Wall * 2))	5,451	LF	\$3.50	\$19,079
06 20 10	Arch Trimwork, Crown Mould (LF Ext Wall + (LF Int Wall * 2))	5,451	LF	\$5.50	\$29,981
06 20 10	Arch Trimwork, Sills and Casing (Gross Window Area)	1,987	SF	\$12.20	\$24,241
06 20 10	Arch Trimwork, Door Frames and Casing (Doors)	76	EA	\$275.00	\$20,900
06 20 10	Arch Trimwork, Safety Rails	8	EA	\$50.00	\$400
06 20 20	Millwork, Base Cabinet, Wall Cabinet, Wall Shelves	36	LF	\$753.65	\$27,131
06 20 20	Millwork, Countertop Support, Closet Shelf, Closet Rod	44	LF	\$24.54	\$1,080
07 11 00	Through Wall Flashing (LF Exterior Wall x 2)	1,942	LF	\$4.17	\$8,098
07 15 00	Insulation, Rigid (Footprint Perimeter)	478	LF	\$4.00	\$1,912
07 15 00	Insulation, Rigid (LF Ext Wall x Typ FI to FI Ht)	13,594	SF	\$6.25	\$84,963
07 15 00	Insulation, Rigid, Gable Ends and Clearstory Walls	2,868	SF	\$6.25	\$17,925
07 16 00	Spray Foam Insulation, Closed Attic (Roof Area)	10,878	SF	\$9.03	\$98,228
07 16 00	Spray Foam Insul, Wall/Roof Junction, 2' Width (Footprint Perim x 2)	956	SF	\$9.03	\$8,633
07 17 00	Insulation, Acoustical (LF Int Part Wall x Typ Part Ht)	14,060	SF	\$2.81	\$39,509
07 22 00	Insulation, Rigid, Mechanical Pen	552	SF	\$11.85	\$6,541
07 22 00	Insulation Fasteners & Plates, Mechanical Pen	552	SF	\$0.25	\$138
07 25 00	Air & Moisture Barrier Underlay (LF Ext Wall x Typ FI to FI Ht)	13,594	SF	\$1.64	\$22,294
07 25 00	Air & Moisture Barrier Underlayment (Gross Roof Area)	10,878	SF	\$1.64	\$17,840
07 25 00	Ice Guard Underlayment (Gross Roof Area - Mechanical Pen)	10,326	SF	\$2.25	\$23,234
07 26 00	Roof Accessories, Vent Stacks	2	EA	\$25.00	\$50
07 26 00	Roof Accessories, Drains & Overflows	2	EA	\$539.00	\$1,078
07 26 00	Roof Accessories, Pitch Pockets	6	EA	\$50.00	\$300
07 26 00	Roof Accessories, Pre Fab Rails, 2 per Location	10	EA	\$815.00	\$8,150
07 26 20	Roof Accessories, Harness Anchor Post	4	EA	\$966.67	\$3,867
07 26 20	Roof Accessories, Harness, Lanyard & Lifeline Set	2	EA	\$2,000.00	\$4,000
07 42 10	Flush Wall Panels, Mechanical Pen	448	SF	\$5.64	\$2,527
07 42 10	Flush Wall Panels, Light Monitor Curbs	420	SF	\$5.64	\$2,369
07 51 00	Low Slope Roof Warranty, Mechanical Pen	552	SF	\$0.24	\$132
07 51 40	Modified Cap Sheet (Gross Roof Area)	552	SF	\$7.35	\$4,057
07 61 00	Sheet Metal Roofing (Gross Roof Area - Mechanical Pen)	10,326	SF	\$10.17	\$105,015
07 61 00	Sheet Metal Roofing, Warranty (Gross Roof Area - Mech Pen)	10,326	SF	\$0.39	\$4,027
07 62 10	Flash & Sht Mtl, Rubber Membrane Underlay (Parapet Coping)	126	LF	\$7.78	\$980
07 62 10	Flash & Sht Mtl, 14" Coping, 0.050 Gauge (Parapet Coping)	126	LF	\$95.64	\$12,051
07 62 20	Flash & Sht Mtl, Gutter and Downspouts (Roof Overhang & Soffit)	473	LF	\$10.42	\$4,929
07 62 20	Flash & Sht Mtl, Multi Story Downspouts (Eave Height x 13 Drops)	546	EA	\$4.58	\$2,501
07 62 40	Flash & Sht Mtl, Counterflashing	126	LF	\$76.43	\$9,630
07 62 40	Flash & Sht Mtl, Internal Gutter, 22 Gauge, Stainless Steel	200	SF	\$15.12	\$3,024
07 92 00	Caulking & Sealants (Gross Area, Total)	21,484	SF	\$0.65	\$13,965
07 92 10	Caulking & Sealants, CJ/EJ (Cut Masonry Control Joints)	803	LF	\$5.19	\$4,168
07 92 10	Caulk & Seal, Store & Curtain Wall (Alum Entrance+Wind+CW)	3,694	SF	\$0.91	\$3,362
08 11 00	Hollow Metal Frames (Doors)	68	EA	\$326.87	\$22,227
08 11 00	Hollow Metal Doors	5	EA	\$225.00	\$1,125
08 11 10	Fiberglass Entry Doors & Frames	0	EA	\$1,800.00	\$0
08 14 10	Flush Wood Doors (Doors-(HM+Fiber+Alum Doors)	63	EA	\$226.28	\$14,256
08 41 00	Aluminum Entrance Doors	8	EA	\$1,764.50	\$14,116
08 41 10	Aluminum Storefront Entrance	672	SF	\$95.15	\$63,941
08 41 20	Aluminum Windows (Windows)	1,987	SF	\$51.57	\$102,470
08 41 30	Aluminum Curtain Wall System	1,035	SF	\$50.31	\$52,071
08 41 50	Translucent Fiberglass Roof Framing & Panels (Arcade Gallery)	614	SF	\$42.32	\$25,984
08 41 50	Translucent Fiberglass Panel Adhesive & Framing Fasteners (Arcade)	614	SF	\$0.62	\$381

08 41 50	Translucent Fiberglass-EPDM Isolation Pads (Arcade Gallery)	614	SF	\$1.43	\$878
08 41 50	Translucent Fiberglass Teflon Isolation Pads (Arcade Gallery)	614	SF	\$9.11	\$5,594
08 41 50	Translucent Fiberglass Roof Eave Structural Steel (Lt Mon CFM)	420	LF	\$97.32	\$40,874
08 41 50	Translucent Fiberglass Roof Aluminum Break Metal (Lt Mon CFM)	420	LF	\$18.46	\$7,753
08 41 60	Auto Sliding Entrance System	2	EA	\$4,500.00	\$9,000
08 71 00	Finish Hardware (Doors)	76	EA	\$383.00	\$29,108
08 71 10	Aluminum Entrance Hardware	8	EA	\$2,050.00	\$16,400
08 71 40	Panic Hardware	4	EA	\$350.00	\$1,400
08 71 40	Key Box	1	EA	\$286.00	\$286
08 80 10	Glass & Glazing (Doors)	76	EA	\$56.33	\$4,281
08 80 10	Entrance Glass & Glazing (Aluminum Entrances)	672	SF	\$23.25	\$15,624
08 80 10	Insulated Glass & Glazing (Aluminum Windows)	1,987	SF	\$23.25	\$46,198
08 80 10	Insulated Glass & Glazing (Aluminum Curtain Wall)	1,035	SF	\$23.25	\$24,064
08 90 00	Stationary Louvers	30	SF	\$69.94	\$2,098
09 02 00	Pressure Washing, Historic Facades in the Arcade Gallery	4,725	SF	\$0.21	\$992
09 24 00	Lath & Plaster	0	SF	\$9.00	\$0
09 24 10	Lath & Plaster Neat Coat Repair & Acrylic Coating	746	SF	\$46.09	\$34,383
09 25 00	Veneer Plaster System	238	SF	\$4.25	\$1,012
09 26 00	Acrylic Coating (Veneer Plaster System)	238	SF	\$6.33	\$1,507
09 29 00	Exterior Wall Sheathing (LF Ext Stud Wall x Typ Fl to Fl Ht)	0	SF	\$4.40	\$0
09 29 10	Gypsum Bd, CF Int Wall Furring (Section 05 40 10 x One Side)	9,710	SF	\$3.42	\$33,208
09 29 10	Gypsum Bd, CF Int Wall (Section 05 40 10 x Two Sides)	28,120	SF	\$3.42	\$96,170
09 29 10	Gypsum Bd, CF Soffits and Bulkheads (Section 05 40 10)	2,265	SF	\$3.42	\$7,746
09 29 10	Gypsum Bd, CF Structural Ceiling & Soffit (Section 05 40 20)	280	SF	\$3.42	\$958
09 30 20	Ceramic Tile Flooring	1,092	SF	\$15.62	\$17,057
09 30 20	Ceramic Tile Wainscoat	3,700	SF	\$15.62	\$57,794
09 51 00	Acoustical Tile Ceilings	19,939	SF	\$2.62	\$52,240
09 61 00	Finish Flooring Allowance (Gross Area, Total)	21,484	SF	\$7.50	\$161,130
09 66 00	Terrazzo Flooring	1,544	SF	\$34.60	\$53,422
09 80 00	Acoustical Panels for Sound Absorption	1,200	SF	\$22.00	\$26,400
09 91 00	Int Paint ((LF Ext Wall + (2 x LF Int Wall)) * Int Part Wall Ht)	54,510	SF	\$1.55	\$84,491
09 91 00	Interior Painting, CF Soffits & Bulkheads (Section 05 40 10)	2,265	SF	\$1.55	\$3,511
09 91 00	Interior Painting, CF Structural Ceiling & Soffit (Section 05 40 20)	280	SF	\$1.55	\$434
09 91 00	Interior Painting, Metal Deck Ceiling (Gross Roof Area)	10,878	SF	\$1.80	\$19,580
09 91 00	Exterior Painting, Trim, Doors (Hollow Metal Doors)	5	EA	\$50.00	\$250
10 14 00	Signage, Interior (Doors)	76	EA	\$142.58	\$10,836
10 15 00	Cast Bronze Plaque	1	EA	\$2,000.00	\$2,000
10 21 00	Toilet Partitions, per Stall	17	ST	\$1,170.00	\$19,890
10 28 00	Toilet & Bath Accessories	35	FX	\$204.48	\$7,157
10 44 00	Fire Extinguisher Cabinets	5	EA	\$542.50	\$2,713
11 52 00	Motorized, Concealed Projection Screen, 10' Wide by 8' Tall	1	EA	\$3,180.00	\$3,180
11 52 00	Projector and Ceiling Mount	1	EA	\$800.00	\$800
11 53 00	Television Brackets, Ceiling or Wall Mount	2	EA	\$600.00	\$1,200
12 21 00	Window Treatment, Blinds (Windows)	1,987	SF	\$3.64	\$7,233
12 21 00	Window Treatment, Bluestone Sills (Windows)	1,987	SF	\$2.18	\$4,332
12 37 00	Solid Surface Countertops	80	LF	\$22.50	\$1,800
12 59 00	Deluxe Cubicles with Cabinetry	12	EA	\$7,638.00	\$91,656
14 24 00	Elevator, Engineering	1	LS	\$3,787.00	\$3,787
14 24 00	Elevator, Hydraulic per Floor	3	EA	\$30,589.00	\$91,767
14 24 00	Elevator, Traction per Floor	2	EA	\$20,000.00	\$40,000
26 10 10	Commercial Standby Generator w/ Auto Trans Switch, 80.KW	0	EA	\$51,100.00	\$0
27 20 00	1' Center Hung Cable Tray and Accessories	408	LF	\$9.00	\$3,672
27 20 00	Voice & Data Cabling, Jacks & Phone System (Gross Area)	21,484	SF	\$1.89	\$40,605
27 51 00	Rescue Communications System, per Station	5	EA	\$900.00	\$4,500
28 13 00	Access Control, Proxy Card Reader System	1	AL	\$3,070.00	\$3,070
28 13 00	Access Control, Proxy Card Door Hardware	12	EA	\$1,000.00	\$12,000
28 13 00	Access Control, Card Programming Equipment	1	AL	\$2,500.00	\$2,500
28 13 00	Access Control, Cards or Keyfobs	100	EA	\$2.00	\$200
31 22 00	Building Pad & Parking Improv Staking (Construction Limits)	0.49	AC	\$740.38	\$363
31 22 00	Site Prep, Stripping ((AC x 43560 SF x 0.5 FT Depth)/27 CF)	395	CY	\$7.06	\$2,791
31 22 00	Site Prep, Compact Subgrade (First Floor Area / 9 SF)	1,209	SY	\$3.82	\$4,617
31 22 00	Site Prep, Replacement Backfill to Original Grade (Stripping)	395	CY	\$34.36	\$13,581
31 22 00	Site Prep, Building Pad, (First Flr Area x 7 FT Depth)/27 CF	2,820	CY	\$14.00	\$39,483
31 22 00	Site Prep, Dress Grading (Acers*4840)-(First Fl Area/9)	1,163	SY	\$2.70	\$3,140

31 23 00	Excavating & Detail Grading (Footprint Perim + Partition Footer)	872	LF	\$5.40	\$4,709
31 23 00	Excavating & Detail Grading (Column Spread Footers)	47	EA	\$100.00	\$4,700
31 23 00	Underslab Drainage Stone, No. 67 NCDOT, 4-Inches (1st Flr)	10,878	SF	\$0.50	\$5,439
31 25 00	Soils Testing	1	LS	\$500.00	\$500
31 31 00	Termite Treatment (First Floor Area)	10,878	SF	\$0.75	\$8,159
32 12 00	Site Improv Detail Construction Staking (Construction Limits)	0.49	AC	\$1,082.81	\$531
32 12 20	Curb & Gutter, 30", Handwork	50	LF	\$24.91	\$1,246
32 12 20	Valley Gutter, 24"	12	LF	\$20.00	\$240
32 18 20	Drive Surfacing, 10 Inch ABC	207	SY	\$16.44	\$3,403
32 18 20	Rough Grade Road Bed (Sum of Drive Surfacing)	207	SY	\$2.50	\$518
32 18 20	Fine Grade ABC Stone (Rough Grade Road Bed)	207	SY	\$0.75	\$155
32 18 20	2" I-2 Asphalt w/ 3" Intermediate Course-Heavy Roadways	207	SY	\$32.32	\$6,690
32 12 20	Site Walks & Improvements	593	SF	\$6.06	\$3,594
32 12 20	Site Walks & Imp, Dumpster & Masonry Screen Wall	1	EA	\$3,500.00	\$3,500
32 12 20	Site Walks & Imp, Loading Dock w/ Well and Ramp	1	EA	\$16,000.00	\$16,000
32 12 20	Site Walks & Imp, Service Area w/ Masonry Screen Wall	1	EA	\$16,000.00	\$16,000
32 12 30	Site Concrete Testing	1	LS	\$500.00	\$500
32 12 60	Traffic Marking (Vehicle Stalls)	0	EA	\$96.80	\$0
32 15 00	Masonry Pavers	1,218	SF	\$9.20	\$11,206
32 90 10	Grass Sod	0	SY	\$3.90	\$0
32 90 20	Plants, Understory Tree, 2" Caliper	0	EA	\$636.86	\$0
32 90 20	Shrubs, 2 Gallon	0	EA	\$40.00	\$0
33 05 00	Water Test and Chlorinate	1	LS	\$1,500.00	\$1,500
33 05 00	Sewer Test	1	LS	\$600.00	\$600
33 10 00	Sewer 4" Cleanout w/ 2' x 2' x 6" Conc Pad, 100 FT Intervals	2	EA	\$250.00	\$500
33 10 00	Elevator Oil Interceptor, 1000 Gallons	2	EA	\$4,850.00	\$9,700
33 30 00	Concrete Water Meter Vault	1	EA	\$10,093.00	\$10,093
33 30 00	Water Main Tap and Saddle, 6"	1	EA	\$2,850.00	\$2,850
33 30 00	Backflow Preventer, 2"	1	EA	\$3,000.00	\$3,000
33 30 00	Water Utilities, 2" PVC	50	LF	\$28.60	\$1,430
33 30 00	Water Utilities, 2" Fittings	4	EA	\$150.00	\$600
33 30 00	Water Utilities, 2" Valve	2	EA	\$225.00	\$450
33 30 00	Sewer Utilities, 6" PVC Including Fittings	50	LF	\$31.35	\$1,568
			SF	\$235.43	\$5,058,020
22 00 00	Plumbing	21,484	SF	\$11.40	\$244,918
21 00 00	Fire Protection	21,484	SF	\$4.50	\$96,678
23 00 00	Mechanical	21,484	SF	\$21.03	\$451,809
26 00 00	Electrical	21,484	SF	\$21.30	\$457,609
28 31 00	Fire Alarm System	21,484	SF	\$4.32	\$92,811
			SF	\$62.55	\$1,343,824
	Estimated Cost				\$6,401,845
	Probable Deviation Amount			5%	\$320,092
	Anticipated Base Bid Range-Low				\$6,081,752
	Anticipated Base Bid Range-High				\$6,721,937

AIA® Document B101™ – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Fifteenth (15th) day of April in the year Two Thousand Twenty (2020)

(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:

(Name, legal status, address and other information)

City of New Bern
300 Pollock Street (28560)
P O Box 1129
New Bern, NC 28560

and the Architect:

(Name, legal status, address and other information)

MBF Architects, P.A.
317-C Pollock Street
New Bern, NC 28560

for the following Project:

(Name, location and detailed description)

City Hall Annex Building
New Bern, Craven County
MBFA No. 2009

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Approximate sizes are indicated in Exhibit C, Preliminary Floor Planning, attached, and these parameters will be reviewed and revised as mutually agreed.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

The property has been purchased by the Owner and is identified as 300 Pollock Street, New Bern, Craven County.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

Project Budget: \$7,450,000

Budget less Fees: \$6,701,000 (\$7,450,000 minus the Architect's fee as stated in 11.1)

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

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.1 Design phase milestone dates, if any:

Design Milestone Dates: Reference Exhibit D, MBF Architects, P. A. correspondence

.2 Construction commencement date:

by April 2021

.3 Substantial Completion date or dates:

by April 2022

.4 Other milestone dates:

Not applicable

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Competitive Bids

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

Not applicable

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™-2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204-2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204-2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

As indicated in Exhibit A, Initial Information

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

Not applicable

§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

Payment for these services originates from the project contingency budget. Reference Exhibit B, Supplemental Services

.2 Civil Engineer:

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Compensation for these services is included within the Architectural fee. Reference Exhibit B, Supplemental Services

- 3 Other, if any:
(List any other consultants and contractors retained by the Owner.)

Reference Exhibit B, Supplemental Services

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address, and other contact information.)

As indicated in Exhibit A, Initial Information

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

- 1 Structural Engineer:

Kaydos-Daniels Engineers, PLLC. Compensation for these services is included within the Architectural fee

- 2 Mechanical Engineer:

En-Tech Engineering, P.A. Compensation for these services is included within the Architectural fee

- 3 Electrical Engineer:

En-Tech Engineering, P.A. Compensation for these services is included within the Architectural fee

§ 1.1.11.2 Consultants retained under Supplemental Services:

Acoustical Consultant, Thorburn Associates, Incorporated; Fire Protection Engineer, Jensen Hughes; Historic Preservation Consultant, Paul F. Stephens, AIA; and Civil Engineer, Avolis Engineering, P.A. Compensation for these services is included within the Architectural fee

§ 1.1.12 Other Initial Information on which the Agreement is based:

Reference Exhibit A, Initial Information attached

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

(Paragraph deleted)

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

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§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than One Million (\$ 1,000,000) for each occurrence and One Million (\$ 1,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than the statutory minimum policy limit per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than \$100,000 policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million (\$ 2,000,000) per claim and Two Million (\$ 2,000,000) in the aggregate.

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

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§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

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§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining competitive bids; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

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§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

1. facilitating the distribution of Bidding Documents to prospective bidders;
2. organizing and conducting a pre-bid conference for prospective bidders;
3. preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
4. organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

(Paragraphs deleted)

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The

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Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such

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requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

1. conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
2. issue Certificates of Substantial Completion;
3. forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
4. issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	Architect, Exhibit B
§ 4.1.1.2 Multiple preliminary designs	Not Provided - N/A
§ 4.1.1.3 Measured drawings	Architect, Exhibit B
§ 4.1.1.4 Existing facilities surveys	Owner, Exhibit B
§ 4.1.1.5 Site evaluation and planning	Not Provided - N/A
§ 4.1.1.6 Building Information Model management responsibilities	Architect, Exhibit B
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided - N/A
§ 4.1.1.8 Civil engineering	Architect, Exhibit B
§ 4.1.1.9 Landscape design	Not Provided - N/A
§ 4.1.1.10 Architectural interior design	Not Provided - N/A
§ 4.1.1.11 Value analysis	Not Provided - N/A
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Architect, Exhibit B
§ 4.1.1.13 On-site project representation	Not Provided - N/A
§ 4.1.1.14 Conformed documents for construction	Architect, Exhibit B
§ 4.1.1.15 As-designed record drawings	Architect, Exhibit B
§ 4.1.1.16 As-constructed record drawings	Architect, Exhibit B
§ 4.1.1.17 Post-occupancy evaluation	Not Provided - N/A
§ 4.1.1.18 Facility support services	Not Provided - N/A
§ 4.1.1.19 Tenant-related services	Not Provided - N/A
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Architect, Exhibit B
§ 4.1.1.21 Telecommunications/data design	Owner, Exhibit B
§ 4.1.1.22 Security evaluation and planning	Not Provided - N/A
§ 4.1.1.23 Commissioning	Architect, Exhibit B
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not Provided - N/A
§ 4.1.1.25 Fast-track design services	Not Provided - N/A
§ 4.1.1.26 Multiple bid packages	Not Provided - N/A
§ 4.1.1.27 Historic preservation	Architect, Exhibit B
§ 4.1.1.28 Furniture, furnishings, and equipment design	Not Provided - N/A
§ 4.1.1.29 Other services provided by specialty Consultants	Architect, Exhibit B
§ 4.1.1.30 Other Supplemental Services	Not Provided - N/A
4.1.1.31 Land Survey Services	Owner, Exhibit B
4.1.1.32 Geotechnical Services	Owner, Exhibit B
4.1.1.33 Environmental Studies and Reports	Owner, Exhibit B
4.1.1.34 Materials Testing	Owner, Exhibit B
4.1.1.35 Models and Renderings	Not Provided, Exhibit B
4.1.1.36 Fees Payable to AHJ	Owner, Exhibit B

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§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

Reference Exhibit B, Supplemental Services

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

Reference Exhibit B, Supplemental Services

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall

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give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

1. Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
2. Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
3. Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
4. Evaluating an extensive number of Claims as the Initial Decision Maker; or,
5. Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

1. Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
2. Fifty-two (52) visits to the site by the Architect during construction (12 Mo / 12 Mo per Yr x 52 Wk per Yr)
3. Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
4. Two (2) inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within Twenty-six (26) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services. Reference Exhibit A, Initial Information.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other

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improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

(Paragraph deleted)

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the

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Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

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

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's

consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration

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proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other: (Specify)

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

(Paragraphs deleted)

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

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§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

1 Termination Fee:

The Termination Fee is equivalent to 5% of the Architect's fee as stipulated in Section 11.1.

2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

Zero (\$0.00) Dollars

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

.1 Stipulated Sum

(Paragraphs deleted) Compensation is \$749,000. The equivalent percentage fee for applicable change orders and changes in the scope of work is 10.05% (\$749,000 / \$7,450,000).

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Compensation is included in Section 11.1. Compensation for adding additional services is at the hourly billing rates stated in Section 11.7 plus expenses incurred.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Compensation for changes stated in Section 4.2.1.1 and 4.2.1.6, which include increasing project financial parameters and adding Owner requested alternates, is calculated by applying the equivalent percentage fee as indicated in Section 11.1. Compensation for the remaining additional services stated in Section 4.2 is at the hourly billing rates stated in Section 11.7 plus expenses incurred.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus the Architect's time in accordance with Section 11.7.

(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase (SD)	\$112,350	percent (	15	%)
Design Development Phase (DD)	\$149,800	percent (	20	%)
Construction Documents Phase (CD)	\$224,700	percent (	30	%)
Bidding & Negotiation Phase (BN)	\$ 37,450	percent (	5	%)
Construction Administration Phase (CA)	\$187,250	percent (	25	%)
Contract Closeout Phase (CC)	\$ 37,450	percent (5	%)
Design Fee	\$749,000	percent (100	%)

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(Paragraphs deleted)

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Employee or Category	Rate (\$0.00)
Principal	\$175 per Hour
Project Manager	\$120 per Hour
Clerical and Technical Staff	\$70 per Hour

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

(Paragraphs deleted)

- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .9 All taxes levied on professional services and on reimbursable expenses;

(Paragraphs deleted)

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus the Architect's time in accordance with Section 11.7. Reimbursable expenses are authorized by the Owner in advance of procurement.

(Paragraphs deleted)

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of Zero (\$ 0) shall be made upon execution of this Agreement. It shall be credited to the Owner's account in the final invoice.

(Paragraph deleted)

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

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

Unpaid amounts bear an interest rate of Prime + 3% and incur an administrative late fee of 1% per month on the outstanding balance until the account is current.

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

(Paragraphs deleted)

Init.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1** AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect.

(Paragraphs deleted)

- .3** Exhibits:

(Check the appropriate box for any exhibits incorporated into this Agreement.)

- ☒ **[X]** Other Exhibits incorporated into this Agreement:

(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

Exhibit A, Initial Information dated April 15, 2020

Exhibit B, Supplemental Services dated April 15, 2020

Exhibit C, Preliminary Floor Planning dated March 1, 2020

Exhibit D, MBF Architects, P. A. correspondence dated April 10, 2020

Exhibit E, Project Budget 1 dated April 10, 2020

Exhibit F, Construction Cost Estimate 1 dated April 10, 2020

- .4** Other documents:

(List other documents, if any, forming part of the Agreement.)

Not applicable

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

On behalf of:

City of New Bern

(Signature)

Mark Stephens

City Manager

(Printed name and title)

Date of Execution

On behalf of:

MBF Architects, P.A.

(Signature)

Darden J. Eure, III, AIA, NCARB

Vice President

(Printed name, title, and license number, if required)

Electronic Counterpart

Init.

Additions and Deletions Report for AIA® Document B101™ – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document; reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:43:01 ET on 04/14/2020.

PAGE 1

AGREEMENT made as of the Fifteenth (15th) day of April in the year Two Thousand Twenty (2020)

...

City of New Bern
300 Pollock Street (28560)
P O Box 1129
New Bern, NC 28560

...

MBF Architects, P.A.
317-C Pollock Street
New Bern, NC 28560

...

City Hall Annex Building
New Bern, Craven County
MBFA No. 2009

PAGE 2

Approximate sizes are indicated in Exhibit C, Preliminary Floor Planning, attached, and these parameters will be reviewed and revised as mutually agreed.

...

The property has been purchased by the Owner and is identified as 300 Pollock Street, New Bern, Craven County.

...

Project Budget: \$7,450,000
Budget less Fees: \$6,701,000 (\$7,450,000 minus the Architect's fee as stated in 11.1)

PAGE 3

Design Milestone Dates: Reference Exhibit D, MBF Architects, P. A. correspondence

...

by April 2021

...

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User Notes:

(1128884326)

by April 2022

Not applicable

Competitive Bids

Not applicable

As indicated in Exhibit A, Initial Information

Not applicable

Payment for these services originates from the project contingency budget. Reference Exhibit B, Supplemental Services

PAGE 4

Compensation for these services is included within the Architectural fee. Reference Exhibit B, Supplemental Services

Reference Exhibit B, Supplemental Services

As indicated in Exhibit A, Initial Information

Kaydos-Daniels Engineers, PLLC. Compensation for these services is included within the Architectural fee

En-Tech Engineering, P.A. Compensation for these services is included within the Architectural fee

En-Tech Engineering, P.A. Compensation for these services is included within the Architectural fee

Acoustical Consultant, Thorburn Associates, Incorporated; Fire Protection Engineer, Jensen Hughes; Historic Preservation Consultant, Paul F. Stephens, AIA; and Civil Engineer, Avolis Engineering, P.A. Compensation for these services is included within the Architectural fee

...

Reference Exhibit A, Initial Information attached

...

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. ~~The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

~~§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™ 2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

PAGE 5

§ 2.5.1 Commercial General Liability with policy limits of not less than One Million (\$ 1,000,000) for each occurrence and One Million (\$ 1,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than ~~(\$)~~ the statutory minimum policy limit per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

...

§ 2.5.5 Employers' Liability with policy limits not less than ~~(\$)~~ each accident, ~~(\$)~~ each employee, and ~~(\$)~~ \$100,000 policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million (\$ 2,000,000) per claim and Two Million (\$ 2,000,000) in the aggregate.

PAGE 7

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining ~~either competitive bids or negotiated proposals; competitive bids;~~ (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

PAGE 8

~~§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.~~

§ 3.5.3 Negotiated Proposals

~~§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.~~

~~§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:~~

- 1 — facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- 2 — organizing and participating in selection interviews with prospective contractors;
- 3 — preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- 4 — participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

PAGE 11

§ 4.1.1.1	Programming	Architect, Exhibit B
§ 4.1.1.2	Multiple preliminary designs	Not Provided - N/A
§ 4.1.1.3	Measured drawings	Architect, Exhibit B
§ 4.1.1.4	Existing facilities surveys	Owner, Exhibit B
§ 4.1.1.5	Site evaluation and planning	Not Provided - N/A
§ 4.1.1.6	Building Information Model management responsibilities	Architect, Exhibit B
§ 4.1.1.7	Development of Building Information Models for post construction use	Not Provided - N/A
§ 4.1.1.8	Civil engineering	Architect, Exhibit B
§ 4.1.1.9	Landscape design	Not Provided - N/A
§ 4.1.1.10	Architectural interior design	Not Provided - N/A
§ 4.1.1.11	Value analysis	Not Provided - N/A
§ 4.1.1.12	Detailed cost estimating beyond that required in Section 6.3	Architect, Exhibit B
§ 4.1.1.13	On-site project representation	Not Provided - N/A
§ 4.1.1.14	Conformed documents for construction	Architect, Exhibit B
§ 4.1.1.15	As-designed record drawings	Architect, Exhibit B
§ 4.1.1.16	As-constructed record drawings	Architect, Exhibit B
§ 4.1.1.17	Post-occupancy evaluation	Not Provided - N/A
§ 4.1.1.18	Facility support services	Not Provided - N/A
§ 4.1.1.19	Tenant-related services	Not Provided - N/A
§ 4.1.1.20	Architect's coordination of the Owner's consultants	Architect, Exhibit B
§ 4.1.1.21	Telecommunications/data design	Owner, Exhibit B
§ 4.1.1.22	Security evaluation and planning	Not Provided - N/A
§ 4.1.1.23	Commissioning	Architect, Exhibit B
§ 4.1.1.24	Sustainable Project Services pursuant to Section 4.1.3	Not Provided - N/A
§ 4.1.1.25	Fast-track design services	Not Provided - N/A
§ 4.1.1.26	Multiple bid packages	Not Provided - N/A
§ 4.1.1.27	Historic preservation	Architect, Exhibit B
§ 4.1.1.28	Furniture, furnishings, and equipment design	Not Provided - N/A
§ 4.1.1.29	Other services provided by specialty Consultants	Architect, Exhibit B

§ 4.1.1.30. Other Supplemental Services	<u>Not Provided - N/A</u>
4.1.1.31 Land Survey Services	<u>Owner, Exhibit B</u>
4.1.1.32 Geotechnical Services	<u>Owner, Exhibit B</u>
4.1.1.33 Environmental Studies and Reports	<u>Owner, Exhibit B</u>
4.1.1.34 Materials Testing	<u>Owner, Exhibit B</u>
4.1.1.35 Models and Renderings	<u>Not Provided, Exhibit B</u>
4.1.1.36 Fees Payable to AHJ	<u>Owner, Exhibit B</u>

PAGE 12

Reference Exhibit B, Supplemental Services

...

Reference Exhibit B, Supplemental Services

PAGE 13

- 1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- 2 Fifty-two (52) visits to the site by the Architect during construction
(12 Mo / 12 Mo per Yr x 52 Wk per Yr)
- 3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- 4 Two (2) inspections for any portion of the Work to determine final completion.

...

§ 4.2.5 If the services covered by this Agreement have not been completed within Twenty-six (26) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services. Reference Exhibit A, Initial Information.

PAGE 14

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

PAGE 17

[☒] Litigation in a court of competent jurisdiction

...

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

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

~~§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.4 Consolidation or Joinder~~

~~§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

PAGE 18

The Termination Fee is equivalent to 5% of the Architect's fee as stipulated in Section 11.1.

...

Zero (\$0.00) Dollars

...

~~§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.~~

...

~~§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.~~

PAGE 19

(Insert amount)

.2 — Percentage Basis

— (Insert percentage value)

— () % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 — Other

~~(Describe the method of compensation)~~

Compensation is \$749,000. The equivalent percentage fee for applicable change orders and changes in the scope of work is 10.05% (\$749,000 / \$7,450,000).

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

...

Compensation is included in Section 11.1. Compensation for adding additional services is at the hourly billing rates stated in Section 11.7 plus expenses incurred.

...

Compensation for changes stated in Section 4.2.1.1 and 4.2.1.6, which include increasing project financial parameters and adding Owner requested alternates, is calculated by applying the equivalent percentage fee as indicated in Section 11.1. Compensation for the remaining additional services stated in Section 4.2 is at the hourly billing rates stated in Section 11.7 plus expenses incurred.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent (%), or as follows: the Architect's time in accordance with Section 11.7.

...

Schematic Design Phase (SD)	\$112,350	percent (	15	%)
Design Development Phase (DD)	\$149,800	percent (	20	%)
Construction Documents Phase (CD)	\$224,700	percent (	30	%)
Procurement Phase Bidding & Negotiation Phase (BN)	\$ 37,450	percent (	5	%)
Construction Administration Phase (CA)	\$187,250	percent (	25	%)
Contract Closeout Phase (CC)	\$ 37,450	percent (	5	%)
Total Basic Compensation-Design Fee	one hundred	percent (	100	%)
	\$749,000			

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

PAGE 20

Principal	\$175 per Hour
Project Manager	\$120 per Hour
Clerical and Technical Staff	\$70 per Hour

...

- ~~1 Transportation and authorized out of town travel and subsistence;~~
- ~~2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;~~

- ~~3~~ Permitting and other fees required by authorities having jurisdiction over the Project;
- ~~4~~ Printing, reproductions, plots, and standard form documents;
- ~~5~~ Postage, handling, and delivery;
- ~~6~~ Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- ~~7~~ Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- ~~8~~ If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- ~~9~~ All taxes levied on professional services and on reimbursable expenses;
- ~~10~~ Site office expenses;
- ~~11~~ Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- ~~12~~ Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus percent (~~—~~ %) of the expenses incurred ~~the Architect's time in accordance with Section 11.7.~~ Reimbursable expenses are authorized by the Owner in advance of procurement.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

...

§ 11.10.1.1 An initial payment of Zero (\$ 0) shall be made upon execution of this Agreement ~~and is the minimum payment under this Agreement.~~ It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of (\$ ~~—~~) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

...

% Unpaid amounts bear an interest rate of Prime + 3% and incur an administrative late fee of 1% per month on the outstanding balance until the account is current.

...

ARTICLE 12 ~~SPECIAL TERMS AND CONDITIONS~~

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

~~2~~ — AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203 2013 incorporated into this agreement.)

[] — AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204 2017 incorporated into this agreement.)

[] — X — Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

Exhibit A, Initial Information dated April 15, 2020

Exhibit B, Supplemental Services dated April 15, 2020

Exhibit C, Preliminary Floor Planning dated March 1, 2020

Exhibit D, MBF Architects, P. A. correspondence dated April 10, 2020

Exhibit E, Project Budget 1 dated April 10, 2020

Exhibit F, Construction Cost Estimate 1 dated April 10, 2020

Not applicable

On behalf of:
City of New Bern

OWNER (Signature)

Mark Stephens
City Manager
(Printed name and title)

Date of Execution

On behalf of:
MBF Architects, P.A.

ARCHITECT (Signature)


Darden J. Eure, III, AIA, NCARB
Vice President
(Printed name, title, and license number, if required)

Electronic Counterpart

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:43:01 ET on 04/14/2020 under Order No. 0216986973 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2017, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed) DAREN J. BIPE, II, AIA, NCARB

VICE PRESIDENT

(Title) MBF ARCHITECTS, P.A.

14 APR 20

(Dated)



April 15, 2020

RE: City Hall Annex Building
City of New Bern
New Bern, Craven County
MBFA No: 2009

AIA Document B101, Exhibit A, Initial Information

The scope of work is to include design services for an addition of approximately 21,484 square feet.

The Architect estimates that Instruments of Service will be ready for construction within Twelve months of contract execution, bids solicited and contracts awarded within Two months, and construction completed within Twelve months. It is anticipated that contract closeout will occur within Two months, consistent with Section 4.2.4. Milestone dates indicated in Section 1.1.4 anticipate Agreement execution by May 1, 2020.

Consultants of the Architect:

Structural Engineering Consultant
Kaydos-Daniels Engineers, PLLC
400-201 West Morgan Street
Raleigh, NC 27603

Plumbing, Mechanical and Electrical Engineering Consultant
EN-TECH Engineering, P.A.
1003-I North Berkeley Blvd. (27534)
PO Box 11527
Goldsboro, NC 27532

Acoustical Consultant
Thorburn Associates
Suite 800
Gateway Centre Boulevard
Morrisville, NC 27560

Fire Protection Engineering Consultant
Jensen Hughes
Suite 580
8000 Regency Parkway
Cary, NC 27518

Historic Preservation Consultant
Paul F. Stephens
Registered Architect
2116 East Kings Highway
Coatesville, PA 19320

Civil Engineering Consultant
Avolis Engineering, P.A.
5405 Morton Road (28562)
PO Box 15564
New Bern, NC 28561

The Architect purchases and maintains the Architect's usual liability insurance with limits of **\$2,000,000** per occurrence and an aggregate limit of **\$2,000,000**. By executing this Agreement, the Owner agrees to limit the liability of the Architect to the amount of insurance coverage provided. Alternative liability insurance limits can be provided at the request of the Owner for an additional cost.

Owner's Consultants and Contractors:

Not applicable

Owner's Representative:

Matt Montanye
Public Works Director
City of New Bern
1004 South Glenburnie Road (28562)
PO Box 1129
New Bern, NC 28563

Tel: (252) 639-7501
Fax: (252) 638-4103
email: montanyem@newbern-nc.gov

Architect's Representative:

Darden J. Eure, III, AIA, NCARB
MBF Architects, P.A.
317-C Pollock Street
New Bern, NC 28563

Tel: (252) 637-6373
Fax: (252) 637-3259
email: eure@mbfarchitects.com



April 15, 2020

RE: City Hall Annex Building
City of New Bern
New Bern, Craven County
MBFA No: 2009

AIA Document B101, Exhibit B, Supplemental Services

Services identified as the Architect's responsibility within Section 4.1.1 are outside the scope of basic services as described within Article 3; however, they are included within the Architect's compensation as described in Section 11.1.

Section 4.1.1.1 Programming: The Architect compiles and evaluates a list of spaces and their approximate sizes with the assistance of the Owner; otherwise, programming prepared by the Owner is reviewed and revised as mutually agreed. Programming will not be substantially modified following completion of Design Development Documents, Section 3.3, as represented in Instruments of Service approved by the Owner. Compensation for these services is included within the Architectural fee.

Section 4.1.1.3 Measured Drawings: The Architect measures and illustrates existing constructions and systems to coordinate design connections. Existing plans, elevations and details are prepared as selected by the Architect to deliver an appropriate context for implementing the design. Partial plans and elevations are used to describe areas of limited work and points of connection. Measured drawings indicate approximate locations of plumbing fixtures, mechanical equipment, electrical equipment and electrical devices; however, they exclude concealed distribution of these systems. Compensation for these services is included within the Architectural fee.

Section 4.1.1.4 Existing Facilities Surveys: The Architect examines and verifies existing constructions and systems to coordinate design connections. The Owner provides, if needed, services to assess existing building characteristics for implementing the design and preparing the building for construction. Reference Section 5.9. Typical services encountered include roofing core samples; access to confirm concealed conditions in walls and ceilings; commercial appraisal; and asbestos, lead paint, mold and mildew environmental assessments and abatement. Payment for these services originates from the project contingency budget.

Section 4.1.1.6 Building Information Modeling: The Architect constructs digital modeling to coordinate consultants and assist in technical reviews. Management of modeling information and authorization for third-party use is solely determined and controlled by the Architect. Building information modeling is a work product of Instruments of Service owned by the Architect. Compensation for these services is included within the Architectural fee.

Section 4.1.1.8 Civil Engineering: The Architect provides civil engineering services to establish site design gradients, water and sewer utilities; and storm water management. Compensation for these services is included within the Architectural fee.

Section 4.1.1.12 Detailed Cost Estimating: The Architect provides a detailed cost estimate in accordance with Section 3.2.6, Schematic Design Phase Services; Section 3.3.2, Design Development Phase Services; and Section 3.4.4, Construction Documents Phase Services. A governing principle of the Architect is to communicate with our clients as candidly as possible to inform of the costs expected. Opinions of probable cost are based on data extracted from previous contract awards, and while the Architect believes that there is a reasonable basis for each appraisal and has confidence in the cost modeling technique utilized, actual bid results may differ materially from those anticipated. Compensation for these services is included within the Architectural fee.

Section 4.1.1.14 Conformed Construction Documents: The Architect provides conformed construction documents via a link to a downloadable zipfile with electronic drawings and specification files in PDF format, which are as designed record drawings updated to include addenda, value engineering and supplemental construction administration drawings. Compensation for these services is included within the Architectural fee.

Section 4.1.1.15 As Designed Record Drawings: The Architect provides as designed record drawings via a link to a downloadable zipfile with electronic drawing and specification files in PDF format, which are Bid Package Instruments of Service used to select the apparent low bidder. Compensation for these services is included within the Architectural fee.

Section 4.1.1.16 As Constructed Record Drawings: The Architect provides as constructed record drawings via a link to a downloadable zipfile with electronic drawing and specification files in PDF format, which are conformed construction documents updated to include changes in the work issued to and provided by the Contractor following contract award. Typical information received indicates approximate locations of unknown utilities discovered during the course of the work, and adjustments in location, routing or connection of work implemented. Compensation for these services is included within the Architectural fee.

Section 4.1.1.20 Coordination of Owner's Consultants: The Architect recommends, coordinates and monitors those services provided by the Owner (Sections 4.1.1.21, 4.1.1.23, 4.1.1.31, 4.1.1.32, 4.1.1.33, 4.1.1.34 and 4.1.1.36) as each applies to the work; otherwise, the Owner selects, compensates, coordinates and monitors its own consultants in accordance with Section 5.8. Compensation for coordinating these services is included within the Architectural fee.

Section 4.1.1.21 Telecommunications/Data Design: The Architect locates telecommunications and data drops with the assistance of the Owner, and indicates a demarc for terminating these pathways. The Owner furnishes and installs cabling from the demarc and pulls it throughout building interiors. The Owner designs, furnishes and installs intra office telecommunications, computer network and data management systems. Payment for these services originates from the project contingency budget.

Section 4.1.1.23 Commissioning: The Architect assists the Owner in procuring independent, third party commissioning, if it is determined that these services are required. These services are compensated in accordance with Section 11.2 and are authorized by the Owner in advance of procurement. Payment for these services originates from the project contingency budget.

Section 4.1.1.27 Historic Preservation: The Architect provides historic preservation services to research historical attributes of the structure, applicable technical assistance and select appropriate methods and materials for implementing work. Compensation for these services is included within the Architectural fee.

Section 4.1.1.29 Other Services Provided by Specialty Consultants: The Architect provides acoustical consulting services to manage sound reverberations within the Arcade Gallery. The Architect provides fire protection engineering consulting to evaluate code compliance, to design wet pipe sprinkler systems and to design fire alarm systems for the Annex Building and Historic City Hall. Compensation for these services is included within the Architectural fee.

Section 4.1.1.31 Land Survey Services: The Owner provides detailed survey data including property boundaries, overhead and underground utilities, topography, structures, constructions, base flood elevation, wetlands delineation and the like as needed to describe site conditions prior to the work provided by the Architect. Reference Section 5.4. Payment for these services originates from the project contingency budget.

Section 4.1.1.32 Geotechnical Services: The Owner provides soil borings, structural bearing capacity and seismic site classification assessments as needed for design and construction of the work. Reference Section 5.5. Payment for these services originates from the project contingency budget.

Section 4.1.1.33 Environmental Studies and Reports: The Owner provides environmental assessments as needed to determine the environmental quality or capacity of the property. Reference Section 5.9. Typical services encountered include archaeological, soils contamination, Phase I Environmental, soils hydraulics assessments and the like as needed to support the design. Payment for these services originates from the project contingency budget.

Section 4.1.1.34 Materials Testing: The Owner provides services for materials testing as needed to verify contract compliance during construction. Typical services encountered include testing for soil compaction, concrete compressive strength and steel connections. Payment for these services originates from the project contingency budget.

Section 4.1.1.35 Models/Renderings: The Architect assists the Owner in procuring models, animations, three dimensional imagery or renderings, if it is determined that these materials are required. Reference Section 11.8.1.7. These services are compensated in accordance with Section 11.3 and are authorized by the Owner in advance of procurement. Payment for these services originates from the project contingency budget.

Section 4.1.1.36 Fees Payable to AHJ: The Architect makes application to Authorities Having Jurisdiction on behalf of the Owner. Reference Section 11.8.1.3. The various fees resulting from development permit applications, connection fees and legal advertising are paid by the Owner. These services are compensated in accordance with Section 11.3. Payment for fees originates from the project contingency budget.



New Bern City Hall Elevator Annex
300 Pollock Street
New Bern, North Carolina

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REVISIONS	DATE	DESCRIPTION
#		

MARCH 1, 2020



MARCH 1, 2020



MBFA No. 1919

PHOTO DOCUMENTATION

AP001
SHEET



STRAND ARCADE, SYDNEY, AUSTRALIA
CONSTRUCTED IN 1891



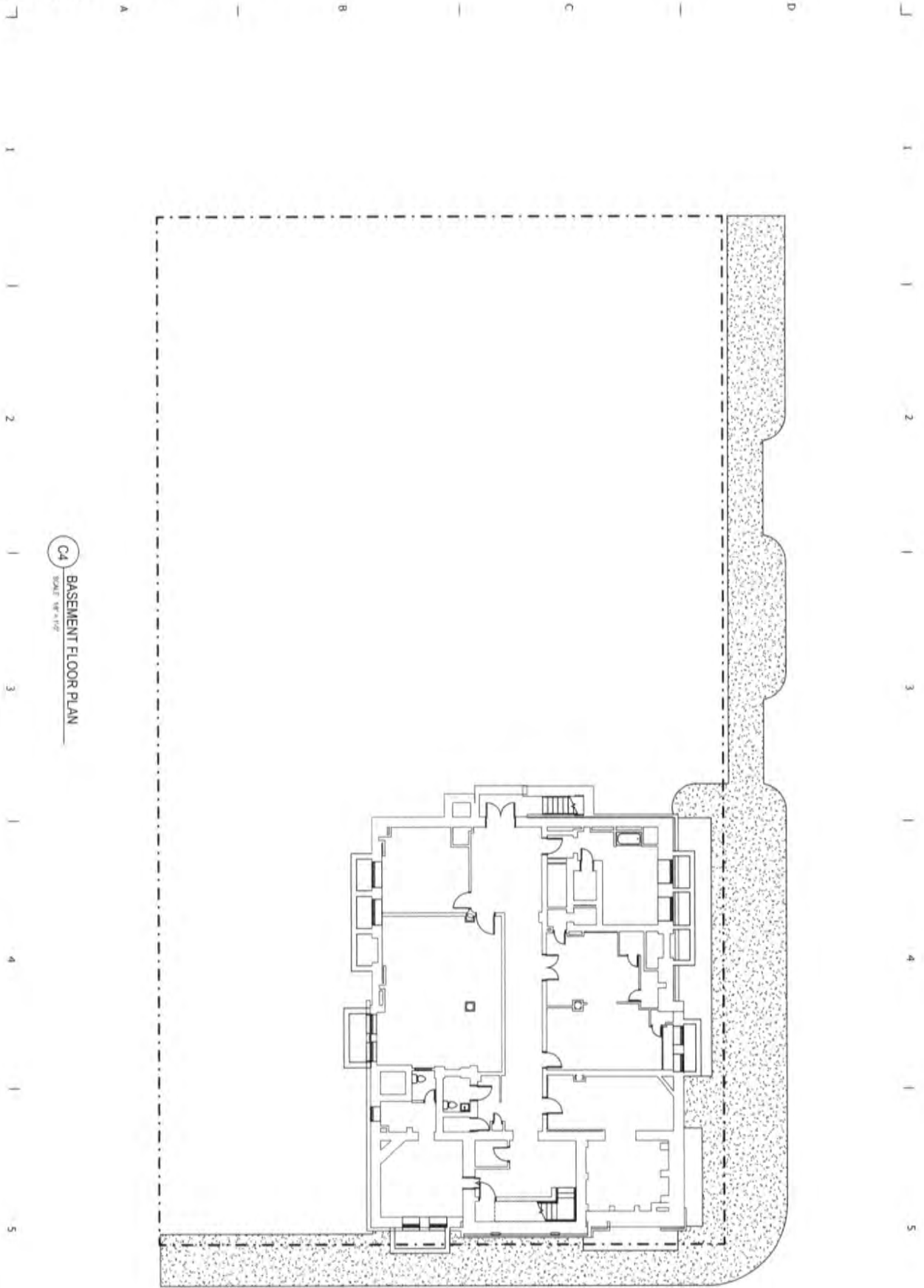
NICKLES ARCADE, ANN ARBOR, MICHIGAN
CONSTRUCTED IN 1918



CITY HALL, NEW BERN, NORTH CAROLINA
CONSTRUCTED IN 1896, CLOCK TOWER ADDED
IN 1910

B2 ARCADE PHOTO EXAMPLES
SCALE: 1/8" = 1'-0"

B4 EXISTING CITY HALL
SCALE: 1/8" = 1'-0"



AP100
SHEET

1950
BASEMENT FLOOR



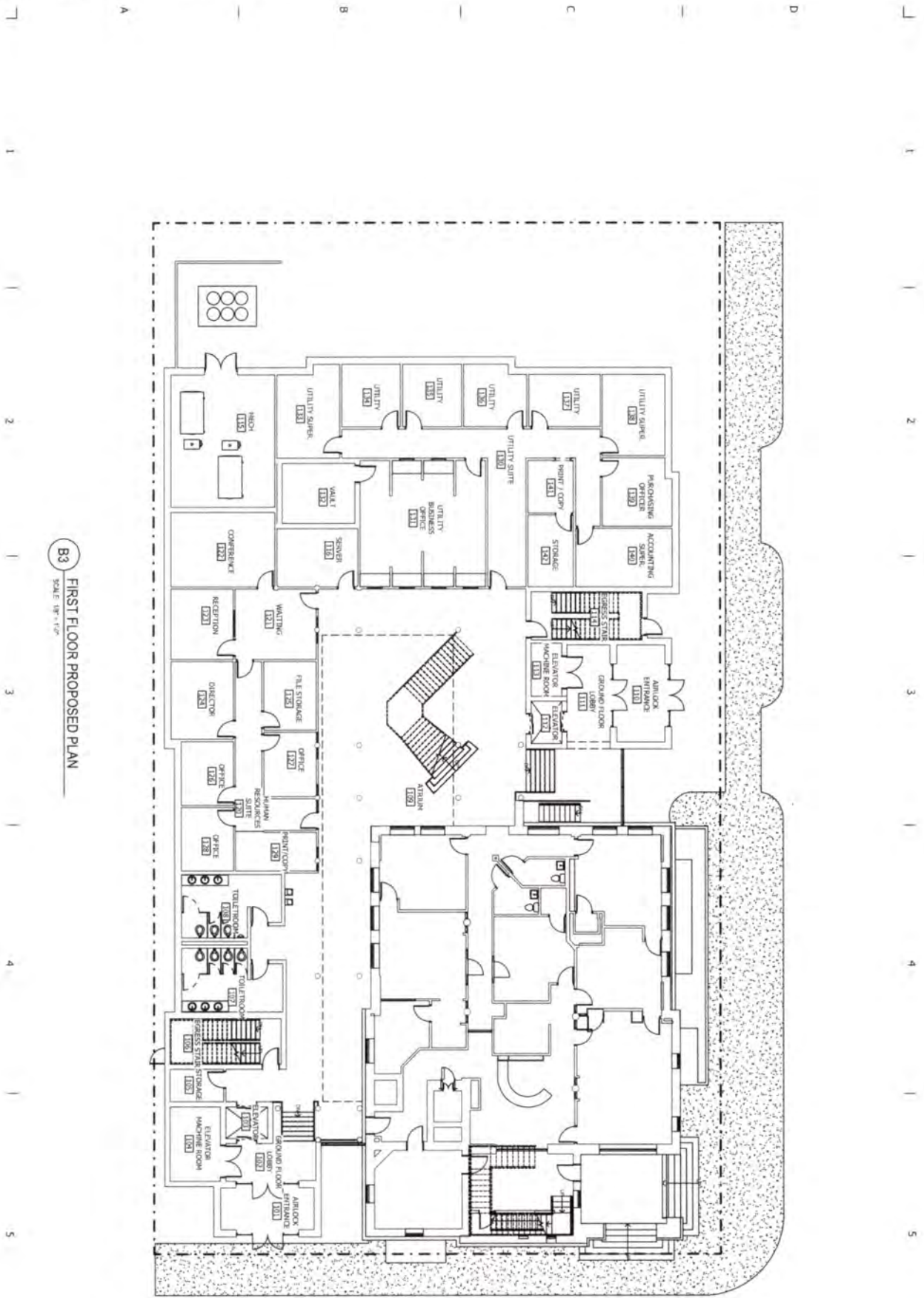
MARCH 1, 2020

REVISIONS		
#	DATE	DESCRIPTION

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New Bern City Hall - Elevator Annex
 300 Pollock Street
 New Bern, North Carolina





AP101
 SHEET

3193
 FIRST FLOOR

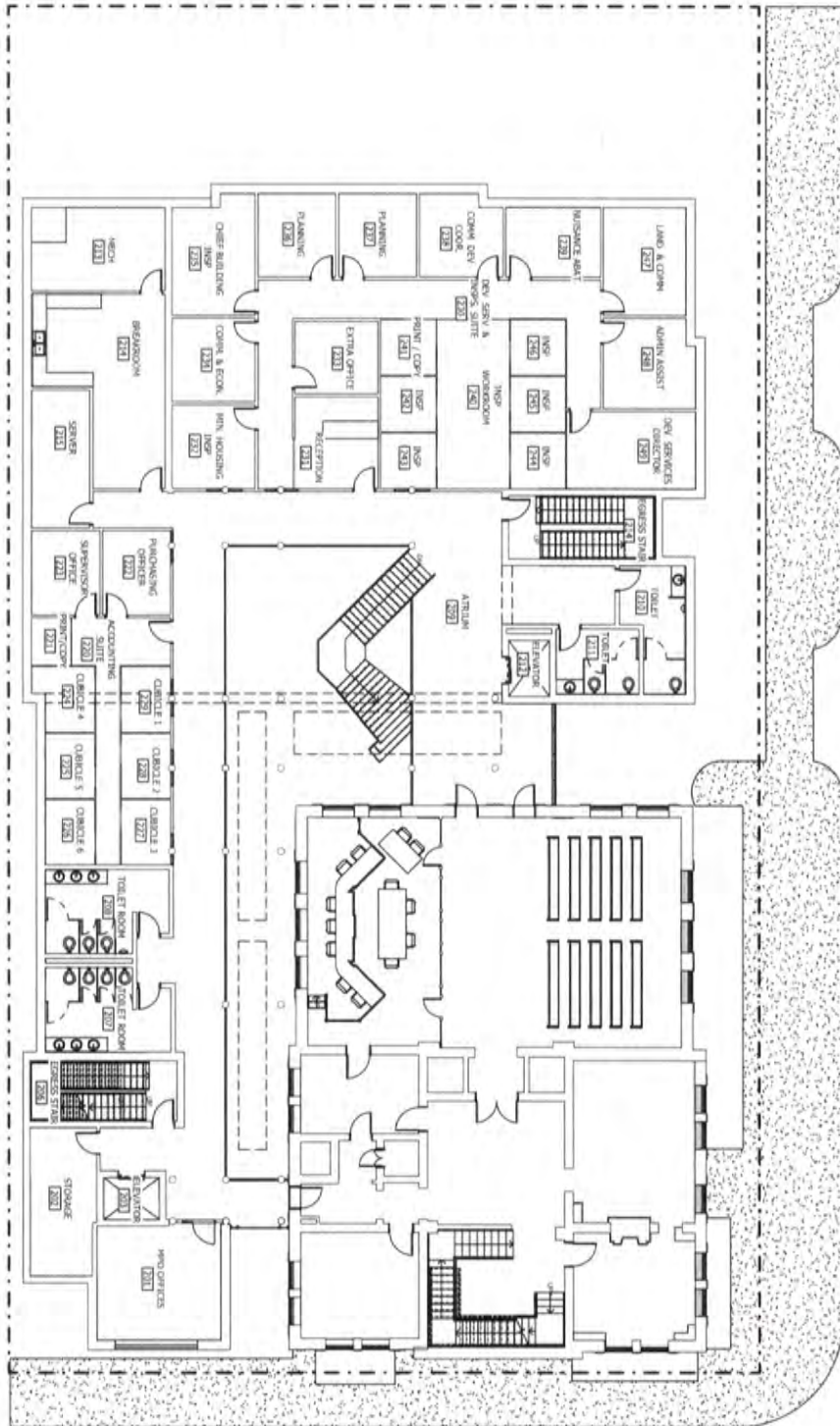


REVISIONS	DATE	DESCRIPTION
1	MARCH 1, 2020	ISSUED FOR PERMIT

MBF ARCHITECTS, P.A.
 300 POLLOCK STREET
 NEW BERN, NORTH CAROLINA 28560
 TEL: 252.639.1111
 FAX: 252.639.1112
 WWW.MBFARCHITECTS.COM

New Bern City Hall: Elevator Annex
 300 Pollock Street
 New Bern, North Carolina





B3 SECOND FLOOR PROPOSED PLAN
 SCALE: 1/8" = 1'-0"

AP102
 SHEET

1919
 SECOND FLOOR



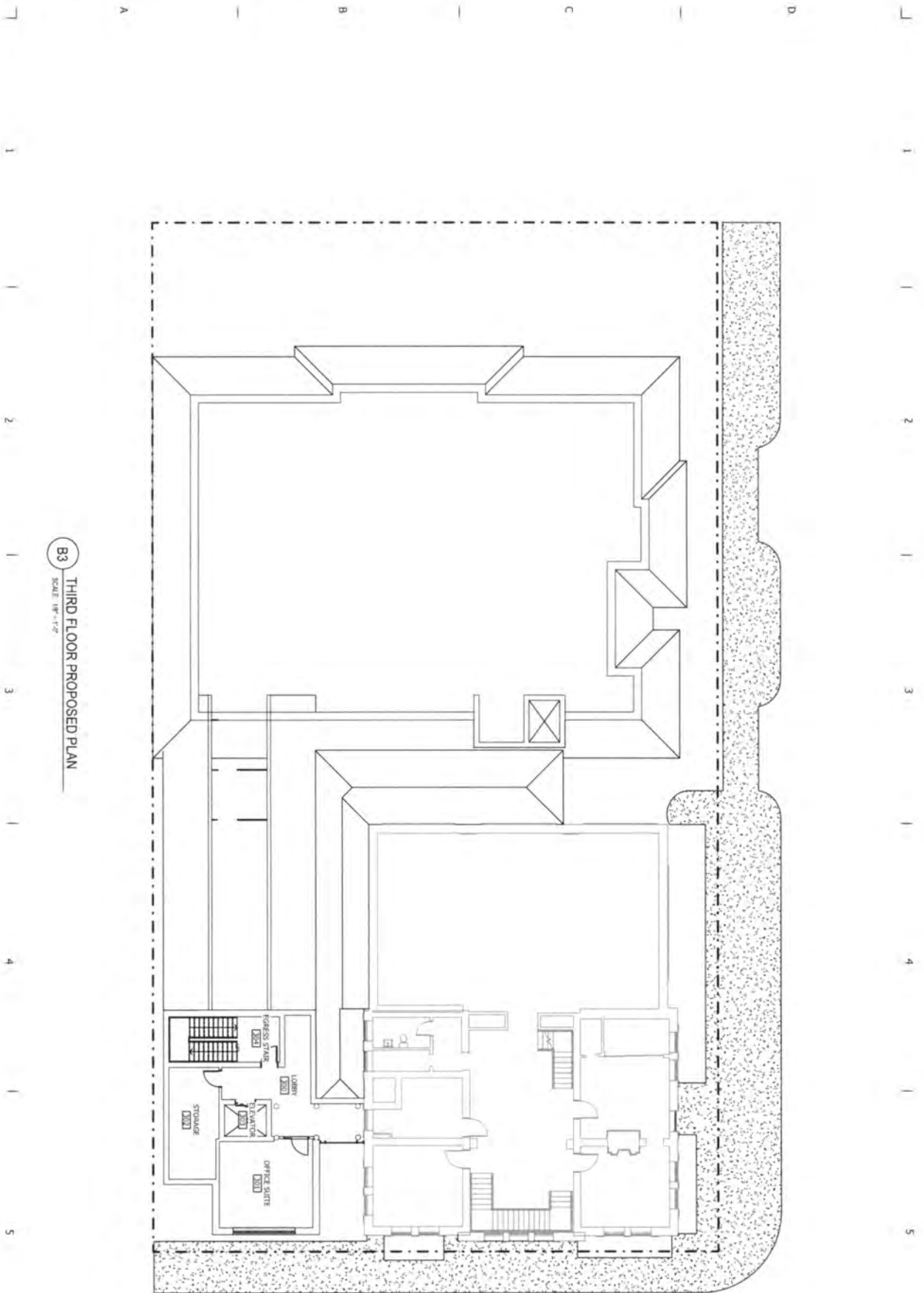
MARCH 1, 2020

REVISIONS	DATE	DESCRIPTION
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2		
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New Bern City Hall: Elevator Annex
 300 Pollock Street
 New Bern, North Carolina





1 2 3 4 5

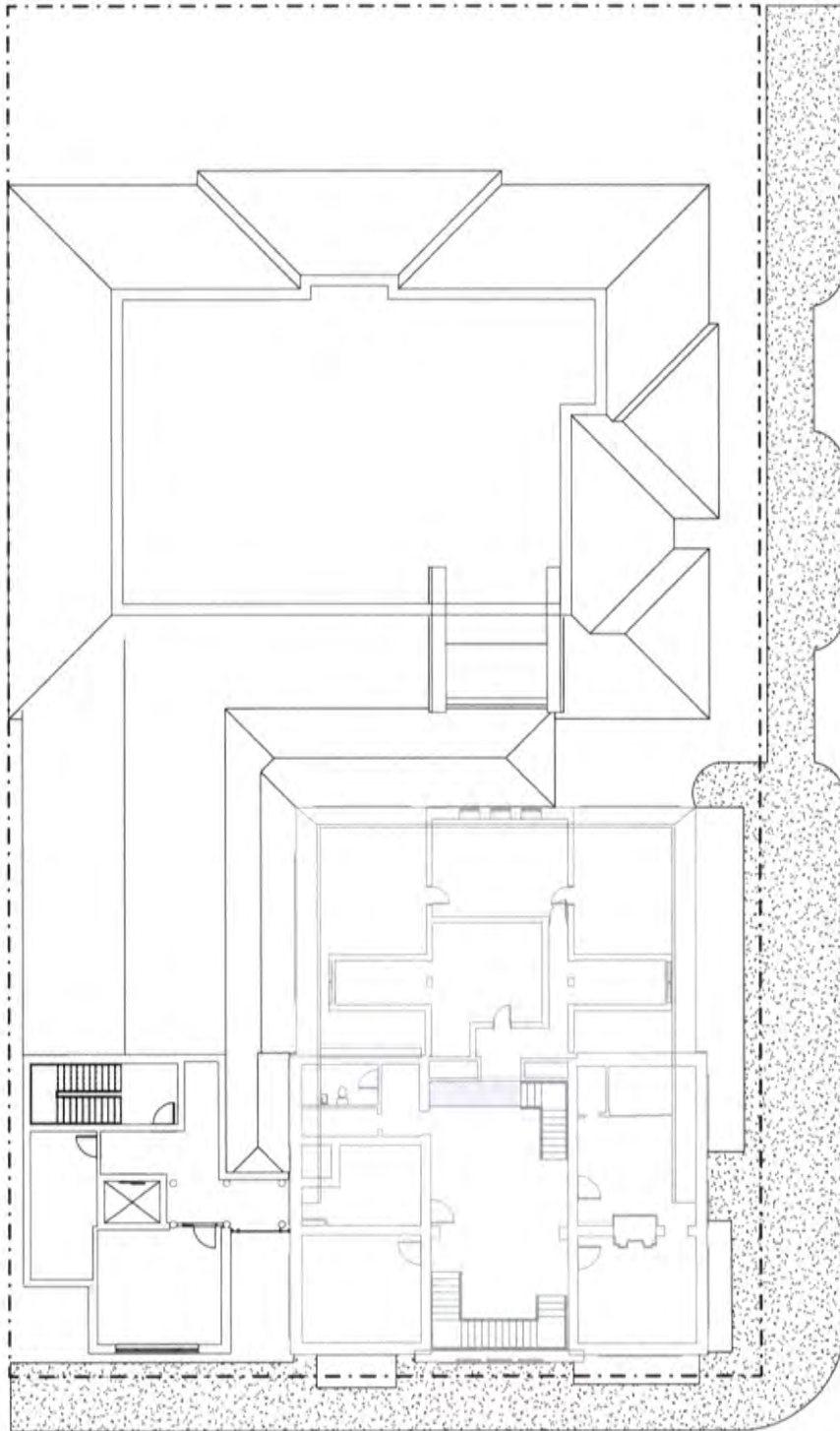
A

B

C

D

1 2 3 4 5



B3 THIRD FLOOR PROPOSED PLAN
 SCALE: 1/8" = 1'-0"

AP104
 SHEET

1919
 THIRD 8 FLOOR



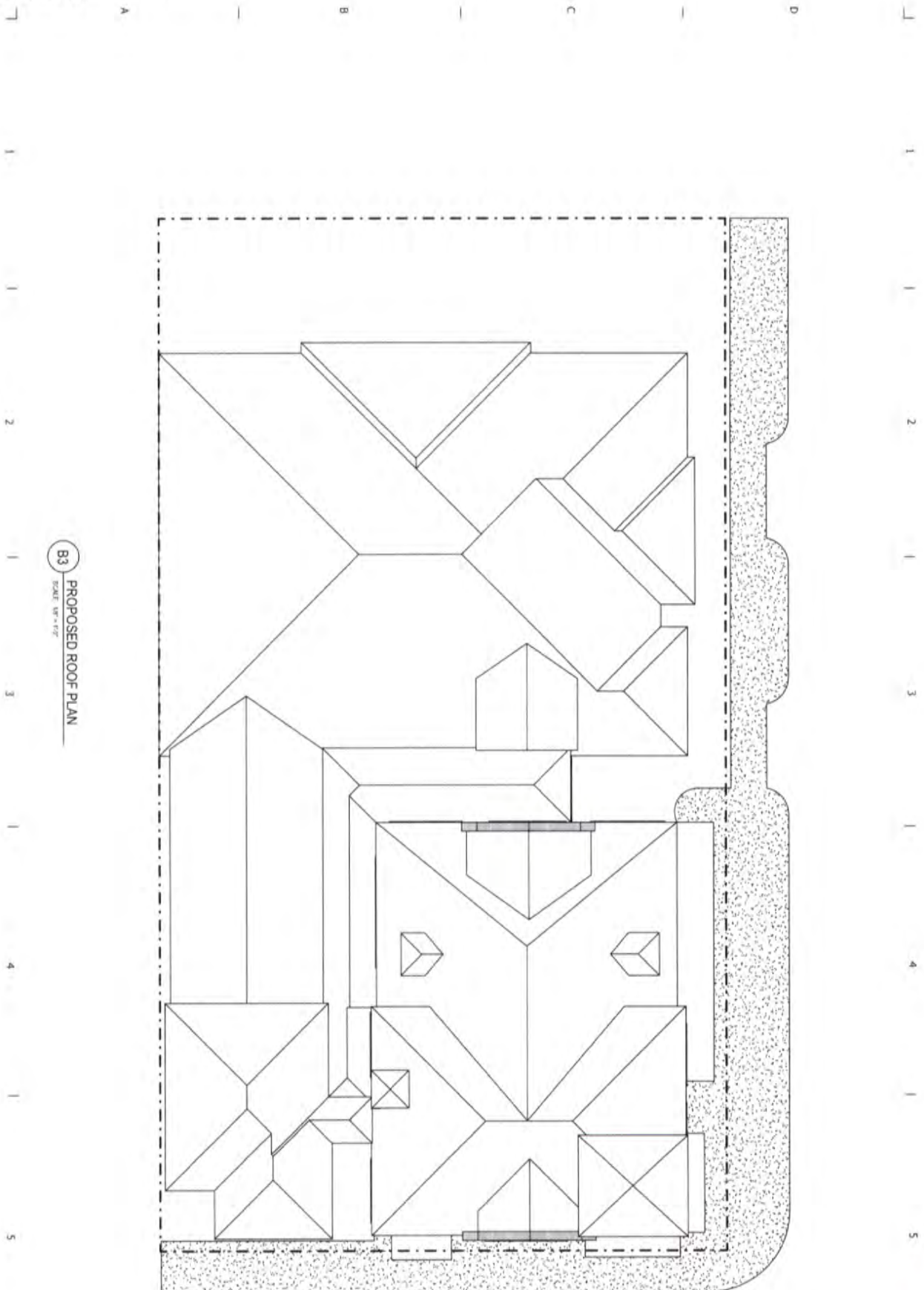
MARCH 1, 2020

REVISIONS		
#	DATE	DESCRIPTION

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New Bern City Hall: Elevator Annex
 300 Pollock Street
 New Bern, North Carolina





AP105
SHEET

ROOF PLAN

MBFA No. 17819



MARCH 1, 2020

REVISIONS		
#	DATE	DESCRIPTION


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New Bern City Hall: Elevator Annex
 300 Pollock Street
 New Bern, North Carolina





**Architectural Services - City Hall Annex Building
RFQ Evaluation Rankings**

	RFQ - REVIEWERS				TOTAL SCORE
	Matt Montanye Director of Public Works	Mark Stephens City Manager	Jeff Ruggerri Dir. of Development Services	George Chiles Staff Engineer	
MBF Architects, PA	168	168	165	165	666
C.R. Frances Architecture	164	147	162	164	637
LS3P	150	148	160	124	582
CPL	147	134	161	110	552
Cheech and Associates	115	122	150	106	493

AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider Adopting an Ordinance to Amend the City Hall Elevator Project Fund

Date of Meeting: 04/28/2020	Ward # if applicable: N/A
Department: Finance	Person Submitting Item: Mary M. Hogan, Director of Finance
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing:

Explanation of Item:	An ordinance to amend the name of the City Hall Elevator Fund to the City Hall Annex Building Project Fund and update the scope of the project.
Actions Needed by Board:	Consider adopting the ordinance amendment
Backup Attached:	Memo, Ordinance Amendment

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:

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

Mary M. Hogan

Director of Finance

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

FROM: Mary Hogan, Director of Finance

DATE: March 17, 2020

RE: Rename the City Hall Elevator Project Fund

Background

At its meeting on May 28, 2019, the Board adopted an Ordinance to establish a capital project fund for the design and construction of an elevator at City Hall.

The scope of the initial project has changed from the design and construction of an elevator to the design and construction of an annex building. This amendment renames the fund to the City Hall Annex Building Project Fund. There are no changes to the previously established budget at this time.

Requested Action

It is recommended that the Board adopt the attached budget amendment at its meeting to be held on April 28, 2020.

**AMENDMENT TO THE CAPITAL PROJECT ORDINANCE
"CITY HALL ELEVATOR PROJECT FUND"**

WHEREAS, on May 28, 2019, the Board adopted a capital project ordinance to establish the City Hall Elevator Project Fund. Since that time, the project has expanded to not only provide for an elevator at City Hall, but to construct an annex to the building. Therefore, the name of the project should be amended to reflect the new scope of work.

BE IT ORDAINED by the Governing Board of the City of New Bern

Section 1: That Section 1 of the Ordinance adopted on May 28, 2019 is hereby amended to change the scope of the project and rename the fund as the City Hall Annex Building Project Fund. The new project authorized is the design and construction of a City Hall annex building.

ADOPTED, THIS THE 28TH DAY OF APRIL, 2020.

DANA E. OUTLAW, MAYOR

BRENDA E. BLANCO, CITY CLERK

AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider Adopting a Resolution Approving an Amendment to the Lease Agreement with the New Bern-Craven County Farmers' Market

Date of Meeting: 04/28/20	Ward # if applicable: 1
Department: Administration	Person Submitting Item: Mark Stephens
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing:

Explanation of Item:	The Farmers' Market has requested that their rent payments for July-December 2020 be waived due to the economic impact of COVID-19.
Actions Needed by Board:	Consider adopting a resolution amending the lease agreement with the Farmers' Market
Backup Attached:	Memo, resolution, amended lease, and request for payment waiver

Is item time sensitive? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will there be advocates/opponents at the meeting? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Cost of Agenda Item:
If this requires an expenditure, has it been budgeted and are funds available and certified by the Finance Director? <input type="checkbox"/> Yes <input type="checkbox"/> No

Additional Notes: Loss of revenue will be \$3,000

Aldermen

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



Dana E. Outlaw
Mayor
Mark A. Stephens
City Manager
Brenda E. Blanco
City Clerk
Mary M. Hogan
Director of Finance

Memorandum

TO: Mayor and Board of Aldermen
FROM: Mark Stephens, City Manager
DATE: April 17, 2020
SUBJECT: Amendment to Farmers' Market Lease

The New Bern/Craven County Area Farmers' Market entered into a 5-year lease agreement with the City effective July 1, 2017 for the property located at 421 South Front Street. As announced at the Board's April 14, 2020 meeting, the Farmers' Market has requested to have their rent payments for the months of July-December 2020 waived in light of the economic impact of COVID-19 on the market. A copy of the letter requesting this modification is attached.

/beb

RESOLUTION

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

That the Amendment to Lease Agreement which is to be effective as of July 1, 2020 by and between the City of New Bern and the New Bern/Craven County Area Farmers' Market, Inc., 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 28th DAY OF APRIL, 2020.

DANA E. OUTLAW, MAYOR

BRENDA E. BLANCO, CITY CLERK

NORTH CAROLINA
CRAVEN COUNTY

**AMENDMENT TO
LEASE AGREEMENT**

THIS AMENDMENT TO LEASE AGREEMENT is made and entered into effective as of the 1st day of July, 2020, by and between the CITY OF NEW BERN ("Lessor"), a North Carolina municipal corporation, and NEW BERN/CRAVEN COUNTY AREA FARMERS' MARKET, INC. ("Lessee"), a North Carolina non-profit corporation, collectively referred to as the "Parties."

WITNESSETH:

THAT WHEREAS, the Lessor and Lessee entered into a Lease Agreement effective as of July 1, 2017 ("Lease Agreement"); and

WHEREAS, Lessee is in compliance with all of the terms and conditions of the Lease Agreement, and has pre-paid the monthly rent due Lessor through June 30, 2020; and

WHEREAS, due to Governor Roy Cooper's Executor Order No. 121 dated March 27, 2020, that restricts public assemblies of more than ten (10) persons, Lessee has experienced a significant reduction in revenue that it expects to persist for months; and

WHEREAS, as a result thereof, Lessee has requested that Lessor suspend Lessee's obligation to pay rent for the period beginning July 1, 2020 through December 31, 2020; and

WHEREAS, Lessor agrees to suspend Lessee's obligation to pay rent for the period beginning July 1, 2020 through December 31, 2020; and

WHEREAS, the Parties desire to reduce their agreement to writing.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the Parties hereby agree as follows:

SECTION 1. That Lessor releases Lessee from its obligation to pay Lessor monthly rent in the amount of \$500.00 per month for the period beginning July 1, 2020 through December 31, 2020.

SECTION 2. That except as otherwise specifically provided herein, all other terms and conditions of the Lease Agreement shall remain unchanged and in full force and effect.

IN TESTIMONY WHEREOF, Lessor has caused this instrument to be executed by its Mayor and its corporate seal to be affixed and attested by its City Clerk, and Lessee has caused this instrument to be executed in its corporate name by its President, 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

By: _____
Dana E. Outlaw, Mayor

ATTEST:

Brenda E. Blanco, City Clerk

NEW BERN/CRAVEN COUNTY AREA FARMERS' MARKET, INC.
A North Carolina Nonprofit Corporation

By: _____
Joe Hunt, President



NEW BERN-CRAVEN COUNTY AREA FARMERS MARKET, INC.
421 South Front Street, New Bern, NC 28560-2131
252-633-0043

April 13, 2020

Mark Stephens
City Manager, City of New Bern
300 Pollock St
New Bern, NC 28560

Mr. Stephens:

The Board of Directors of the New Bern Farmers Market requests that the Board of Aldermen consider waiving the Market's \$500 monthly rent for the last six months of 2020 because of the extraordinary economic impact of the COVID 19 virus on our non-profit.

We rely heavily on the rental of our facility to outside groups to help with operating expenses, but current COVID virus assembly restrictions have forced the cancellation or postponement of private events until at least June, assuming we may see some relief by then. The future is uncertain.

Likewise, booth sales are limited to only essential items, restricting table/booth rentals to just vendors of food, food plants, or cleaning supplies until lifted.

We have already made a \$3000 payment for rent through June but ask for consideration on the rent for the months July through December.

We hope that the Market can be a vital resource in bringing the downtown back after this is over, like our efforts after Florence.

Sincerely,

Joe Hunt
President

Jim Morrison
Treasurer

RECEIVED

APR 16 2020

CNB Administration

AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider Adopting a Resolution Authorizing the Mayor to Execute an Agreement for the Purchase and Sale of Real Property Located on Broad Street and Gaston Boulevard

Date of Meeting: 04/28/20	Ward # if applicable: 2
Department: Administration	Person Submitting Item: Mark Stephens
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing:

Explanation of Item:	Purchase of contiguous property on Broad Street and Gaston Boulevard for \$455,000
Actions Needed by Board:	Consider approving the resolution
Backup Attached:	Resolution and Agreement for Purchase and Sale of Real Property

Is item time sensitive? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Will there be advocates/opponents at the meeting? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Cost of Agenda Item: \$455,000
If this requires an expenditure, has it been budgeted and are funds available and certified by the Finance Director? <input type="checkbox"/> Yes <input type="checkbox"/> No

Additional Notes:

RESOLUTION

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

That the Agreement for Purchase and Sale of Real Property by and between the City of New Bern and Pietro Passalacqua and spouse, Paula R. Passalacqua, and Paul E. McDonald, 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 28th DAY OF APRIL, 2020.

DANA E. OUTLAW, MAYOR

BRENDA E. BLANCO, CITY CLERK

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT, including any and all addenda attached hereto ("Agreement"), is by and between the **CITY OF NEW BERN**, a North Carolina municipal corporation ("Buyer"), and **PIETRO PASSALACQUA and wife, PAULA R. PASSALACQUA, and PAUL E. McDONALD, unmarried** (collectively, "Seller").

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) **"Property":** 1.5 +/- acres located on Neuse Boulevard in New Bern, North Carolina, identified by Craven County tax parcel numbers 8-012-12000, 8-012-131, 8-012-126, 8-012-12001, and 8-012-322, and more specifically described on Exhibit A attached hereto.

\$455,000.00 (b) **"Purchase Price"** shall mean the sum of Four Hundred Fifty-five Thousand and No/100 Dollars payable on the following terms:

\$10,000.00 (i) **"Earnest Money"** shall mean Ten Thousand and No/100 Dollars or terms as follows:

Upon this Agreement becoming a contract in accordance with Section 14, the Earnest Money shall be promptly deposited in escrow with Davis Hartman Wright, PLLC to be applied as part payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the provisions of Section 10 herein.

\$0 (ii) **Proceeds of a new loan** in the amount of _____ Dollars for a term of _____ years, at an interest rate not to exceed _____% per annum with mortgage loan discount points not to exceed _____% of the loan amount, or such other terms as may be set forth on **Exhibit B**. Buyer shall pay all costs associated with any such loan.

\$0 (iii) **Delivery of a promissory note** secured by a deed of trust, said promissory note in the amount of _____ Dollars being payable over _____ months in equal monthly installments of principal, together with accrued interest on the outstanding principal balance at the rate of _____ percent (_____%) per annum, with the first principal payment beginning on the first day of the month next succeeding the date of Closing, or such other terms as may be set forth on **Exhibit B**. At any time, the promissory note may be prepaid in whole or in part without penalty and without further interest on the amounts prepaid from the date of such prepayment. **(NOTE: In the event of Buyer's subsequent default upon a promissory note and deed of trust given hereunder, Seller's remedies may be limited to foreclosure of the Property. If the deed of trust given hereunder is subordinated to senior financing, the material terms of such financing must be set forth on Exhibit B. If such senior financing is subsequently foreclosed, the Seller may have no remedy to recover under the note.)**

\$0

(iv) **Assumption** of that unpaid obligation of Seller secured by a deed of trust on the Property, such obligation having an outstanding principal balance of \$ _____ and evidenced by a note bearing interest at the rate of _____ percent (____%) per annum, or _____. Buyer shall pay all costs associated with any such assumption, including any assumption fee charged by the lender.

\$445,000.00

(v) **Cash, balance of Purchase Price**, at Closing in the amount of Four Hundred Forty-five Thousand and No/100 Dollars.

(c) **"Closing"** shall mean the date and time of recording of the deed. Closing shall occur on or before 15 days after the expiration of the final Examination Period.

(d) **"Contract Date"** means the date this Agreement has been fully executed by both Buyer and Seller.

(e) **"Examination Period"** shall mean the period beginning on the Contract Date and extending through thirty (30) days after the Contract.

(f) **"Broker(s)"** shall mean: N/A ("Listing Agency"),
____ ("Listing Agent" – License # ____)

Acting as: ☐ Seller's Agent; ☐ Dual Agent

and N/A ("Selling Agency"),

Gray Wheeler ("Selling Agent" - License #59301)

Acting as: ☒ Buyer's Agent; ☐ Seller's (Sub)Agent; ☐ Dual Agent

(g) **"Seller's Notice Address"** shall be as follows:

White & Allen, P.A.
Attn: Brian Z. Taylor
901 College Court
New Bern, NC 28562

except as same may be changed pursuant to Section 12.

(h) **"Buyer's Notice Address"** shall be as follows:

Davis Hartman Wright, PLLC
Attn: Michael Scott Davis
209 Pollock Street
New Bern, NC 28560

except as same may be changed pursuant to Section 12.

☒ (i) If this block is marked, additional terms of this Agreement are set forth on **Exhibit B** attached hereto and incorporated herein by reference. (Note: Under North Carolina law, real estate agents are not permitted to draft conditions or contingencies to this Agreement.)

Section 2. Sale of Property and Payment of Purchase Price: Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price.

Section 3. Proration of Expenses and Payment of Costs: Seller and Buyer agree that all property taxes (on a calendar year basis), leases, rents, mortgage payments and utilities or any other assumed liabilities as detailed on attached **Exhibit B**, if any, shall be prorated as of the date of Closing. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Agreement, excise tax (revenue stamps), any deferred or rollback taxes, and other conveyance fees or taxes required by law, and the following: N/A. Buyer shall pay recording costs, costs of any title search, title insurance, survey, the cost of any inspections or investigations undertaken by Buyer under this Agreement and the following: N/A.

Each party shall pay its own attorney's fees.

Section 4. Deliveries: Seller agrees to use best efforts to deliver to Buyer as soon as reasonably possible after the Contract Date copies of all information relating to the Property in possession of or available to Seller, including but not limited to: title insurance policies, surveys and copies of all presently effective warranties or service contracts related to the Property. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all materials delivered by Seller to Buyer pursuant to this Section 4 (or Section 7, if applicable), if any, and shall, upon Seller's request, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys and other information relating directly to the Property prepared by or at the request of Buyer, its employees and agents, and shall deliver to Seller, upon the release of the Earnest Money, copies of all of the foregoing without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof.

Section 5. Evidence of Title: Seller agrees to convey fee simple marketable and insurable title to the Property free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, and (b) matters of record existing at the Contract Date that are not objected to by Buyer prior to the end of the Examination Period ("Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens. Seller shall not enter into or record any instrument that affects the Property after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 6. Conditions: This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following conditions:

(a) **New Loan:** The Buyer must be able to obtain the loan, if any, referenced in Section 1(b)(ii). Buyer must be able to obtain a firm commitment for this loan on or before the end of the last Examination Period, effective through the date of Closing. Buyer agrees to use its best efforts to secure such commitment and to advise Seller immediately upon receipt of lender's decision. On or before the above date, Buyer has the right to terminate this Agreement for failure to obtain the loan referenced in Section 1(b)(ii) by delivering to Seller written notice of termination by the above date, *time being of the essence*. If Buyer delivers such notice, this Agreement shall be null and void and Earnest Money shall be refunded to Buyer. If Buyer fails to deliver such

notice, then Buyer will be deemed to have waived the loan condition. Notwithstanding the foregoing, after the above date, Seller may request in writing from Buyer a copy of the commitment letter. If Buyer fails to provide Seller a copy of the commitment letter within five (5) days of receipt of Seller's request, then Seller may terminate this Agreement by written notice to Buyer at any time thereafter, provided Seller has not then received a copy of the commitment letter, and Buyer shall receive a return of Earnest Money.

(b) **Qualification for Financing:** If Buyer is to assume any indebtedness in connection with payment of the Purchase Price, Buyer agrees to use its best efforts to qualify for the assumption. Should Buyer fail to qualify, Buyer shall notify Seller in writing immediately upon lender's decision, whereupon this Agreement shall terminate, and Buyer shall receive a return of Earnest Money.

(c) **Title Examination:** After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event that such title examination shall show that Seller's title is not fee simple marketable and insurable, subject only to Permitted Exceptions, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than the end of the Examination Period, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(d) **Same Condition:** If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property.

(e) **Inspections:** Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, performing soil boring and other testing, conducting timber cruises, and surveying the Property. Buyer shall conduct all such on-site inspections, examinations, soil boring and other testing, timber cruises and surveying of the Property in a good and workmanlike manner, shall repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer shall make reasonable efforts to undertake on-site inspections outside of the hours any tenant's business is open to the public and shall give prior notice to any tenants of any entry onto any tenant's portion of the Property for the purpose of conducting inspections. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property, provided, however, that Buyer shall not disclose any information regarding this Property (or any tenant therein) unless required by law and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Buyer shall obtain their agreement to maintain such confidentiality. Buyer assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this Section 6(e) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Buyer shall, at Buyer's expense, promptly repair any damage to the Property caused by Buyer's entry and on-site inspections. Except as provided in Section 6(c) above, Buyer shall have from the Contract Date through the end of the Examination Period to perform the

above inspections, examinations and testing. **IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNST MONEY.**

Section 7. Leases (Check one of the following, as applicable):

☐ If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the Property.

☒ If this box is checked, Seller discloses that there are one or more leases affecting the Property (oral or written, recorded or not -"Leases") and the following provisions are hereby made a part of this Agreement.

(a) All Leases shall be itemized on **Exhibit B**;

(b) Seller shall deliver copies of any Leases to Buyer pursuant to Section 4 as if the Leases were listed therein;

(c) Seller represents and warrants that as of the Contract Date there are no current defaults (or any existing situation which, with the passage of time, or the giving of notice, or both, or at the election of either landlord or tenant could constitute a default) either by Seller, as landlord, or by any tenant under any Lease ("Lease Default"). In the event there is any Lease Default as of the Contract Date, Seller agrees to provide Buyer with a detailed description of the situation in accordance with Section 4. Seller agrees not to commit a Lease Default as Landlord after the Contract Date, and agrees further to notify Buyer immediately in the event a Lease Default arises or is claimed, asserted or threatened to be asserted by either Seller or a tenant under the Lease.

(d) In addition to the conditions provided in Section 6 of this Agreement, this Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon the assignment of Seller's interest in any Lease to Buyer in form and content acceptable to Buyer (with tenant's written consent and acknowledgement, if required under the Lease), and Seller agrees to use its best efforts to effect such assignment. Any assignment required under this Section 7 shall be required to be delivered at Closing by Seller in addition to those deliveries required under Section 11 of this Agreement.

(e) Seller agrees to deliver an assignment of any Lease at Closing, with any security deposits held by Seller under any Leases to be transferred or credited to Buyer at Closing. Seller also agrees to execute and deliver (and work diligently to obtain any tenant signatures necessary for same) any estoppel certificates and subordination, nondisturbance and attornment agreements in such form as Buyer may reasonably request.

Section 8. Environmental: Seller represents and warrants that it has no actual knowledge of the presence or disposal, except as in accordance with applicable law, within the buildings or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the Clean Water Act of 1977 (33 U.S.C. §1321) or listed

pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. §1317), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601). Seller has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

Section 9. Risk of Loss/Damage/Repair: Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

Section 10. Earnest Money Disbursement: In the event that any of the conditions hereto are not satisfied, or in the event of a breach of this Agreement by Seller, then the Earnest Money shall be returned to Buyer, but such return shall not affect any other remedies available to Buyer for such breach. In the event this offer is accepted and Buyer breaches this Agreement, then the Earnest Money shall be forfeited. Seller agrees that Seller's sole remedy for breach of this Agreement by Buyer is the Earnest Money.

Section 11. Closing: At Closing, Seller shall deliver to Buyer a general warranty deed unless otherwise specified on Exhibit B and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, a bill of sale for any personalty listed on Exhibit B, an owner's affidavit, lien waiver forms and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall pay to Seller the Purchase Price. At Closing, the Earnest Money shall be applied as part of the Purchase Price. The Closing shall be held at the office of Buyer's attorney or such other place as the parties hereto may mutually agree. Possession shall be delivered at Closing, unless otherwise agreed herein.

Section 12. Notices: Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing and shall be deemed to have been properly given and received on the date delivered in person or deposited in the United States mail, registered or certified, return receipt requested, to the addresses set out in Section 1(g) as to Seller and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith.

Section 13. Entire Agreement: This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto.

Section 14. Enforceability: This Agreement shall become a contract when a signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that the notice described in Section 12 is not required for effective communication for the purposes of this Section 14. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

Section 15. Adverse Information and Compliance with Laws:

(a) **Seller Knowledge:** Seller has no actual knowledge of (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; or

(iv) governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments, except as follows: None

(Insert "None" or the identification of any matters relating to (i) through (iv) above, if any). Seller shall pay all owners' association assessments and all governmental assessments confirmed as of the time of Closing, if any, and Buyer shall take title subject to all pending assessments, if any, unless otherwise agreed as follows:

None

Seller represents that the regular owners' association dues, if any, are \$ _____ per _____.

(b) **Compliance:** To Seller's actual knowledge, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, constitute any default under or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

Section 16. Survival of Representations and Warranties: All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

Section 17. Applicable Law: This Agreement shall be construed under the laws of the state in which the Property is located. This form has only been approved for use in North Carolina.

Section 18. Assignment: This Agreement is freely assignable unless otherwise expressly provided on Exhibit B.

Section 19. Tax-Deferred Exchange: In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

Section 20. Memorandum of Contract: Upon request by either party, the parties hereto shall execute a memorandum of contract in recordable form setting forth such provisions hereof (other than the Purchase Price and other sums due) as either party may wish to incorporate. Such memorandum of contract shall contain a statement that it automatically terminates and the Property is released from any effect thereby as of a specific date to be stated in the memorandum (which specific date shall be no later than the date of Closing). The cost of recording such memorandum of contract shall be borne by the party requesting execution of same.

Section 21. Authority: Each signatory to this Agreement represents and warrants that he, she or it has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he, she or it signs and that his, her or its signature binds such party.

Section 22. Brokers: Except as expressly provided herein, Buyer and Seller agree to indemnify and hold each other harmless from any and all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising out of the sale of the Property to Buyer. Buyer and Seller represent and warrant to each other that: (i) except as to the Brokers designated under Section 1(f) of this Agreement, they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction and (ii) that the compensation of the Brokers is established by and shall be governed by separate agreements entered into as amongst the Brokers, the Buyer and/or the Seller.

BUYER:

SELLER:

CITY OF NEW BERN

By: _____
Mayor

PIETRO PASSALACQUA

Date: _____

PAULA R. PASSALACQUA

PAUL E. MCDONALD

Date: _____

EXHIBIT A

Property Description

TRACT ONE: 8 012 12000

All that certain tract or parcel of land lying and being situate in Number Eight (8) Township, Craven County, in the City of New Bern, North Carolina, and being all of Lots 2 and 3 and a portion of Lots 4, 6, 7, and 9, Block H, Elmview Subdivision, recorded in Map Book 1 at Page 160, Craven County Registry, being more particularly described as follows:

Beginning at a point in the Northern right of way line of Neuse Boulevard which point is located North 85° 51' 53" East 74.34 feet. THENCE FROM THIS POINT OF BEGINNING SO LOCATED running North 04° 41' 20" West 157.67 feet; thence North 85° 51' 53" East 11.3 feet to an iron pipe; thence North 04° 47' 20" West 47.98 feet to an iron pipe; thence North 83° 37' 00" East 122.00 feet to an iron pipe; thence South 10° 15' 00" East 65.00 feet to a point; thence South 82° 49' 13" West 42.43 feet to an iron pipe; thence along and with the eastern line of Lot 2, Elmview Subdivision South 09° 39' 39" East 144.21 feet to the northern right of way line of Neuse Boulevard; thence along and with right of way line of Neuse Boulevard South 85° 51' 53" West 109.6 feet.

Being the same property as described in Deed recorded in Book 2551, Page 53, Craven County Registry.

TRACT TWO: 8 012 126

All that certain lot or parcel of land lying and being situate in Number Eight (8) Township, Craven County, North Carolina, and more particularly described as follows:

Beginning at a point in the eastern right of way line of Gaston Boulevard, said point being located N 04° 37' 07" W 154.54 feet from the intersection of said eastern right of way line and the northern right of way line of Broad Street; THENCE from said point or place of beginning N 04° 37' 07" W 106.21 feet; thence N 83° 28' 57" E 87.19 feet; thence S 05° 22' 13" E 59.53 feet; thence S 04° 47' 20" E 47.98 feet; thence S 84° 20' 49" W 88.08 feet to the point or place of beginning, containing 0.21 acre, more or less, in accordance with a survey by Edward B. Latham, PLS, for Carlson & Williams, LLC, dated July 19, 2007, reference to which is hereby made.

Being the same property as described in Deed recorded in Book 2780, Page 565, Craven County Registry.

TRACT THREE: 8 012 131

All that certain tract or parcel of land lying and being in the City of New Bern, Number Eight (8) Township, Craven County, North Carolina and being more particularly described as follows:

Beginning at a point where the eastern right of way line of Gaston Boulevard intersects the Northern right of way line of Broad Street. THENCE FROM THIS POINT OF BEGINNING SO LOCATED, running along and with the eastern right of way line of Gaston Boulevard North 04° 37'

07" West 154.54 feet to a point; thence North 84° 20' 49" East 76.08 feet to a point; thence South 04° 55' 20" East 156.56 feet to the northern right of way line of Broad Street; thence along and with the Northern right of way of Broad Street South 85° 51' 53" West 76.90 feet to the point and place of beginning. Said property being all of Lot 5 and a portion of Lots 4 and 6, Block H, Elmview Subdivision as shown on the Map recorded in Map Book 1, Page 160, Craven County Registry.

Being all of Tract One in deed recorded in Book 2633, Page 105, Craven County Registry.

TRACT FOUR: 8 012 12001

All that certain tract or parcel of land lying and being in the City of New Bern, Number Eight (8) Township, Craven County, North Carolina and being more particularly described as follows:

Beginning at a point which is located North 04° 37' 07" West 260.75 feet from where the eastern right of way line of Gaston Boulevard intersects the Northern right of way line of Broad Street. THENCE FROM THIS POINT OF BEGINNING SO LOCATED, running along and with the eastern right of way line of Gaston Boulevard North 04° 37' 07" West 30.43 feet to a point; thence North 85° 22' 53" East 202.21 feet to a point to the northeastern corner of Lot 9, Block H, Elmview Subdivision, as shown on the Map recorded in Map Book 1, Page 160, Craven County Registry; thence South 09° 55' 15" East 83.67 feet to a point; thence South 83° 37' 00" West 122.08 feet to a point; thence North 05° 22' 13" West 59.53 feet to a point; thence South 83° 28' 57" West 87.19 feet to the eastern right of way of Gaston Boulevard, the point and place of beginning. Said property being all of Lot 7, 8 and 9, Block H, Elmview Subdivision as shown on the Map recorded in Map Book 1, Page 160, Craven County Registry.

Being all of Tract Two in deed recorded in Book 2633, Page 105, Craven County Registry.

TRACT FIVE: 8 012 322

All that certain tract or parcel of land lying and being in the City of New Bern, Number Eight (8) Township, Craven County, North Carolina and being more particularly described as follows:

Beginning at a point in the eastern right of way line of Gaston Boulevard, which point is located North 04° 37' 07" West 292.00 feet to a point, the northern line of an abandoned street (Henderson Avenue). THENCE FROM THIS POINT OF BEGINNING SO LOCATED, running North 85° 22' 53" East 198.50 feet to a point; thence South 09° 55' 15" East 40.17 feet to a point, being the northeastern corner of Lot 9, Elmview Subdivision as shown on the Map recorded in Map Book 1, Page 160, Craven County Registry; running thence South 85° 22' 53" West 202.21 feet to the eastern right of way line of Gaston Boulevard; thence along and with Gaston Boulevard North 04° 37' 07" West 40.00 feet to the point and place of beginning. Said property being all of Grantors interest in the abandoned street, platted as Henderson Avenue, which is platted but undeveloped and which is and has been claimed by Grantor.

Being all of Tract Three in deed recorded in Book 2633, Page 105, Craven County Registry.

EXHIBIT B

Additional Terms and Conditions

1. The parties agree to the following additional conditions of their Offer to Purchase and Contract to which this Addendum is attached:
 - a) Neither the Sellers, nor to Sellers' best knowledge, any prior owner of the Property or any tenant, has ever stored, treated, or disposed of any hazardous materials or waste on the Property;
 - b) Sellers have provided to Buyer all environmental information on the Property in Seller's possession;
 - c) There are no pending or threatened claims, actions, or administrative proceedings against Sellers regarding the environmental condition of the Property; and
 - d) There are no underground fuel storage tanks at, on, or under the Property.
2. Buyer's obligations hereunder are further conditioned upon the following:
 - a) Buyer shall have the right to terminate this Offer to Purchase if, in its sole discretion, the development and use of the Property for its intended purposes is not feasible or cost effective;
 - b) All of the conditions, and representations of Sellers contained in Paragraph 1 of this Addendum shall be true at the time this Addendum is executed and true at closing;
 - c) No portion of the Property shall be or have been used as a sanitary landfill, whether permitted or unpermitted, and no activity shall be or shall have been conducted thereon which is subject to regulation under the North Carolina Solid Waste Management Act;
 - d) No portion of the Property shall consist of filled land, and no portion of the Property shall consist of wetlands as that term is used in Section 404 of the Clean Water Act;
 - e) No portion of the Property shall be located in a special flood hazardous area as such term is used in the Flood Disaster Protection Act of 1973, or in a floodway as such term is used in North Carolina Water and Air Resources Act;
 - f) All applicable federal, state, and local governmental zoning, land use, and environmental requirements shall permit the use of the Property for Buyer's intended purpose;
 - g) The soil and subsurface conditions of the Property shall permit the development of the Property for reasonable commercial/industrial use; and
 - h) In the event of the failure of any of the foregoing conditions of this section, Buyer shall have the right to terminate this Offer to Purchase and Contract by written notice to Sellers or Sellers' counsel, in which event neither party shall have any further rights hereunder.
3. The Property is subject to the following leases:

a) Parcel No. 8-012-131 is subject to a lease agreement entered into between Carlson & Williams Homes, LLC and Irene Magness dated July 1, 2013, which is now a month-to-month lease.

b) Parcel No. 8-012-126 is subject to a lease agreement entered into between Carlson & Williams Homes, LLC/Ronnie Carlson and Irene Magness dated September 15, 2013, which is now a month-to-month lease.

c) Parcel No. 8-012-12000 is subject to a lease agreement entered into between Carlson & Williams Homes, LLC and SGC Enterprises, Inc. d/b/a Ghent Sandwich Shop dated October 10, 2018, which expires at noon on October 31, 2020.

4. In the event of any conflict between the provisions of this Addendum and the provisions of the Offer to Purchase to which this Addendum is attached, the provisions of this Addendum shall control.
5. Sellers may remove any fixtures located in the building on the Property at any time prior to Closing.
6. The provisions of this Contract and Addendum shall survive the closing and purchase of the Property hereunder.

BUYER: City of New Bern

Date: _____

By: _____
Mayor

SELLER:

Date: _____

PIETRO PASSALACQUA

PAULA R. PASSALACQUA

PAUL E. MCDONALD

AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider Adopting a Resolution Authorizing the Mayor to Execute an Agreement for the Purchase and Sale of Real Property Located on Gaston Boulevard

Date of Meeting: 04/28/20	Ward # if applicable: 2
Department: Administration	Person Submitting Item: Mark Stephens
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing:

Explanation of Item:	Purchase of property on Neuse Boulevard for \$40,000
Actions Needed by Board:	Consider approving the resolution
Backup Attached:	Resolution and Agreement for Purchase and Sale of Real Property

Is item time sensitive? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Will there be advocates/opponents at the meeting? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Cost of Agenda Item: \$40,000
If this requires an expenditure, has it been budgeted and are funds available and certified by the Finance Director? <input type="checkbox"/> Yes <input type="checkbox"/> No

Additional Notes:

RESOLUTION

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

That the Agreement for Purchase and Sale of Real Property by and between the City of New Bern and Deborah C. Porcelli and spouse, Leonard J. Porcelli, and Sarah Tisdale Ferrell, 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 28th DAY OF APRIL, 2020.

DANA E. OUTLAW, MAYOR

BRENDA E. BLANCO, CITY CLERK

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT, including any and all addenda attached hereto ("Agreement"), is by and between the **CITY OF NEW BERN**, a North Carolina municipal corporation ("Buyer"), and **DEBORAH C. PORCELLI and spouse, LEONARD J. PORCELLI and SARAH TISDALE FERRELL** (collectively, "Seller").

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

- (a) **"Property":** 1.08 +/- acres located on Gaston Boulevard in New Bern, North Carolina, identified by Craven County tax parcel number 8-012-119, and more specifically described on Exhibit A attached hereto.

\$40,000.00 (b) **"Purchase Price"** shall mean the sum of Forty Thousand and No/100 Dollars payable on the following terms:

\$4,000.00 (i) **"Earnest Money"** shall mean Four Thousand and No/100 Dollars or terms as follows:

Upon this Agreement becoming a contract in accordance with Section 14, the Earnest Money shall be promptly deposited in escrow with Davis Hartman Wright, PLLC to be applied as part payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the provisions of Section 10 herein.

\$0 (ii) **Proceeds of a new loan** in the amount of _____ Dollars for a term of _____ years, at an interest rate not to exceed _____% per annum with mortgage loan discount points not to exceed _____% of the loan amount, or such other terms as may be set forth on **Exhibit B**. Buyer shall pay all costs associated with any such loan.

\$0 (iii) **Delivery of a promissory note** secured by a deed of trust, said promissory note in the amount of _____ Dollars being payable over _____ months in equal monthly installments of principal, together with accrued interest on the outstanding principal balance at the rate of _____ percent (_____%) per annum, with the first principal payment beginning on the first day of the month next succeeding the date of Closing, or such other terms as may be set forth on **Exhibit B**. At any time, the promissory note may be prepaid in whole or in part without penalty and without further interest on the amounts prepaid from the date of such prepayment. **(NOTE: In the event of Buyer's subsequent default upon a promissory note and deed of trust given hereunder, Seller's remedies may be limited to foreclosure of the Property. If the deed of trust given hereunder is subordinated to senior financing, the material terms of such financing must be set forth on Exhibit B. If such senior financing is subsequently foreclosed, the Seller may have no remedy to recover under the note.)**

\$0

(iv) **Assumption** of that unpaid obligation of Seller secured by a deed of trust on the Property, such obligation having an outstanding principal balance of \$ _____ and evidenced by a note bearing interest at the rate of _____ percent (_____%) per annum, or _____. Buyer shall pay all costs associated with any such assumption, including any assumption fee charged by the lender.

\$36,000.00

(v) **Cash, balance of Purchase Price**, at Closing in the amount of Thirty-six Thousand and No/100 Dollars.

(c) **"Closing"** shall mean the date and time of recording of the deed. Closing shall occur on or before 15 days after the expiration of the final Examination Period.

(d) **"Contract Date"** means the date this Agreement has been fully executed by both Buyer and Seller.

(e) **"Examination Period"** shall mean the period beginning on the Contract Date and extending through thirty (30) days after the Contract.

(f) **"Broker(s)"** shall mean: N/A ("Listing Agency"),
____ ("Listing Agent" – License #____)

Acting as: ☐ Seller's Agent; ☐ Dual Agent

and N/A ("Selling Agency"),

Gray Wheeler ("Selling Agent"- License #59301)

Acting as: ☐ Buyer's Agent; ☒ Seller's (Sub)Agent; ☐ Dual Agent

(g) **"Seller's Notice Address"** shall be as follows:

Deborah and Leonard Porcelli
47 Evergreen Road
Norristown, PA 19403

Sarah Tisdale Ferrell
Post Office Box 1847
Washington, NC 27889

except as same may be changed pursuant to Section 12.

(h) **"Buyer's Notice Address"** shall be as follows:

Davis Hartman Wright, PLLC
Attn: Michael Scott Davis
209 Pollock Street
New Bern, NC 28560

except as same may be changed pursuant to Section 12.

☒ (i) If this block is marked, additional terms of this Agreement are set forth on **Exhibit B** attached hereto and incorporated herein by reference. (Note: Under North Carolina law, real estate agents are not permitted to draft conditions or contingencies to this Agreement.)

Section 2. Sale of Property and Payment of Purchase Price: Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price.

Section 3. Proration of Expenses and Payment of Costs: Seller and Buyer agree that all property taxes (on a calendar year basis), leases, rents, mortgage payments and utilities or any other assumed liabilities as detailed on attached **Exhibit B**, if any, shall be prorated as of the date of Closing. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Agreement, excise tax (revenue stamps), any deferred or rollback taxes, and other conveyance fees or taxes required by law, and the following: N/A. Buyer shall pay recording costs, costs of any title search, title insurance, survey, the cost of any inspections or investigations undertaken by Buyer under this Agreement and the following: N/A.

Each party shall pay its own attorney's fees.

Section 4. Deliveries: Seller agrees to use best efforts to deliver to Buyer as soon as reasonably possible after the Contract Date copies of all information relating to the Property in possession of or available to Seller, including but not limited to: title insurance policies, surveys and copies of all presently effective warranties or service contracts related to the Property. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all materials delivered by Seller to Buyer pursuant to this Section 4 (or Section 7, if applicable), if any, and shall, upon Seller's request, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys and other information relating directly to the Property prepared by or at the request of Buyer, its employees and agents, and shall deliver to Seller, upon the release of the Earnest Money, copies of all of the foregoing without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof.

Section 5. Evidence of Title: Seller agrees to convey fee simple marketable and insurable title to the Property free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, and (b) matters of record existing at the Contract Date that are not objected to by Buyer prior to the end of the Examination Period ("Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens. Seller shall not enter into or record any instrument that affects the Property after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 6. Conditions: This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following conditions:

(a) **New Loan:** The Buyer must be able to obtain the loan, if any, referenced in Section 1(b)(ii). Buyer must be able to obtain a firm commitment for this loan on or before the end of the last Examination Period, effective through the date of Closing. Buyer agrees to use its best efforts to secure such commitment and to advise Seller immediately upon receipt of lender's decision. On or before the above date, Buyer has the right to terminate this Agreement for failure to obtain the loan referenced in Section 1(b)(ii) by delivering to Seller written notice of termination by the above date, *time being of the essence*. If Buyer delivers such notice, this Agreement shall be null and void and Earnest Money shall be refunded to Buyer. If Buyer fails to deliver such notice, then Buyer will be deemed to have waived the loan condition. Notwithstanding the foregoing, after the above date, Seller may request in writing from Buyer a copy of the commitment letter. If Buyer fails to provide Seller a copy of the commitment letter within five (5) days of receipt of Seller's request, then Seller may

terminate this Agreement by written notice to Buyer at any time thereafter, provided Seller has not then received a copy of the commitment letter, and Buyer shall receive a return of Earnest Money.

(b) **Qualification for Financing:** If Buyer is to assume any indebtedness in connection with payment of the Purchase Price, Buyer agrees to use its best efforts to qualify for the assumption. Should Buyer fail to qualify, Buyer shall notify Seller in writing immediately upon lender's decision, whereupon this Agreement shall terminate, and Buyer shall receive a return of Earnest Money.

(c) **Title Examination:** After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event that such title examination shall show that Seller's title is not fee simple marketable and insurable, subject only to Permitted Exceptions, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than the end of the Examination Period, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(d) **Same Condition:** If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property.

(e) **Inspections:** Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, performing soil boring and other testing, conducting timber cruises, and surveying the Property. Buyer shall conduct all such on-site inspections, examinations, soil boring and other testing, timber cruises and surveying of the Property in a good and workmanlike manner, shall repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer shall make reasonable efforts to undertake on-site inspections outside of the hours any tenant's business is open to the public and shall give prior notice to any tenants of any entry onto any tenant's portion of the Property for the purpose of conducting inspections. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property, provided, however, that Buyer shall not disclose any information regarding this Property (or any tenant therein) unless required by law and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Buyer shall obtain their agreement to maintain such confidentiality. Buyer assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this Section 6(e) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Buyer shall, at Buyer's expense, promptly repair any damage to the Property caused by Buyer's entry and on-site inspections. Except as provided in Section 6(c) above, Buyer shall have from the Contract Date through the end of the Examination Period to perform the above inspections, examinations and testing. **IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN**

THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY.

Section 7. Leases (Check one of the following, as applicable):

☒ If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the Property.

☐ If this box is checked, Seller discloses that there are one or more leases affecting the Property (oral or written, recorded or not -"Leases") and the following provisions are hereby made a part of this Agreement.

(a) All Leases shall be itemized on **Exhibit B**;

(b) Seller shall deliver copies of any Leases to Buyer pursuant to Section 4 as if the Leases were listed therein;

(c) Seller represents and warrants that as of the Contract Date there are no current defaults (or any existing situation which, with the passage of time, or the giving of notice, or both, or at the election of either landlord or tenant could constitute a default) either by Seller, as landlord, or by any tenant under any Lease ("Lease Default"). In the event there is any Lease Default as of the Contract Date, Seller agrees to provide Buyer with a detailed description of the situation in accordance with Section 4. Seller agrees not to commit a Lease Default as Landlord after the Contract Date, and agrees further to notify Buyer immediately in the event a Lease Default arises or is claimed, asserted or threatened to be asserted by either Seller or a tenant under the Lease.

(d) In addition to the conditions provided in Section 6 of this Agreement, this Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon the assignment of Seller's interest in any Lease to Buyer in form and content acceptable to Buyer (with tenant's written consent and acknowledgement, if required under the Lease), and Seller agrees to use its best efforts to effect such assignment. Any assignment required under this Section 7 shall be required to be delivered at Closing by Seller in addition to those deliveries required under Section 11 of this Agreement.

(e) Seller agrees to deliver an assignment of any Lease at Closing, with any security deposits held by Seller under any Leases to be transferred or credited to Buyer at Closing. Seller also agrees to execute and deliver (and work diligently to obtain any tenant signatures necessary for same) any estoppel certificates and subordination, nondisturbance and attornment agreements in such form as Buyer may reasonably request.

Section 8. Environmental: Seller represents and warrants that it has no actual knowledge of the presence or disposal, except as in accordance with applicable law, within the buildings or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the Clean Water Act of 1977 (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. §1317), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response,

Compensation and Liability Act of 1980 (42 U.S.C. §9601). Seller has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

Section 9. Risk of Loss/Damage/Repair: Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

Section 10. Earnest Money Disbursement: In the event that any of the conditions hereto are not satisfied, or in the event of a breach of this Agreement by Seller, then the Earnest Money shall be returned to Buyer, but such return shall not affect any other remedies available to Buyer for such breach. In the event this offer is accepted and Buyer breaches this Agreement, then the Earnest Money shall be forfeited. Seller agrees that Seller's sole remedy for breach of this Agreement by Buyer is the Earnest Money.

Section 11. Closing: At Closing, Seller shall deliver to Buyer a general warranty deed unless otherwise specified on Exhibit B and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, a bill of sale for any personalty listed on Exhibit B, an owner's affidavit, lien waiver forms and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall pay to Seller the Purchase Price. At Closing, the Earnest Money shall be applied as part of the Purchase Price. The Closing shall be held at the office of Buyer's attorney or such other place as the parties hereto may mutually agree. Possession shall be delivered at Closing, unless otherwise agreed herein.

Section 12. Notices: Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing and shall be deemed to have been properly given and received on the date delivered in person or deposited in the United States mail, registered or certified, return receipt requested, to the addresses set out in Section 1(g) as to Seller and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith.

Section 13. Entire Agreement: This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto.

Section 14. Enforceability: This Agreement shall become a contract when a signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that the notice described in Section 12 is not required for effective communication for the purposes of this Section 14. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

Section 15. Adverse Information and Compliance with Laws:

(a) **Seller Knowledge:** Seller has no actual knowledge of (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; or (iv) governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments, except as follows: None

(Insert "None" or the identification of any matters relating to (i) through (iv) above, if any). Seller shall pay all owners' association assessments and all governmental assessments confirmed as of the time of Closing, if any, and Buyer shall take title subject to all pending assessments, if any, unless otherwise agreed as follows:

None

Seller represents that the regular owners' association dues, if any, are \$_____ per _____.

(b) **Compliance:** To Seller's actual knowledge, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, constitute any default under or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

Section 16. Survival of Representations and Warranties: All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

Section 17. Applicable Law: This Agreement shall be construed under the laws of the state in which the Property is located. This form has only been approved for use in North Carolina.

Section 18. Assignment: This Agreement is freely assignable unless otherwise expressly provided on Exhibit B.

Section 19. Tax-Deferred Exchange: In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

Section 20. Memorandum of Contract: Upon request by either party, the parties hereto shall execute a memorandum of contract in recordable form setting forth such provisions hereof (other than the Purchase Price and other sums due) as either party may wish to incorporate. Such memorandum of contract shall contain a statement that it automatically terminates and the Property is released from any effect thereby as of a specific date to be stated in the memorandum (which specific date shall be no later than the date of Closing). The cost of recording such memorandum of contract shall be borne by the party requesting execution of same.

Section 21. Authority: Each signatory to this Agreement represents and warrants that he, she or it has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he, she or it signs and that his, her or its signature binds such party.

Section 22. Brokers: Except as expressly provided herein, Buyer and Seller agree to indemnify and hold each other harmless from any and all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising out of the sale of the Property to Buyer. Buyer and Seller

represent and warrant to each other that: (i) except as to the Brokers designated under Section 1(f) of this Agreement, they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction and (ii) that the compensation of the Brokers is established by and shall be governed by separate agreements entered into as amongst the Brokers, the Buyer and/or the Seller.

BUYER:

SELLERS:

CITY OF NEW BERN

By: _____
Mayor

DEBORAH C. PORCELLI

LEONARD J. PORCELLI

Date: _____

SARAH TISDALE FERRELL

Date: _____

EXHIBIT A

Property Description

All those certain lots or parcels of land known as Lots 1, 2, 3, 4, 5, 6 and 7, Block G, in that certain subdivision known and depicted as Elmview in a map recorded in Map Book 1, Page 160, Craven County Registry, reference to which should be made for a more perfect description hereof.

EXHIBIT B

Additional Terms and Conditions

1. The parties agree to the following additional conditions of their Offer to Purchase and Contract to which this Addendum is attached:
 - a) Neither the Sellers, nor to Sellers' best knowledge, any prior owner of the Property or any tenant, has ever stored, treated, or disposed of any hazardous materials or waste on the Property;
 - b) Sellers have provided to Buyer all environmental information on the Property in Seller's possession;
 - c) There are no pending or threatened claims, actions, or administrative proceedings against Sellers regarding the environmental condition of the Property; and
 - d) There are no underground fuel storage tanks at, on, or under the Property.
2. Buyer's obligations hereunder are further conditioned upon the following:
 - a) Buyer shall have the right to terminate this Offer to Purchase if, in its sole discretion, the development and use of the Property for its intended purposes is not feasible or cost effective;
 - b) All of the conditions, and representations of Sellers contained in Paragraph 1 of this Addendum shall be true at the time this Addendum is executed and true at closing;
 - c) No portion of the Property shall be or have been used as a sanitary landfill, whether permitted or unpermitted, and no activity shall be or shall have been conducted thereon which is subject to regulation under the North Carolina Solid Waste Management Act;
 - d) No portion of the Property shall consist of filled land, and no portion of the Property shall consist of wetlands as that term is used in Section 404 of the Clean Water Act;
 - e) No portion of the Property shall be located in a special flood hazardous area as such term is used in the Flood Disaster Protection Act of 1973, or in a floodway as such term is used in North Carolina Water and Air Resources Act;
 - f) All applicable federal, state, and local governmental zoning, land use, and environmental requirements shall permit the use of the Property for Buyer's intended purpose;
 - g) The soil and subsurface conditions of the Property shall permit the development of the Property for reasonable commercial/industrial use; and
 - h) In the event of the failure of any of the foregoing conditions of this section, Buyer shall have the right to terminate this Offer to Purchase and Contract by written notice to Sellers or Sellers' counsel, in which event neither party shall have any further rights hereunder.
3. In the event of any conflict between the provisions of this Addendum and the provisions of the Offer to Purchase to which this Addendum is attached, the provisions of this Addendum shall control.

4. Sellers may remove any fixtures located in the building on the Property at any time prior to Closing.
5. The provisions of this Contract and Addendum shall survive the closing and purchase of the Property hereunder.

CITY OF NEW BERN

By: _____
Mayor

DEBORAH C. PORCELLI

LEONARD J. PORCELLI

Date: _____

SARAH TISDALE FERRELL

Date: _____

Aldermen

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



NEW BERN
CITY OF NEW BERN
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
Mary M. Hogan
Director of Finance

Memorandum

TO: Mayor and Board of Aldermen
FROM: Brenda Blanco, City Clerk *BBB*
DATE: February 28, 2020
SUBJECT: Appointment to Appearance Commission

Joseph Cannon's term on the Appearance Commission has expired, and he is not interested in reappointment. Foster Hughes, Director of Parks and Recreation, has the name of someone who has expressed interest in serving on this commission. Please reach out to Mr. Hughes for additional information, if desired.

Terms on the Appearance Commission are three years. When possible, appointees should have special training or experience in a design field, such as architecture, landscape design, horticulture, city planning, or a closely-related field.

/beb

Aldermen

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



Dana E. Outlaw
Mayor
Mark A. Stephens
City Manager
Brenda E. Blanco
City Clerk
Mary M. Hogan
Director of Finance

Memorandum

TO: Mayor and Board of Aldermen

FROM: Brenda Blanco, City Clerk

DATE: April 15, 2020

SUBJECT: Appointment to New Bern-Craven County Library Board

Ethel Staten has resigned from her seat on the New Bern-Craven County Library Board effective March 29, 2020. You are asked to make an appointment to fill out the remainder of her term, which expires on December 1, 2020.

/beb