

**CITY OF NEW BERN
BOARD OF ALDERMEN MEETING
SEPTEMBER 12, 2023 – 6:00 P.M.
CITY HALL COURTROOM
300 POLLOCK STREET**

1. Meeting opened by Mayor Odham. Prayer Coordinated by Alderman Brinson. Pledge of Allegiance.
2. Roll Call.
3. Approve Agenda.
4. Request and Petition of Citizens.

Consent Agenda

5. Consider Adopting a Resolution Calling for a Public Hearing to Annex 3277 Old Airport Road.
6. Consider Adopting a Resolution Closing Specific Streets for the Tryon Palace Candlelight Celebration.
7. Approve Minutes.

8. Introduction of Staff.
9. Conduct a Public Hearing and Consider Adopting a Resolution Approving the Installment Financing Agreement for the Stanley White Recreation Center.
10. Presentation on Project Lifesaver.
11. Consider Adopting an Amendment to Resolution 23-050 to Designate a Street Closure for the 2023 MumFeast Event.
12. Consider Adopting a Resolution Approving the NBAMPO 5303 Grant Contract with the NC Department of Transportation.
13. Consider Adopting a Resolution Establishing a Municipal Service District ("MSD") Advisory Committee.
14. Consider Adopting a Resolution Approving a Water and Sewer Use Agreement for 3277 Old Airport Road.
15. Consider Adopting an Amendment to Section 6.14 "Dangerous or Potentially Dangerous Dog" of Chapter 6 of the Code of Ordinances.

16. Consider Adopting a Resolution Authorizing the City Manager to Negotiate and Execute a Contract with WithersRavenel for Civil Engineering Services.
17. Consider Adopting an Order Authorizing the Sale and Issuance of the Combined Enterprise System Revenue Bond, Series 2023 for the Sewer Improvements Projects.
18. Consider Adopting a Resolution Authorizing the Execution of an Installment Purchase Contract for the 2023 Vehicle and Equipment Financing.
19. Consider Adopting a Budget Ordinance Amendment for Fiscal Year 2023-24.
20. Consider Adopting an Ordinance Amending the Township 7 Sewer Improvements Project Fund.
21. Consider Adopting an Ordinance Amending the Northwest Interceptor Rehabilitation Phase II Project Fund.
22. Appointment(s).
23. Attorney's Report.
24. City Manager's Report.
25. New Business.
26. Closed Session.
27. Adjourn.

INDIVIDUALS WITH DISABILITIES REQUIRING SPECIAL ASSISTANCE SHOULD CALL
639-2931 NO LATER THAN 3 P.M. THE DATE OF THE MEETING



NEW BERN
CITY OF NEW BERN

300 Pollock Street, P.O. Box 1129
New Bern, NC 28563-1129
(252) 636-4000

Aldermen

Rick Prill
Hazel B. Royal
Robert V. Aster
Johnnie Ray Kinsey
Barbara J. Best
Robert Brinson, Jr.

Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A Ostrom
Director of Finance

Memo to: Mayor and Board of Aldermen

From: Foster Hughes, City Manager

Date: September 08, 2023

Re: September 12, 2023 Agenda Explanations

1. **Meeting opened by Mayor Jeffrey T. Odham. Prayer Coordinated by Alderman Brinson. Pledge of Allegiance.**
2. **Roll Call.**
3. **Approve Agenda.**
4. **Request and Petition of Citizens.**

This section of the agenda is titled Requests and Petitions of Citizens. This is an opportunity for public comment, and we thank you for coming to the Board of Aldermen meeting tonight to share your views. We value all citizen input.

Speaker comments are limited to a maximum of 4 minutes during the public comment period. At the conclusion of 4 minutes, each speaker shall leave the podium. Comments will be directed to the full board, not to an individual board member or staff member. Although the board is interested in hearing your comments, speakers should not expect any comments, action, or deliberation from the board on any issue raised during the public comment period.

In the board's discretion, it may refer issues to the appropriate city officials or staff for further investigation. If an organized group is present to speak on a common issue, please designate one person to present the group's comment, which shall be limited to a maximum of 4 minutes.

Consent Agenda

5. Consider Adopting a Resolution Calling for a Public Hearing to Annex 3277 Old Airport Road.

(Ward 3) Michael and Rose Miller have submitted a petition to annex the property at 3277 Old Airport Road. It is requested a hearing be called for September 26, 2023 to receive comments and consider this request. A memo from Brenda Blanco, City Clerk, is attached.

6. Consider Adopting a Resolution Closing Specific Streets for the Tryon Palace Candlelight Celebration.

(Ward 1) Susan Briley, Operations Manager at Tryon Palace, has requested the 600 block of Pollock Street and 300 block of George Street be closed on December 9th and 16th from 2 p.m. until 11 p.m. for Tryon Palace's Candlelight Christmas Celebration. To accommodate a fireworks' display both evenings, she has also requested a block of South Front Street at the location of Palace Point Commons. A memo from Mrs. Warren is attached along with a map of the proposed closures.

7. Approve Minutes.

Draft minutes from the August 22, 2023 regular meeting and August 30, 2023 strategic planning work session are provided for review and approval.

8. Introduction of Staff.

The City Manager will introduce the following new staff: Deanna Trebil, MPO Administrator; Robert Gough, Assistant Director of Development Services; Kendrick Stanton, Land and Community Development Administrator (Zoning); and David Fishel, Assistant Director of Public Works. He will also introduce Jim McConnell as the Interim Fire Chief.

9. Conduct a Public Hearing and Consider Adopting a Resolution Approving the Installment Financing Agreement for the Stanley White Recreation Center.

On August 08, 2023, the Board conducted a public hearing on the financing of the construction of the Stanley White Recreation Center. The city's bond counsel published a notice of hearing in the Sun Journal that incorrectly stated the loan would not exceed \$8,200,000. The ad should have stated the loan will not exceed \$10,000,000. The bond counsel and City Attorney concurred that a new notice needed to be published and a second hearing held prior to approval of the financing agreement. After conducting the hearing, the Board is asked to consider the resolution approving a financing agreement with TD Bank. A memo from Kim Ostrom, Director of Finance, is attached.

10. Presentation on Project Lifesaver.

At its first meeting in August, the Board approved a Memorandum of Understanding between the city and Eastern Carolina Council ("ECC") for Project Lifesaver. Police and Fire personnel have been trained on the use of the equipment. Staff will be joined by David Bone of ECC and January Brown from the ECC Area Agency on Aging to provide details and information about the program. A memo from Police Chief Patrick Gallagher is attached.

11. Consider Adopting an Amendment to Resolution 23-050 to Designate a Street Closure for the 2023 MumFeast Event.

(Ward 1) On May 23, 2023, the Board adopted a resolution to close specific streets for the operation of street cafes. Swiss Bear has recently requested that one of the approved closures dates, September 29, 2023, be designated for MumFeast and that the closure be modified to begin at 5 p.m. instead of 6 p.m. It was also requested that the closure be extended to include the 400 block of Pollock Street and the entire 300 block of Middle Street. A rain date of October 06, 2023 is sought. A memo from Kari Warren, Director of Parks and Recreation, is attached.

12. Consider Adopting a Resolution Approving the NBAMPO 5303 Grant Contract with the NC Department of Transportation.

On behalf of the New Bern Area Metropolitan Planning Organization, the City has been identified as the direct recipient of Section 5303 Federal Transit Administration Urban Planning Funds. These funds are managed by NCDOT's Public Transportation Division. To receive the funds, the Board of Aldermen must adopt a resolution authorizing the City Manager to sign a grant agreement with NCDOT. The total allocation for FY2023-24 is \$60,080, which reflects a federal share of \$48,064, state share of \$6,008, and a local share of \$6,008. The local share will be provided by the jurisdictions participating in the New Bern Area MPO as follows: New Bern \$3,333.24; River Bend \$356.88; Trent Woods \$489.05; Bridgeton \$50.47; and Craven County \$1,778.37. A memo from Deanna Trebil, MPO Administrator, is attached.

13. Consider Adopting a Resolution Establishing a Municipal Service District ("MSD") Advisory Committee.

(Ward 1) A resolution establishing a MSD Advisory Committee was presented to the Board at its August 22, 2023 meeting. After some discussion, the Board requested the number of Ex-Officio members be increased from four to five to provide for an at-large appointment from the Board of Aldermen, and that term limits be set at two successive terms for residential members and commercial members representing the same commercial interest. The document has also been revised to specify that the Board can replace any voting member who does not attend three of the four quarterly meetings or who no longer owns real property or resides within the MSD.

14. Consider Adopting a Resolution Approving a Water and Sewer Use Agreement for 3277 Old Airport Road.

(Ward 3) The owners of 3277 Old Airport Road have requested to connect to the City's water and sewer systems. They are planning to build a single-family residence on the property, which is currently outside of the city limits. The proposed home will have a calculated average sewer demand of 360 gallons per day, which would require a standard sewer service connection. Section 74-74 of the City's ordinances provides that a written water and sewer use agreement be entered into to outline the roles and responsibilities of both parties in establishing service. A memo from Jordan Hughes, Director of Water Resources, is attached.

15. Consider Adopting an Amendment to Section 6.14 "Dangerous or Potentially Dangerous Dog" of Chapter 6 of the Code of Ordinances.

This ordinance amendment clarifies language with respect to a dangerous or potentially dangerous dog. It also adds a requirement for a dog owner to immediately notify New Bern's Animal Control when a dangerous or potentially dangerous dog escapes their property or restraints. A brief memo from Chief Gallagher is attached.

16. Consider Adopting a Resolution Authorizing the City Manager to Negotiate and Execute a Contract with WithersRavenel for Civil Engineering Services.

A Request for Qualifications was issued for civil engineering services as part of staff's administration of the NC Department of Environmental Quality's Local Assistance for Stormwater Infrastructure Investments grant. Five responses were received and reviewed. WithersRavenel ranked the highest during the review, and staff is recommending the City Manager be authorized to negotiate a contract with this firm. Attached is a memo from Chris Seaberg, Community and Economic Development Manager.

17. Consider Adopting an Order Authorizing the Sale and Issuance of the Combined Enterprise System Revenue Bond, Series 2023 for the Sewer Improvements Projects.

As discussed at the last two Board meetings, the City is pursuing the issuance of its Combined Enterprise System Revenue Bonds, Series 2023 in the amount of \$6,100,000 to finance the Northwest Sewer Interceptor Rehabilitation Phase II project and the Township 7 Sewer Improvements Phase III project. This resolution authorizes the issuance and sale of the bonds as well as execution of the associated financial documents. This transaction is scheduled to close on September 21, 2023. A memo from Mrs. Ostrom is attached.

18. Consider Adopting a Resolution Authorizing the Execution of an Installment Purchase Contract for the 2023 Vehicle and Equipment Financing.

The financing of the purchase of vehicles and equipment was also discussed at the last two Board meetings. The proposed resolution approves and authorizes the execution of an installment financing agreement and other documents with TD Equipment Finance for a loan not to exceed \$4,900,000. A memo from Mrs. Ostrom is attached.

19. Consider Adopting a Budget Ordinance Amendment for Fiscal Year 2023-24.

This budget amends multiple funds to reflect loan proceeds for the purchase of vehicles and equipment. A memo from Mrs. Ostrom is attached.

20. Consider Adopting an Ordinance Amending the Township 7 Sewer Improvements Project Fund.

This project fund is amended to recognize proceeds from the issuance of the Combined Enterprise System Revenue Bonds, Series 2023. A memo from Mrs. Ostrom is attached.

21. Consider Adopting an Ordinance Amending the Northwest Interceptor Rehabilitation Phase II Project Fund.

This project fund is also amended to recognize proceeds from the issuance of the Combined Enterprise System Revenue Bonds, Series 2023. A memo from Mrs. Ostrom is attached.

22. Appointment(s).

- a) Raymond Layton's term on the Planning and Zoning Board expired June 30, 2023, and he is ineligible for reappointment. Alderman Kinsey is asked to make a new appointment to fill Seat 4 for a three-year term.
- b) Ken Daub was appointed to the Police Civil Service Board on June 27, 2023, but it has subsequently been determined he is currently ineligible to fill the seat. It is requested a new appointment be made.
- c) George Halyak recently resigned from the Friends of the Firemen's Museum Board, and a new appointment is needed to fill the remainder of his term which will expire on April 22, 2025.

23. Attorney's Report.

24. City Manager's Report.

25. New Business.

26. Closed Session.

27. Adjourn.

INDIVIDUALS WITH DISABILITIES REQUIRING SPECIAL ASSISTANCE SHOULD CALL
639-2931 NO LATER THAN 3 P.M. THE DATE OF THE MEETING

AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider adopting a resolution calling for a public hearing to annex 3277 Old Airport Road

Date of Meeting: 9/12/2023	Ward # if applicable: 3
Department: City Clerk	Person Submitting Item: Brenda Blanco
Call for Public Hearing: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Date of Public Hearing: 9/26/2023

Explanation of Item:	Michael and Rose Miller have requested to annex 3227 Old Airport Road. It is requested a public hearing be held on September 26, 2023 to hear this request. If the property is annexed, it will be in Ward 3.
Actions Needed by Board:	Consider calling for a public hearing to be held on September 26, 2023
Backup Attached:	Resolution calling for a public hearing, petition for annexation, certificate of sufficiency, and map
Is item time sensitive? <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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300 Pollock Street, P.O. Box 1129
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(252) 636-4000

Aldermen

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Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

TO: Mayor and Board of Aldermen
FROM: Brenda E. Blanco, City Clerk
DATE: August 28, 2023
SUBJECT: Call for a Public Hearing to Annex 3277 Old Airport Road

Background

Michael and Rose Miller have petitioned the City to annex 3277 Old Airport Road. They plan to construct a residence on the property as detailed in Jordan Hughes' memo regarding a water and sewer use agreement (Item 13 on this agenda). It is requested a public hearing be held on September 26, 2023 to consider this request.

Recommendation

Consider adopting a resolution to call for a public hearing.

RESOLUTION

THAT WHEREAS, the Board of Aldermen of the City of New Bern has received a petition from Rose Marie Miller and Michael J. Miller, Sr., bearing date August 21, 2023, seeking annexation to the City of New Bern of a parcel of land consisting of 0.89 acres, more or less, which said parcel is located at 3277 Old Airport Road in Number 7 Township, Craven County, more particularly identified on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, the Board of Aldermen has caused the City Clerk to investigate the sufficiency of said petition and to certify the results of her investigation; and

WHEREAS, the Board of Aldermen has received the certification of the City Clerk attesting to the sufficiency of the petition; and

WHEREAS, the Board of Aldermen desires to conduct a public hearing on September 26, 2023, in the City Hall Courtroom at 6:00 p.m. on the question of annexing to the City of New Bern the above-described parcel of land owned by Rose Marie Miller and Michael J. Miller, Sr.

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

Section 1. That a public hearing will be conducted by the Board of Aldermen of the City of New Bern on September 26, 2023, in the City Hall Courtroom at 6:00 p.m., or as soon thereafter as the matter may be reached, on the question of annexing to the City of New Bern the parcel of land owned by Rose Marie Miller and Michael J. Miller, Sr., which said parcel is located at 3277 Old Airport Road in Number 7 Township, Craven County, North Carolina, the boundaries of which are shown on Exhibit A attached hereto and incorporated herein by reference.

Section 2. That a notice of public hearing shall be published once in the *Sun-Journal* at least ten (10) days prior to September 26, 2023.

ADOPTED THIS 12th DAY OF SEPTEMBER, 2023.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

EXHIBIT A

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

Being all of Lot A, containing 38,935 square feet (0.89 acres), more or less, as shown on that map entitled "Re-Combination Survey for Rose Marie Miller" by Brad L. Suitt, PLS, dated January 18, 2021, a copy of which is recorded in Plat Cabinet J, Slide 48G, Craven County Registry, and incorporated herein by reference.

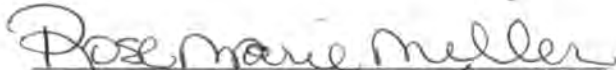
PETITION TO ANNEX


TO: BOARD OF ALDERMEN OF THE CITY OF NEW BERN

1. Rose Marie Miller and Michael J. Miller, Sr., the undersigned owners of real property, respectfully requests that the area described in Paragraph 2 below be annexed to the City of New Bern.

2. The area to be annexed is contiguous to the City of New Bern, and the boundaries of such territory are more particularly described on Exhibit A attached hereto and incorporated herein by reference.

OWNERS:


Rose Marie Miller


Michael J. Miller, Sr.

Date: 8-21-23

Mailing Address: 3277 Old Airport Road, New Bern, North Carolina 28562

EXHIBIT A

3277 OLD AIRPORT ROAD
CRAVEN COUNTY PARCEL ID: 7-105-1000

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

Being all of Lot A, containing 38,935 square feet (0.89 acres), more or less, as shown on that map entitled "Re-Combination Survey for Rose Marie Miller" by Brad L. Suitt, PLS, dated January 18, 2021, a copy of which is recorded in Plat Cabinet J, Slide 48G, Craven County Registry, and incorporated herein by reference.

CERTIFICATE OF SUFFICIENCY

I, BRENDA BLANCO, City Clerk of the City of New Bern, North Carolina, do hereby certify that I have investigated the sufficiency of the petition of Rose Marie Miller and Michael J. Miller, Sr., requesting annexation by the City of New Bern of a parcel of land located at 3277 Old Airport Road in Number 7 Township, Craven County, which said petition is dated August 21, 2023, and I do hereby certify that said petition is in order in all respects.

THIS DAY 12TH OF SEPTEMBER, 2023.

BRENDA BLANCO, CITY CLERK

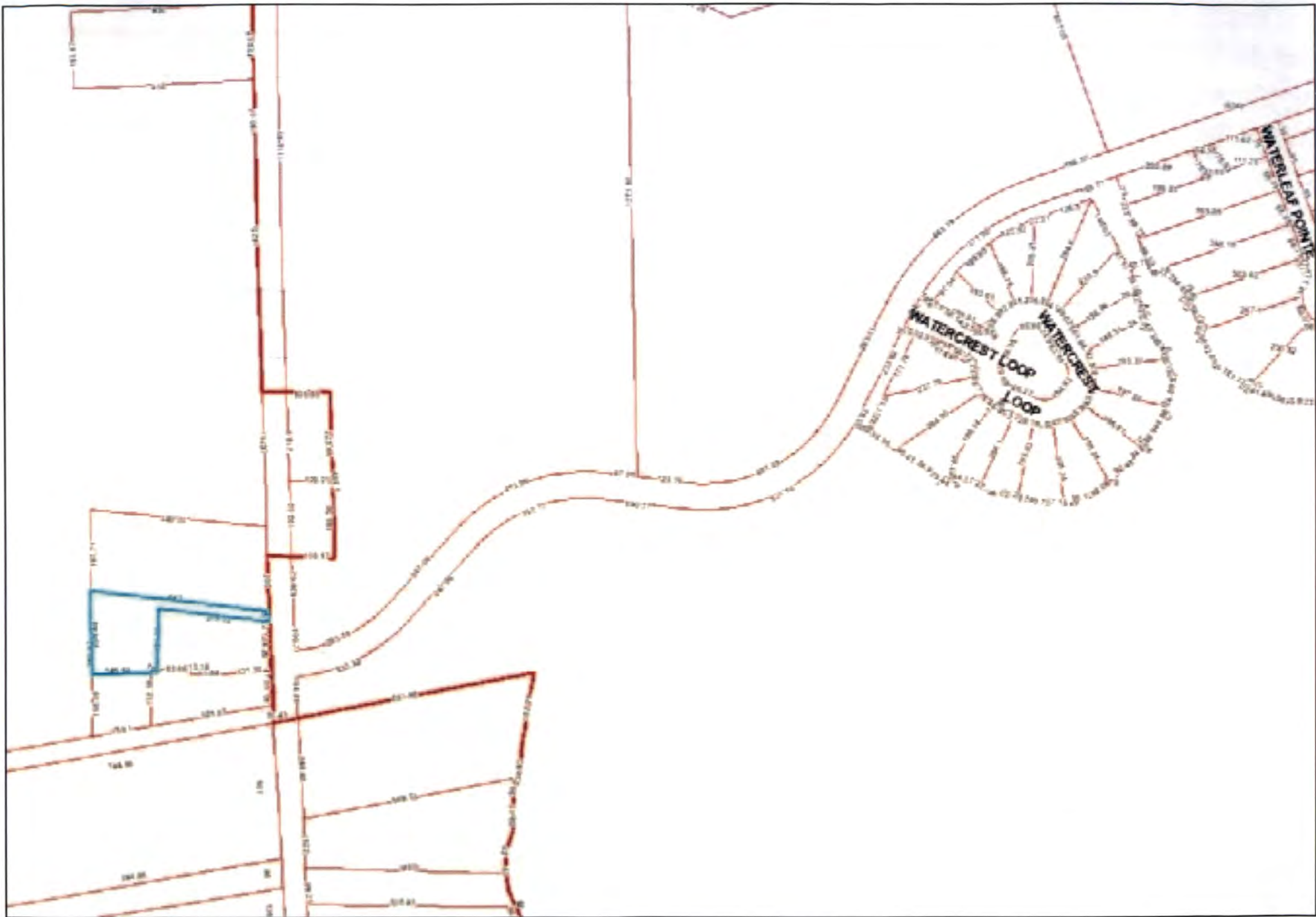


Craven County GIS 3277 Old Airport Road

1 inch = 344 feet

Craven County does NOT warrant the information shown on this map and should be used ONLY for tax assessment purposes. Printed on August 24, 2023 at 1:17:26 PM





Craven County GIS 3277 Old Airport Road

Craven County does NOT warrant the information shown on this map and should be used ONLY for tax assessment purposes. Printed on September 8, 2023 at 2:46:12 PM

1 inch = 307 feet



AGENDA ITEM COVER SHEET



Agenda Item Title:

Consider Adopting a Resolution to close streets for Tryon Palace Candlelight Christmas Celebration.

Date of Meeting: 9/12/2023	Ward # if applicable: Ward 1
Department: Parks & Recreation	Person Submitting Item: Kari Warren Director of Parks & Recreation
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing: N/A

Explanation of Item:	Tryon Palace has requested to close the 600 block of Pollock Street and the 300 block of George Street to vehicular traffic for Tryon Palace Candlelight Christmas Celebration to be held 2:00 p.m. until 11:00 p.m., and a blockage of South Front Street at Palace Point Commons behind Tryon Palace South Lawn be closed to vehicular and pedestrian traffic from 2:00 p.m. until 11:00 p.m. for fireworks on Saturday, December 9th, and 16th, 2023.
Actions Needed by Board:	Adopt the Resolution
Backup Attached:	Resolution – Memo – Map – Petition - Application
Is item time sensitive? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

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

Additional Notes: N/A



Aldermen

Rick Prill
Hazel B. Royal
Bobby Aster
Johnnie Ray Kinsey
Barbara J. Best
Robert Brinson, Jr.

Kari Warren, CPRP
Interim Director of Parks & Recreation

Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance



Memo To: Mayor and Board of Aldermen

From: Kari Warren, CPRP *KW*
Director of Parks and Recreation

Re: Street Closure for Tryon Palace Candlelight Christmas Celebration.

Background Information:

Tryon Palace has requested to close the 600 block of Pollock Street and the 300 block of George Street to vehicular traffic for their Candlelight Christmas Celebration to be held 2:00 p.m. until 11:00 p.m., and a blockage of South Front Street at Palace Point Commons behind Tryon Palace South Lawn be closed to vehicular and pedestrian traffic from 2:00 p.m. until 11:00 p.m. for fireworks on Saturday, December 9th, and 16th, 2023.

Recommendation:

The Director of Parks and Recreation recommends approval and request the Board adopt a Resolution approving the request.

If you have any questions concerning this matter, please let me know.

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

RESOLUTION

THAT WHEREAS, Tryon Palace has scheduled its annual Candlelight Christmas Celebration and requested the 600 block of Pollock Street and 300 block of George Street be closed to vehicular traffic from 2:00 p.m. until 11:00 p.m. on both Saturday, December 9, 2023, and Saturday, December 16, 2023; and

WHEREAS, South Front Street at Palace Point Commons is also requested to be closed to vehicular and pedestrian traffic from 2:00 p.m. until 11:00 p.m. to accommodate a fireworks display on the above dates; and

WHEREAS, the Director of Parks and Recreation of the City of New Bern recommends the streets be closed as requested.

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

That the 600 block of Pollock Street and the 300 block of George Street be closed to vehicular traffic from 2:00 p.m. until 11:00 p.m. on December 9, 2023, and December 16, 2023, for Tryon Palace's Annual Candlelight Christmas Celebration; and

FURTHER, South Front Street at Palace Point Commons shall be closed to vehicular and pedestrian traffic from 2:00 p.m. until 11:00 p.m. on the aforesaid dates for a fireworks display.

ADOPTED THIS 12TH OF SEPTEMBER 2023.

JEFFREY T. ODHAM, MAYOR

BRENDA BLANCO, CITY CLERK

RECEIVED

AUG 24 2023

BY: VEM

Sat. Dec 9th / 16th
Street Closing

CITY OF NEW BERN

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

This application is hereby made for a permit to hold a Public Assembly and/or Parade as described in the City of New Bern Code of Ordinances (Sec. 66-85; 66-86; and 66-87) – Public Assemblies and Parades. This application along with attachments must be presented at least 60 days prior to the event date.

Festival – A concert, fair, festival, exhibit, athletic event, promotion, community event, block party, or similar event.

Parade – A march, ceremony, pageant, procession or other similar activities consisting of persons, animals, vehicles or things, or any combination thereof, that disrupts the normal flow of traffic upon any public street.

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

Name of Event/Activity: Candlelight

Organization Name: Tryon Palace

Responsible Contact: Susan R. Briley

Address: 529 S. Front St.

City: New Bern State: NC Zip code: 28562

Phone: 252-639-3584 Alternate Phone: 252-670-1101

Email: susan.briley@dncr.nc.gov

Type of Event: Demonstration Festival Parade

2pm - 11pm

Date of Event: December 9 and 16, 2023 Proposed Rain Date: n/a

Event Set up time: 2:00 pm Event Tear Down Completed Time: 11:00 pm

Event Start Time: 4:00 pm Event End Time: 10:30 pm

What is the specific location and/or route of the proposed event? (Attach additional information if needed)

Palace grounds and 300 block of George Street and 600 block of Pollock Street.

There will be fireworks from the South Lawn of the Palace. So the horseshoe road on Palace Point Commons also needs to be closed to traffic. See attached aerial map.

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

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

Our annual holiday events to fundraise and promote the Palace. Includes holiday tours of the Palace and performances on the street as well as fireworks on the South Lawn of the Palace.

The majority of guests will be inside our property. All tents are inside gates and none are on the street.

Estimated attendance: 1625; Attendance not to exceed: 1625

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

Tents # 3 Sizes 40x80, 20x40, 20x20 Provide additional info as needed (Note: Tents 700 sq. ft. or bigger must be inspected by Fire Marshall.)

How will you handle trash generated from the event?

We are requesting # 0 trash cans.

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

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

Are you requesting any City of New Bern Street Closures? Yes* No

*Any street closures require approval of the Board of Aldermen. Street closures must be received **at least 60 days in advance** for consideration. Street closures require barricades. A fee of **\$5.00 per barricade** must be paid 48 business hours prior to the event.

*What Street(s) are you requesting to close? Be specific: We provide our own barricades.

George Street - between Broad & Pollock; Pollock Street - between Eden and Metcalf; South Front Street - around the horseshoe road behind the Palace from the intersection of S. Front & Metcalf, to the intersection of Eden and S. Front St.

Are you requesting any State Road or Bridge closures? Yes* No

*If yes, a 90 day notice and application is required by the NCDOT for in order to consider state roads or bridges. For additional information, please call NCDOT Office at **252-439-2816**. The State Road/Bridge Closure permit must be attached to this application.

If this event includes the use of floats, vehicles, placards, loud speakers, or mechanical devices of any type, please provide a detailed explanation of their use, purpose and number. _____

Will Inflatables or other Play features be part of this event? Yes No (Additional insurance may be required)

Will Food Vendors or Commercial/Non-Profit vendors be part of this event? Yes No

(If you answered YES, Additional Fees apply. A detailed list of all vendors is required.)

The following items are required and must be attached at the time of Application:

- A detailed map – including the location, route with beginning and ending point and street names included.
- Petition of Signatures – of business/residents affected – If roads are closed.

The following items are required within **two (2) business days of the event or event shall be cancelled**:

- Certificate of Insurance – Listing the City of New Bern, PO Box 1129, New Bern, NC as "Additional Insured".
- List of all food/commercial/non-profit vendors.
- Payment in full of applicable fees and charges.

I attest that I am authorized on behalf of this group/organization to request the permit for the activities prescribed herein. I understand that this application must be submitted with full details and attachments. I understand that additional fees and charges may be incurred. Those charges include set-up tear down time for staff, rental of barricades, Public Safety, Trash collection, damages, etc. I further understand that failure to provide the requested information within the specified timelines shall result in application being denied. I agree to indemnify and hold harmless the City of New Bern, its departments, agents, employees, officials and volunteers for any injury, illness or damage to person or property during this activity.

The following items must be submitted with Application:

- Completed & Signed Application
- Detailed maps of parade route and/or festival layout
- Petition of signatures (if road closure is requested)
- Proof of Crowd Manager training & Public Safety Plan (if attendance is 1,000 or more)

Susan R. Bily
Authorized Signature

8/23/23
Date

All documents have been provided and this application is recommended for approval

Administrative Support Supervisor

Date

This application has been approved.

Tharu Wanan
Director of Parks & Recreation

8-29-2023
Date

Total Anticipated Charges

Barricades: # _____

\$ _____

Trash Collection:

\$ _____

City Staff: # _____

\$ _____

Vendor Fees # 343

\$ 135 + 135 = 270.00

Park/Facility Rental:

\$ _____

Total Due: **\$ 270.00**

- Have HOA's been notified? Yes No Spoke with: _____
- Approved by Department Date: 8-29-23 Staff Initials: KW
- Submitted for Board Approval Date: 8-29-23 Staff Initials: KW
- All Paperwork collected Date: _____ Staff Initials: _____
- All fees collected \$ _____ Date: _____ Staff Initials: _____

City Sponsored Event

Yes No
Updated 6-3-2019

Food Vendors at Tryon Palace Candlelight Events on Dec. 9 and 16, 2023


Three Food Trucks only:

1. Jasmine Tasty Thai
2. Sea & Soul
3. Frank's Franks

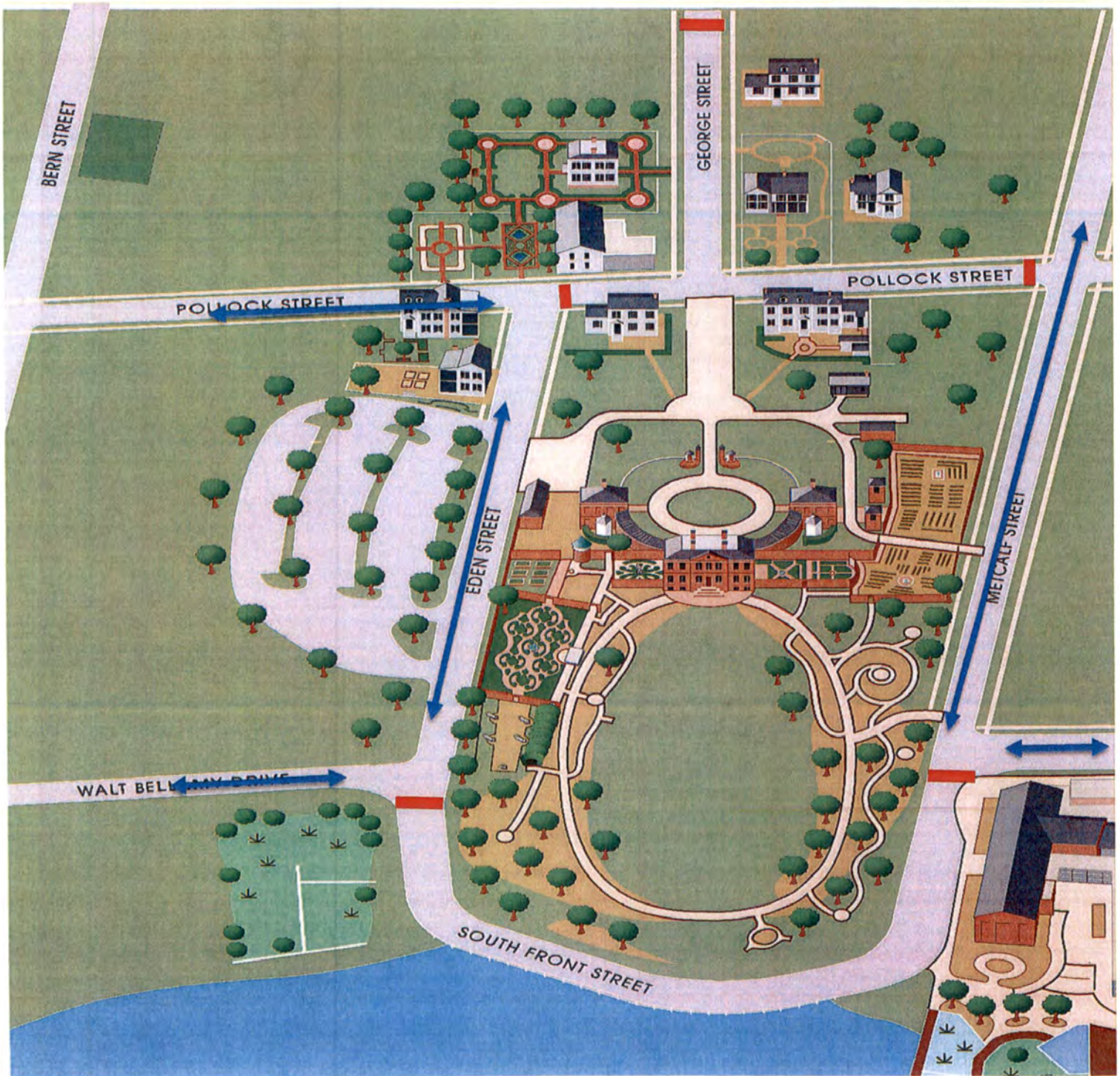
\$45 each for each night. \$135 per night, \$270 total owed.

Road Closures:

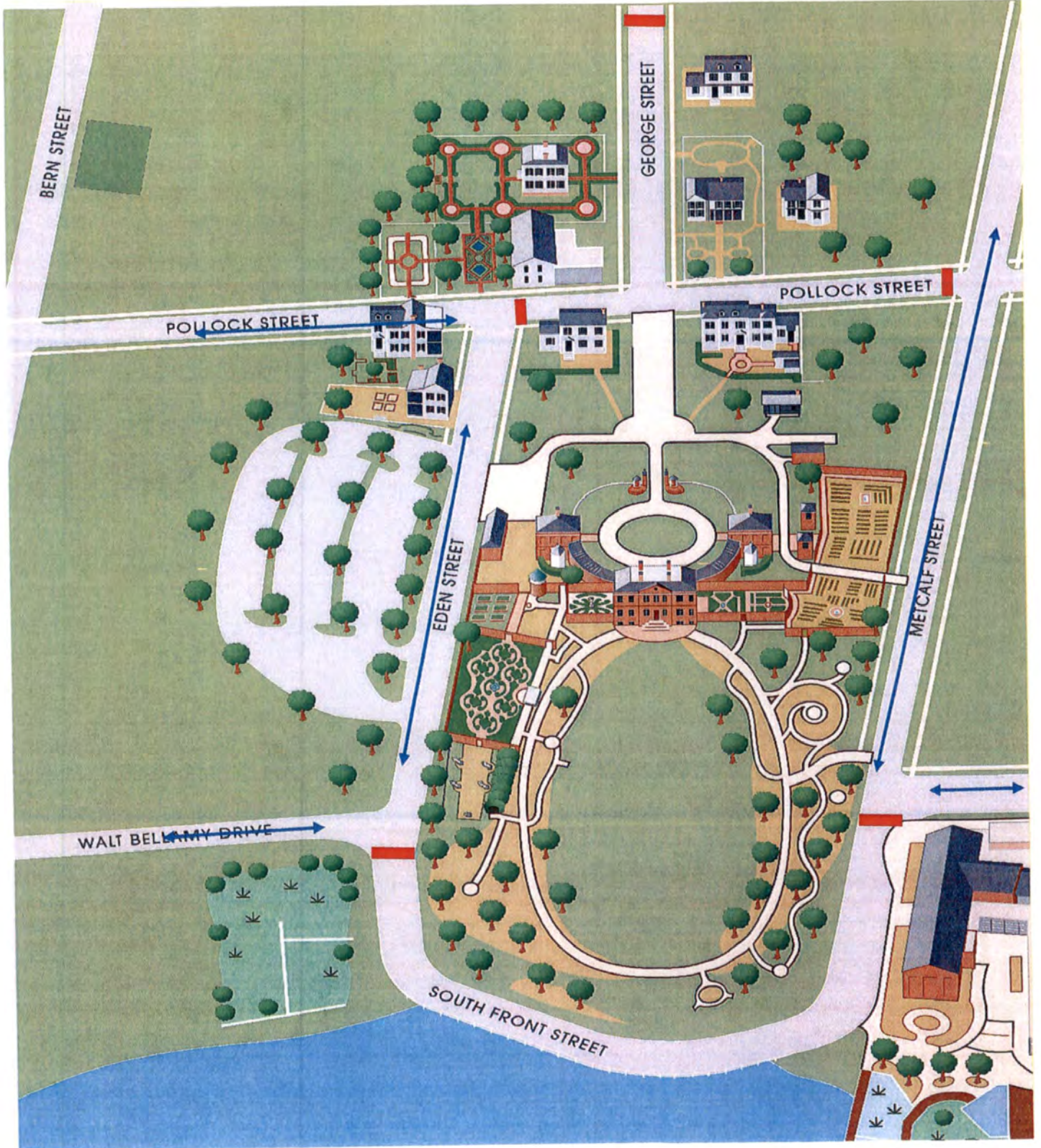
Security Personnel will assist in directing traffic.

 Road Closure Barricades

 Traffic Patterns



Festival Layout and Road Closure Map



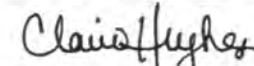


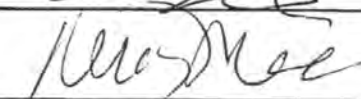
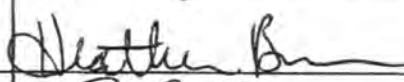
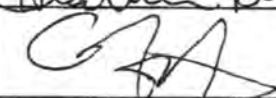

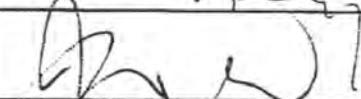
Tryon Palace Annual Candlelight Event Temporary Road Closure Petition of Signatures

Tryon Palace
529 S. Front St.
New Bern, NC 28562

Street(s) to be closed: 300 block of Pollock St. and 600 block of George St.	Street Closure Start Time:	2:00 PM	Street Closure End Time:	10:30 PM
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Dates of Street Closure: Dec. 9, and Dec. 16, 2023

We, the undersigned, being residents/owners/authorized business officials of properties abutting the section of roads requested for temporary closure during the Tryon Palace Candlelight Holiday Cheer event, do hereby consent to the temporary road closure.

NAME	ADDRESS	SIGNATURE	PHONE
Claire Hughes	310 George St. New Bern, NC 28562		(252) 631-1410
CAROL DUPREE	312 George St New Bern, NC 28562		(252) 412-3863
Ronald Hall	613 Broad St New Bern NC 28560		704-604-7875
NANCY MANSFIELD	315 GEORGE		252-655-1574
Heather Burr	313 George St. Suite B		828-773-7617
Chris Richy	602 Pollock		252-673-1366
Elaine Kelly	405 Pollock		252-626-3936
Jim (J) Hall	607 Pollock		919-231-5018

AGENDA ITEM COVER SHEET

Agenda Item Title:

Conduct Public Hearing on Stanley White Recreation Center Financing and Consider Adopting a Resolution for the 2023 Installment Financing Agreement for the Stanley White Recreation Center

Date of Meeting: 9/12/2023	Ward # if applicable:
Department: Finance	Person Submitting Item: Kim Ostrom, Director of Finance
Call for Public Hearing: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Date of Public Hearing: 9/12/2023

Explanation of Item:	Conduct a public hearing on Stanley White Recreation Center financing and adopt a resolution granting final approval for the financing with TD Bank.
Actions Needed by Board:	Conduct Public Hearing and Adopt Resolution
Backup Attached:	Memo; Notice of Public Hearing; Resolution; Installment Financing Agreement; Deed of Trust
Is item time sensitive? <input checked="" type="checkbox"/> Yes <input 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:



NEW BERN
CITY OF NEW BERN

300 Pollock Street, P.O. Box 1129
New Bern, NC 28563-1129
(252) 636-4000

Aldermen

Rick Prill
Hazel B. Royal
Robert V. Aster
Johnnie Ray Kinsey
Barbara J. Best
Robert Brinson, Jr.

Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

TO: City Manager, Honorable Mayor and Members of the Board of Aldermen
FROM: Kim Ostrom - Director of Finance
DATE: August 28, 2023
RE: Conduct Public Hearing on Stanley White Recreation Center Financing and Consider Adopting a Resolution for the 2023 Installment Financing Agreement for the Stanley White Recreation Center

Current

The City is pursuing an installment financing agreement (the "Financing Agreement") in an amount not to exceed \$10,000,000 under Section 160A-20 of the General Statutes of North Carolina for the purpose of financing project costs related to the Stanley White Recreation Center. The lender on the Financing Agreement will be TD Bank. Under North Carolina law, the Financing Agreement requires a public hearing. The attached resolution (a) evidences the holding of the required public hearing, (b) grants final approval for the financing, (c) approves the forms of the financing documents related to the financing, and (d) authorizes certain officers and officials of the City to take all further action related to the financing including execution of the final forms of the financing documents. The Stanley White Recreation Center financing is scheduled to close on Wednesday, September 20th.

Requested Action

It is recommended that the Board take the following action:

1. Conduct the public hearing as required by Section 160A-20.
2. Adopt the attached resolution granting final approval for the financing.

**RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF
AN INSTALLMENT FINANCING AGREEMENT, A DEED OF TRUST
AND RELATED DOCUMENTS IN CONNECTION WITH THE
FINANCING OF THE NEW STANLEY WHITE RECREATION CENTER
FOR THE CITY OF NEW BERN, NORTH CAROLINA**

BE IT RESOLVED by the Board of Aldermen (the "Board") of the City of New Bern, North Carolina (the "City") as follows:

Section 1. The Board does hereby find and determine as follows:

(a) There exists in the City a need to finance the costs of acquiring, constructing and equipping the new Stanley White Recreation Center for the City (the "Project").

(b) After a public hearing and due consideration, the City has determined to enter into an Installment Financing Agreement, to be dated as of the date of delivery thereof (the "Agreement"), with TD Bank, N.A. (the "Lender") pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, in an aggregate principal amount not to exceed \$10,000,000 to provide funds, together with any other available funds, to (i) pay the costs of the Project and (ii) pay certain financing costs in connection therewith.

(c) Pursuant to the Agreement, the Lender will advance to the City amounts sufficient, together with any other available funds, to pay the costs of the Project and associated financing costs, and the City will repay the advancement in installments with interest (the "Installment Payments"). The City intends to prepay a portion of the advancement upon receipt of grant funds from the Federal Emergency Management Agency (FEMA) as the Project is constructed and completed.

(d) In order to secure its obligations under the Agreement, the City will execute and deliver a Deed of Trust, to be dated as of the date of delivery thereof (the "Deed of Trust"), granting a lien on all or a portion of the Project, together with all improvements and fixtures located or to be located thereon.

(e) There has been presented to the Board at this meeting drafts of the Agreement and the Deed of Trust.

Section 2. In order to provide for the financing of the Project, the City is hereby authorized to enter into the Agreement and receive advancements pursuant thereto in an aggregate principal amount not to exceed \$10,000,000. The City shall repay the advancements in installments due in the amounts and at the times set forth in the Agreement. The payments of the installment payments shall be designated as principal and interest as provided in the Agreement. The interest rate payable under the Agreement shall be 4.50% per annum (subject to adjustment as provided in the Agreement) and the final maturity shall not exceed October 1, 2038.

Section 3. The Board hereby approves the Agreement and the Deed of Trust in substantially the forms presented at this meeting. The Mayor, the City Manager and the Director of Finance of the City are each hereby authorized to execute and deliver on behalf of the City

said documents in substantially the forms presented at this meeting, containing such modifications as the person executing such documents shall approve, such execution to be conclusive evidence of approval by the Board of any such changes. The City Clerk or any Deputy or Assistant City Clerk of the City is hereby authorized and directed to affix the official seal of the City to said documents and to attest the same as may be required.

Section 4. No deficiency judgment may be rendered against the City in any action for breach of any contractual obligation authorized pursuant to this resolution and the taxing power of the City is not and may not be pledged directly or indirectly to secure any moneys due under any contract herein authorized.

Section 5. The Mayor, the City Manager, the Director of Finance, the City Attorney and the City Clerk of the City, and any other officers, agents and employees of the City, are hereby authorized and directed to execute and deliver such closing certificates, opinions, agreements and other items of evidence as shall be deemed necessary to consummate the transactions described above. The officers, agents and employees of the City are hereby authorized and directed to do all acts and things required of them by the provisions of this resolution for the full, punctual and complete performance of the terms, covenants and provisions of the Agreement and the Deed of Trust and any other documents contemplated by this resolution.

Section 6. This resolution shall take effect immediately upon its adoption.

ADOPTED this 12th day of September, 2023.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

Prepared by and return to:

Jonathan T. Mize
Attorney at Law
Womble Bond Dickinson (US) LLP
555 Fayetteville Street, Suite 1100
Raleigh, North Carolina 27601

DEED OF TRUST

STATE OF NORTH CAROLINA

COUNTY OF CRAVEN

This DEED OF TRUST, dated as of September 20, 2023 (the "Deed of Trust"), from the CITY OF NEW BERN, NORTH CAROLINA, a municipal corporation duly organized and validly existing under the Constitution and laws of the State of North Carolina (the "City"), to THE FIDELITY COMPANY, as trustee (the "Deed of Trust Trustee"), for the benefit of TD BANK, N.A., a national banking association duly organized and validly existing under the laws of the United States of America, and its successors and assigns (the "Beneficiary");

WITNESSETH:

WHEREAS, the City has entered into an Installment Financing Agreement, of even date herewith (the "Agreement"), with the Beneficiary, whereby the Beneficiary agrees to advance moneys to the City for financing the costs of the Project (as defined in the Agreement) and related financing costs, and the City agrees to repay the moneys advanced to the City in installments due at the times and in the amounts set forth in Exhibit A to the Agreement (the "Installment Payments") and to pay certain additional payments as more fully provided therein;

COLLATERAL IS OR INCLUDES FIXTURES

WHEREAS, pursuant to the Agreement, the City is delivering this Deed of Trust to secure the repayment by the City to the Beneficiary of the moneys advanced and all other sums payable under the Agreement and to secure the other obligations of the City under the Agreement and this Deed of Trust;

WHEREAS, the City has agreed to pay to the Beneficiary the sum of \$ _____, representing the moneys advanced, as evidenced by, and payable as provided in, the Agreement, with interest payable at the times and rate specified therein, with a final Installment Payment being due and payable on October 1, 2038;

WHEREAS, the City and the Beneficiary desire to secure (a) the payment of the Installment Payments due under the Agreement, (b) the payment by the City of all additional payments required to be paid by the City under the Agreement and the performance by the City of all of the additional covenants of the City set forth in the Agreement and (c) the performance of the covenants and agreements contained in this Deed of Trust, and any amendments and supplements hereto or thereto; and

WHEREAS, the City desires to execute and deliver this Deed of Trust as security for the payment of the amounts described above and the performance of the covenants described above;

NOW, THEREFORE, the City, subject to Permitted Encumbrances (as defined in the Agreement), as security for the Installment Payments and other payments to be made by the City under the Agreement and for the performance by the City of all of its obligations under the Agreement and this Deed of Trust, and in further consideration of the sum of \$1.00 paid to the City by the Deed of Trust Trustee, receipt and sufficiency of which are hereby acknowledged, has given, granted, bargained and sold, and by these presents does give, grant, bargain, sell and convey unto the Deed of Trust Trustee, its successors and assigns, in trust, with power of sale, the real property lying and being in Craven County in the State of North Carolina, constituting so much thereof as constitutes real property or fixtures, and more particularly described as set forth in Exhibit A attached hereto and made a part hereof; TOGETHER with all buildings, improvements and fixtures of every kind and description now or hereafter erected or located thereon, all rights, appurtenances, easements, privileges, remainders and reversions appertaining thereto and all materials intended for construction, reconstruction, alteration and repair of such buildings and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises hereby conveyed immediately upon the delivery thereof to the aforesaid real property, and all apparatus, equipment, fixtures and articles of personal property now or hereafter attached thereto as fixtures, and replacements thereof, including, but not limited to, all heating, refrigerating, air conditioning, gas, plumbing and electric apparatus and equipment, all boilers, engines, motors, power equipment, piping and plumbing fixtures, pumps, tanks, lighting equipment and systems, fire prevention and sprinkling equipment and systems, and other things now or hereafter thereon or therein, including all interests of any owner thereof in any of such items, and all renewals or replacements thereof or articles in substitution thereof; TOGETHER with all rents, issues, profits and revenues of the aforesaid real property, fixtures and other property and all of the right, title and interest of the City in and to any and all leases and contracts now or hereafter affecting the real property, fixtures and other property covered hereby or any part thereof; TOGETHER with all proceeds of any of the foregoing real property and fixtures including, without limitation, proceeds of the

conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, all awards and other payments as a result of or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain by any governmental authority ("Eminent Domain"), all insurance proceeds and claims therefor as a result of damage to or destruction of all or any part of any of the foregoing (the real property, fixtures and proceeds granted to the Deed of Trust Trustee pursuant to the foregoing provisions hereof being collectively referred to as the "Mortgaged Property");

TO HAVE AND TO HOLD the Mortgaged Property, with all the rights, privileges and appurtenances thereunto belonging or appertaining to the Deed of Trust Trustee, its successors and assigns, in fee simple forever, upon the trusts and for the uses and purposes hereinafter set out;

AND THE CITY COVENANTS to and with the Deed of Trust Trustee and the Beneficiary that the City is seized of the Mortgaged Property in fee, that the City has the right to convey the Mortgaged Property in fee simple, and that the City does hereby forever warrant and will forever defend the title to the Mortgaged Property (except for Permitted Encumbrances, as defined in the Agreement) against the claims of all persons whatsoever; provided, however, that

THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST, that if the City shall make all of the payments required under the Agreement secured hereby in accordance with its terms, together with interest thereon and all taxes, charges, assessments and any premiums for insurance hereby secured, and, further, shall comply with all the covenants, terms and conditions of this Deed of Trust and the Agreement and any amendments and supplements thereto, then this conveyance shall be null and void and may be canceled of record at the request and at the cost of the City.

THE CITY FURTHER COVENANTS, REPRESENTS AND AGREES AS FOLLOWS:

Section 1. Amount Secured; Maintenance and Modification of Mortgaged Property by City. This Deed of Trust secures all present and future indebtedness owing by the City under the Agreement and this Deed of Trust. The current principal amount of the indebtedness is \$_____.

The Deed of Trust Trustee shall not be under any obligation to operate, maintain or repair the Mortgaged Property. The City agrees that it will at its own expense (a) keep the Mortgaged Property in as reasonably safe condition as its operations shall permit, (b) keep the Mortgaged Property in good repair and in good operating condition, (c) comply with all applicable governmental requirements imposed upon the Mortgaged Property or in connection with its use and (d) make from time to time all necessary repairs thereto and renewals and replacements thereof.

Subject to the provisions of the Agreement, the City may also, at its own expense, make from time to time any additions, modifications or improvements to the real property covered hereby that it may deem desirable and that do not materially impair the effective use, nor materially decrease the value, of the Mortgaged Property. All such additions, modifications and improvements so made by the City within the boundaries of the Mortgaged Property shall

become a part of the Mortgaged Property. The City will do, or cause to be done, all such things as may be required by law in order fully to protect the security and all rights of the Beneficiary under this Deed of Trust. The City shall not cause or permit the lien of this Deed of Trust to be impaired in any way.

Section 2. Grant and Release of Easements; Release of Mortgaged Property. (a) If no Event of Default under this Deed of Trust shall have occurred and shall continue to exist, the City may at any time or times grant easements, licenses, rights of way and other rights or privileges in the nature of easements with respect to any part of the Mortgaged Property, and the City may release existing interests, easements, licenses, rights of way and other rights or privileges with or without consideration, and the Beneficiary agrees that it shall execute and deliver and will cause, request or direct the Deed of Trust Trustee to execute and deliver any instrument necessary or appropriate to grant or release any such interest, easement, license, right of way or other right or privilege but only upon receipt of (a) a copy of the instrument of grant or release, (b) a written application signed by an authorized representative of the City requesting such instrument and (c) a certificate executed by an authorized representative of the City stating that the grant or release (i) is not detrimental to the proper conduct of the operations of the City at the Mortgaged Property and (ii) will not impair the effective use of or interfere with the operations of the City at the Mortgaged Property and will not materially diminish the value of the security under this Deed of Trust in contravention of the provisions hereof.

(b) The Deed of Trust Trustee and the City shall not release or caused to be released all or any portion of the Mortgaged Property from the lien and security interest created by this Deed of Trust without the prior written consent of the Beneficiary.

Section 3. Default; Remedies of the Deed of Trust Trustee and Beneficiary Upon Default. (a) If any of the following events shall occur:

(i) default in any payment under the Agreement or default in any of the other terms or conditions of the Agreement secured hereby and the expiration of any applicable grace or notice periods provided thereby;

(ii) failure by the City to observe and perform any warranty, covenant, condition or agreement on the part of the City under this Deed of Trust other than Section 3(i) above for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to the City by the Beneficiary unless the Beneficiary shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in the notice cannot be reasonably corrected within the applicable period, and if corrective action is instituted by the City within the applicable period, the City shall have such additional period of time to correct the failure as shall be necessary, so long as such correction is diligently pursued, but in no event for an additional period of time in excess of sixty (60) days after the end of such thirty (30) day period;

(iii) any lien, charge or encumbrance prior to or affecting the validity of this Deed of Trust is found to exist, other than Permitted Encumbrances, or proceedings are instituted to enforce any lien, charge or encumbrance against any of the Mortgaged

Property and such lien, charge or encumbrance would be prior to the lien of this Deed of Trust;

then and in any of such events (hereinafter referred to as an "Event of Default"), all payments under the Agreement shall, at the option of the Beneficiary, become at once due and payable, regardless of the maturity date or other due date thereof.

(b) Upon the occurrence of an Event of Default:

(i) To the extent permitted by law, the Deed of Trust Trustee shall have the right to enter upon the Mortgaged Property to such extent and as often as the Deed of Trust Trustee, in his sole discretion, deems necessary or desirable in order to cure any default by the City. To the extent permitted by law, the Deed of Trust Trustee may take possession of all or any part of the Mortgaged Property and may hold, operate and manage the same, and from time to time make all needful repairs and improvements as shall be deemed expedient by the Deed of Trust Trustee; and the Deed of Trust Trustee may lease any part of the Mortgaged Property in the name of and for the account of the City, and collect, receive and sequester the rent, revenues, receipts, earnings, income, products and profits therefrom, and out of the same and from any moneys received from any receiver of any part thereof pay, and set up proper reserves for the payment of, all proper costs and expenses of so taking, holding and managing the same, including reasonable compensation to the Deed of Trust Trustee, his agents and counsel, and any taxes and assessments and other charges prior to the lien of this Deed of Trust which the Deed of Trust Trustee may deem it proper to pay, and all expenses of such repairs and improvements, and apply the remainder of the moneys so received in accordance with the provisions hereof.

(ii) To the extent permitted by law, the Deed of Trust Trustee shall have the right after an Event of Default to the appointment of a receiver to collect the rents and profits from the Mortgaged Property without consideration of the value of the premises or the solvency of any person liable for the payment of the amounts then owing, and all amounts collected by the receiver shall, after expenses of the receivership, be applied to the payment of the obligations hereby secured, and the Deed of Trust Trustee, at his option, in lieu of an appointment of a receiver, shall have the right to do the same. If such receiver should be appointed or if there should be a sale of the said premises, as provided below, the City, or any person in possession of the premises thereunder, as tenant or otherwise, shall become a tenant at will of the receiver or of the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

(iii) The Deed of Trust Trustee shall have the right to assign to any other person, for lawful consideration, any rents, revenues, earnings, income, products and profits receivable under this Deed of Trust, provided that the proceeds of any such assignment shall be applied as provided in this Deed of Trust.

(iv) The Deed of Trust Trustee is hereby authorized and empowered to expose to sale and to sell the Mortgaged Property or such part or parts thereof or interests therein as the Deed of Trust Trustee deems prudent at public auction for cash, and upon collection

of the proceeds from such sale to make and deliver a deed therefor, after first having complied with all applicable requirements of North Carolina law with respect to the exercise of powers of sale contained in deeds of trust. The City agrees that in the event of a sale hereunder, the Beneficiary shall have the right to bid at it and to become the purchaser. The Deed of Trust Trustee may require the successful bidder at any sale to deposit immediately with the Deed of Trust Trustee cash or a certified check in an amount not to exceed five percent (5%) of his bid, provided notice of such requirement is contained in the advertisement of the sale. The bid may be rejected if the deposit is not immediately made and thereupon the next highest bidder may be declared to be the successful bidder. Such deposit shall be refunded in case a resale is had; otherwise it shall be applied to the purchase price. The sale of the Mortgaged Property or any part thereof or any interest therein, whether pursuant to judicial foreclosure, foreclosure under power of sale or otherwise under this Deed of Trust, shall forever bar any claim with respect to the Mortgaged Property by the City.

(v) To the extent permitted by law, the Beneficiary, immediately and without additional notice and without liability therefor to the City, may do or cause to be done any or all of the following: (A) take physical possession of the Mortgaged Property; (B) exercise its right to collect the rents and profits thereof; (C) enter into contracts for the completion, repair and maintenance of the Mortgaged Property; (D) expend any rents, income and profits derived from the Mortgaged Property for payment of any taxes, insurance premiums, assessments and charges for completion, repair and maintenance of the Mortgaged Property, preservation of the lien of this Deed of Trust and satisfaction and fulfillment of any liabilities or obligations of the City arising out of or in any way connected with the Mortgaged Property whether or not such liabilities and obligations in any way affect, or may affect, the lien of this Deed of Trust; (E) enter into leases demising the Mortgaged Property or any part thereof; (F) take such steps to protect and enforce the specific performance of any covenant, condition or agreement in this Deed of Trust or the Agreement or to aid the execution of any power herein granted; and (G) generally, supervise, manage, and contract with reference to the Mortgaged Property as if the Beneficiary were the equitable owner of the Mortgaged Property. The City also agrees that any of the foregoing rights and remedies of the Beneficiary may be exercised at any time independently of the exercise of any other such rights and remedies, and the Beneficiary may continue to exercise any or all such rights and remedies until the Event(s) of Default of the City are cured with the consent of the Beneficiary or until foreclosure and the conveyance of the Mortgaged Property to the high bidder or until the indebtedness secured hereby is otherwise satisfied or paid in full.

(vi) The Beneficiary may proceed against the fixtures referred to in Section 12 as provided in and in accordance with the applicable provisions of the Uniform Commercial Code as adopted by the State of North Carolina, as amended (the "UCC") or, at its election, may proceed and may instruct the Deed of Trust Trustee to proceed as to the portion of the Mortgaged Property constituting fixtures, in accordance with its rights and remedies with respect thereto and those granted to the Deed of Trust Trustee, all as set forth in this Deed of Trust. Subject to any limitations imposed by the applicable provisions of the UCC, the Beneficiary may sell, lease, or otherwise dispose of all or any part of the fixtures, at public or private sale, for cash or on credit, as a whole or in part,

and the Beneficiary may at such sale or sales purchase the fixtures or any part thereof. The proceeds of such sale, lease, collection or other disposition shall be applied first to the costs and expenses of the Beneficiary incurred in connection with such sale, lease, collection or other disposition, and then to such outstanding balance due on any and all indebtedness owed to the Beneficiary. Further, the Beneficiary may require the City to assemble the fixtures, or evidence thereof, and make them reasonably available to the Beneficiary at one or more places to be designated by the Beneficiary which are reasonably convenient to the Beneficiary, and the Beneficiary may take possession of the fixtures and hold, prepare for sale, lease or other disposition and sell, lease or otherwise dispose of the fixtures. Any required notice by the Beneficiary of sale or other disposition or default, when mailed to the City at its address set forth herein, shall constitute reasonable notice to the City. In addition to, but not in limitation of, any of the foregoing, the Beneficiary may exercise any or all of the rights and remedies afforded to the Beneficiary by the provisions of the UCC or otherwise afforded to the Beneficiary under this Deed of Trust, with all such rights and remedies being cumulative and not alternative, and the City agrees, to the extent permitted by law, to pay the reasonable costs of collection, including, in addition to the costs and disbursements provided by statute, reasonable attorneys' fees and legal expenses which may be incurred by the Beneficiary subject to the procedures and limitations set forth in Section 6-21.2 of the General Statutes of North Carolina, as amended.

In all such cases, the Beneficiary shall have the right to direct the Deed of Trust Trustee to exercise the remedies granted hereunder.

(c) The City also agrees that any of the foregoing rights and remedies of the Beneficiary may be exercised at any time independently of the exercise of any other such rights and remedies, and the Beneficiary may continue to exercise any or all such rights and remedies until the Event(s) of Default of the City are cured with the consent of the Beneficiary or until foreclosure and the conveyance of the Mortgaged Property to the high bidder or until the indebtedness secured hereby is otherwise satisfied or paid in full.

(d) The City hereby waives, to the full extent it lawfully may, the benefit of all appraisement, valuation, stay, moratorium, exemption from execution, extension and redemption laws and any statute of limitations, now or hereafter in force and all rights of marshalling in the event of the sale of the Mortgaged Property or any part thereof or any interest therein.

(e) Except as set forth in subsection (f) of this Section, the foregoing shall in no way be construed to limit the powers of sale or to restrict the discretion the Deed of Trust Trustee may have under the provisions of Article 2A of Chapter 45 of the General Statutes of North Carolina, as amended. Each legal, equitable or contractual right, power or remedy of the Deed of Trust Trustee now or hereafter provided herein or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power and remedy, and the exercise or beginning of the exercise by the Deed of Trust Trustee of any one or more of such rights, powers and remedies shall not preclude the simultaneous or later exercise of any or all such other rights, powers and remedies.

(f) NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NO DEFICIENCY JUDGMENT SHALL BE RENDERED AGAINST THE CITY IN ANY ACTION FOR BREACH BY THE CITY OF ITS OBLIGATIONS UNDER THE AGREEMENT OR THIS DEED OF TRUST, OR FOLLOWING THE EXERCISE BY THE CITY OF ITS RIGHT OF TERMINATION OF ITS OBLIGATION TO MAKE THE INSTALLMENT PAYMENTS AND ANY ADDITIONAL PAYMENTS UNDER THE AGREEMENT; THE REMEDIES PROVIDED UNDER THIS DEED OF TRUST, INCLUDING FORECLOSURE AND SALE OF THE MORTGAGED PROPERTY UNDER THIS DEED OF TRUST, BEING THE SOLE REMEDY GRANTED HEREBY. THE TAXING POWER OF THE CITY IS NOT AND MAY NOT BE PLEDGED IN ANY WAY, DIRECTLY OR INDIRECTLY TO SECURE THE PAYMENT OF ANY MONEYS DUE UNDER THE AGREEMENT, INCLUDING THE INSTALLMENT PAYMENTS UNDER THE AGREEMENT OR ANY OTHER INSTRUMENT CONTEMPLATED HEREBY OR THEREBY.

Section 4. Application of Proceeds. The proceeds of (a) the operation and management of the Mortgaged Property pursuant to Section 3 hereof, (b) any sale of the Mortgaged Property or any interest therein, whether pursuant to judicial foreclosure, foreclosure under power of sale or otherwise and (c) any insurance policies or eminent domain awards or other sums (other than awards or sums to which the City is entitled to under the Agreement) retained by the Deed of Trust Trustee upon the occurrence of an Event of Default shall be applied to pay:

First: The costs and expenses of sale, reasonable attorneys' fees actually incurred at standard hourly rates to the extent permitted by Section 6-21.2 of the General Statutes of North Carolina, as amended, the Beneficiary's fees and expenses, court costs, any other expenses or advances made or incurred in the protection of the rights of the Beneficiary or in the pursuance of any remedies hereunder and the Deed of Trust Trustee's commission payable under Section 5 hereof;

Second: All taxes and assessments then constituting a lien against said premises other than those advertised and sold subject to;

Third: Any indebtedness secured by this Deed of Trust and at the time due and payable (whether by acceleration or otherwise), including all amounts of principal and interest at the time due and payable with respect to the Installment Payments, and interest on any overdue principal of at a rate per annum equal to the original interest rate payable with respect to the Installment Payments; and

Fourth: The balance, if any, to the persons then entitled thereto under the Agreement.

Section 5. Deed of Trust Trustee's Commission. In the event of a consummated sale under the power of sale contained herein, the Deed of Trust Trustee's commission shall be a reasonable commission for services rendered not to exceed five percent (5%) of the highest bid thereat.

It is further provided that in the event foreclosure is terminated upon the request of the City prior to delivery of the deed by the Deed of Trust Trustee, the City shall pay the Deed of Trust Trustee all costs and expenses incident to the foreclosure, including reasonable compensation for services rendered; together with attorneys' fees actually incurred at standard hourly rates to the extent permitted by Section 6-21.2 of the General Statutes of North Carolina, as amended.

It is further provided that the compensation herein allowed to the Deed of Trust Trustee shall constitute indebtedness secured hereby on the Mortgaged Property immediately upon request of sale.

Section 6. General Covenant. The City shall pay the amounts due under the Agreement and shall observe and perform all covenants, conditions and agreements contained in the Agreement, and any amendments and supplements thereto.

Section 7. Payment of Costs, Attorneys' Fees and Expenses. To the extent permitted by law, the City shall pay any and all costs, attorneys' fees and other expenses of whatever kind incurred by the Beneficiary or the Deed of Trust Trustee in connection with (a) obtaining possession of the Mortgaged Property, (b) the protection and preservation of the Mortgaged Property, (c) the collection of any sum or sums secured hereby, (d) any litigation involving the Mortgaged Property, this trust, any benefit accruing by virtue of the provisions hereof, or the rights of the Deed of Trust Trustee or the Beneficiary, (e) the presentation of any claim under any administrative or other proceeding in which proof of claim is required by law to be filed, (f) any additional examination of the title to the Mortgaged Property which may be reasonably required by the Beneficiary or the Deed of Trust Trustee, (g) taking any steps whatsoever in enforcing this Deed of Trust, claiming any benefit accruing by virtue of the provisions hereof, or exercising the rights of the Beneficiary hereunder, or (h) any proceeding, legal or otherwise, which the Beneficiary shall deem necessary to sustain the lien of this Deed of Trust or its priority. If the City shall fail to make any payment required to be made by the foregoing covenant, however, such amount shall be payable solely from the amounts realized upon the enforcement of the remedies set forth in Section 3 of this Deed of Trust.

Section 8. Insurance and Taxes. Pursuant to the Agreement, the City will obtain and maintain certain insurance and will pay all lawful taxes, assessments and charges, if any, at any time levied or assessed upon or against the Mortgaged Property or any part thereof; provided, however, that nothing contained in this Deed of Trust shall require the maintenance of insurance or the payment of any such taxes, assessments or charges if the same are not required to be paid under the Agreement. If the City shall fail to make any payment required to be made by the foregoing covenant, however, such amount shall be payable solely from the amounts realized upon the enforcement of the remedies set forth in Section 3 of this Deed of Trust.

Section 9. No Assignment or Encumbrance of the Mortgaged Property. Except as permitted by the Agreement and this Deed of Trust, the City shall not sell, transfer, exchange, lease, mortgage, encumber, pledge, assign or otherwise dispose of the Mortgaged Property or any interest therein or part thereof without the prior written consent of the Beneficiary. Any such disposition or encumbrance of the Mortgaged Property or any interest therein or any part thereof other than Permitted Encumbrances without such prior written consent shall, at the option

of the Beneficiary, constitute a default hereunder, giving rise to all of the remedies herein provided for an Event of Default.

Section 10. Advances by Beneficiary. The Beneficiary is authorized, but is not required to, for the account of the City, to make any required payments under any lien prior hereto or under this Deed of Trust, the non-payment of which would constitute a default, including but not limited to principal payments, interest payments, premium payments, if any, taxes and insurance premiums. All sums so advanced shall attach to and become part of the debt secured hereby, shall become payable at any time on demand therefor and, from the date of the advance to the date of repayment, any sum so advanced shall bear interest at a rate of six percent (6%) per annum. The failure to make payment on demand shall, at the option of the Beneficiary, constitute a default hereunder, giving rise to all of the remedies herein provided for an Event of Default. If the City shall fail to make any payment required to be made by the foregoing covenant, however, such amount shall be payable solely from the amounts realized upon the enforcement of the remedies set forth in Section 3 of this Deed of Trust.

Section 11. The Deed of Trust Trustee. The Deed of Trust Trustee shall be under no duty to take any action hereunder except as expressly required, or to perform any act which would involve him in expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to his satisfaction by the Beneficiary. All reasonable expenses, charges, counsel fees and other disbursements incurred by the Deed of Trust Trustee in and about the administration and execution of the trusts hereby created, and the performance of its duties and powers hereunder, shall, to the extent permitted by law, be secured by this Deed of Trust prior to the indebtedness represented by the Agreement, and such amounts not paid when due shall, to the extent permitted by law, bear interest at a rate of six percent (6%) per annum. If the City shall fail to make any payment required to be made by the foregoing covenant, however, such amount shall be payable solely from the amounts realized upon the enforcement of the remedies set forth in Section 3 of this Deed of Trust.

Section 12. Security Interest in Fixtures. **COLLATERAL IS OR INCLUDES FIXTURES.** With respect to any portion of the Mortgaged Property which is or may become fixtures, this Deed of Trust shall constitute a financing statement filed as a fixture filing. The lien upon fixtures granted herein and perfected hereby shall be in addition to and not in lieu of any lien upon fixtures acquired under real property law. The fixtures are located on the land described on Exhibit A, and the City is the record owner of that land. The name and address of the City, as debtor, and the Beneficiary, as secured party, are set forth in Section 17. This Deed of Trust is intended to be a security agreement pursuant to the Uniform Commercial Code, as in effect in the State of North Carolina.

Section 13. Leases. The City shall keep, observe and perform all of the covenants, agreements, terms, conditions and provisions on its part to be kept, observed or performed under any leases involving all or any part of the Mortgaged Property, shall require tenants to keep, observe and perform all of the covenants, agreements, terms, conditions and provisions on their part to be kept, observed or performed under any such leases and shall not suffer or permit any breach or default to occur with respect to the foregoing. In the event of a default by the City under any lease involving all or any part of the Mortgaged Property, the Beneficiary shall have the right to perform or to require performance of any such covenants, agreements, terms,

conditions or provisions of such leases, and to add any expense incurred in connection therewith to the debt secured hereby. Any such expense incurred by the Beneficiary shall be immediately due and payable. If the City shall fail to make any payment required to be made by the foregoing covenant, however, such amount shall be payable solely from the amounts realized upon the enforcement of the remedies set forth in Section 3 of this Deed of Trust.

Section 14. Additional Documents. The City agrees to execute and deliver to the Beneficiary, concurrently with the execution of this Deed of Trust and upon the request of the Beneficiary from time to time hereafter, all financing statements and other documents reasonably required to perfect and maintain the lien or security interest created hereby. For the period in which the indebtedness of the City to the Beneficiary remains unpaid, the City hereby irrevocably makes, constitutes and appoints the Beneficiary as the true and lawful attorney in fact of the City, to the extent permitted by law, to sign the name of the City on any financing statement, continuation of financing statement or similar document required to perfect or continue such security interests.

Section 15. Environmental Issues. The City for itself, its successors and assigns represents, warrants and agrees that, except as disclosed in writing to the Beneficiary by the City, (a) neither the City nor, to the best of the City's knowledge, any other person has improperly used or installed any Hazardous Material (as hereinafter defined) on the Mortgaged Property or received any notice from any governmental agency, entity or other person with regard to Hazardous Materials on, from or affecting the Mortgaged Property; (b) neither the City nor, to the best of the City's knowledge, any other person has violated any applicable Environmental Laws (as hereinafter defined) relating to or affecting the Mortgaged Property; (c) to the best of the City's knowledge, the Mortgaged Property is presently in compliance with all Environmental Laws and there are no circumstances presently existing upon or under the Mortgaged Property, or relating to the Mortgaged Property which may violate any applicable Environmental Laws, and there is not now pending, or threatened, any action, suit, investigation or proceeding against the City relating to the Mortgaged Property (or against any other party relating to the Mortgaged Property) seeking to enforce any right or remedy under any of the Environmental Laws; (d) the Mortgaged Property shall be used to generate, manufacture, refine, transport, treat, store, handle, dispose, produce or process Hazardous Materials only in accordance with all applicable Environmental Laws; (e) the City shall not cause nor permit the improper installation of Hazardous Materials in the Mortgaged Property nor a release of Hazardous Materials on the Mortgaged Property; (f) the City shall at all times comply with and ensure compliance by all other parties with all applicable Environmental Laws relating to or affecting the Mortgaged Property and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to any applicable Environmental Laws; (g) the City has obtained and will at all times continue to obtain and/or maintain all licenses, permits, and/or other governmental or regulatory actions necessary to comply with Environmental Laws with respect to the Mortgaged Property (the "Permits"), and the City is in full compliance with the terms and provisions of the Permits and will continue to comply with the terms and provisions of the Permits; (h) the City shall immediately give the Beneficiary oral and written notice in the event that the City receives any notice from any governmental agency, entity, or any other party with regard to Hazardous Materials on, from or affecting the Mortgaged Property and shall conduct and complete all investigations, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Mortgaged Property in

accordance with all applicable Environmental Laws. To the extent permitted by law, the City hereby agrees to defend and indemnify the Deed of Trust Trustee and the Beneficiary and hold them harmless from and against any and all losses, liabilities, damages, injuries (including, without limitation, attorneys' fees) and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against the Deed of Trust Trustee or the Beneficiary for, with respect to, or as a direct or indirect result of (a) the presence on, or under, or the escape, spillage, emission or release from the Mortgaged Property of any Hazardous Material regardless of whether or not caused by or within the control of the City, (b) the violation of any Environmental Laws relating to or affecting the Mortgaged Property, whether or not caused by or within the control of the City, (c) the failure by the City to comply fully with the terms and provisions of this paragraph, or (d) any warranty or representation made by the City in this paragraph being false or untrue in any material respect. In the event that the Beneficiary elects to control, operate, sell or otherwise claim property rights in the Mortgaged Property, the City shall deliver the Mortgaged Property free of any and all Hazardous Materials so that the conditions of the Mortgaged Property shall conform with all applicable Environmental Laws. Prior to any such delivery of the Mortgaged Property, the City shall pay to the Beneficiary from its own funds any amounts required to be paid under the indemnification provisions set forth above. For purposes of this Deed of Trust, "Hazardous Material" means and includes petroleum products, any flammable explosives, radioactive materials, hazardous materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, substance or material defined as such in (or for the purpose of) the Environmental Laws. For the purposes of this Deed of Trust, "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Hazardous Materials Transportation Act, the Oil Pollution Act of 1990, the Emergency Planning and Right-to-Know Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Resource Conservation and Recovery Act, any "Super Fund" or "Super Lien" law (including in all cases any regulations promulgated thereunder), or any other federal, state, or local law, regulation or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials, as may now or at any time hereafter be in effect. The obligations and liabilities of the City under this paragraph shall survive the foreclosure of the Deed of Trust, the delivery of a deed in lieu of foreclosure, and the cancellation of this Deed of Trust; or if otherwise expressly permitted in writing by the Beneficiary, the sale or alienation of any part of the Mortgaged Property.

Section 17. Miscellaneous. (a) Notices. All notices, approvals, consents, requests and other communications hereunder shall be in writing and, unless otherwise provided herein, shall be deemed to have been given when delivered or mailed by registered or certified mail, postage prepaid, addressed as follows: (a) if to the City, at 300 Pollock Street, Post Office Box 1129, New Bern, North Carolina 28563-1129, Attention: Director of Finance; (b) if to the Beneficiary, to TD Bank, N.A., 11325 N. Community House Road, Suite 500, Charlotte, North Carolina 28255, Attention: Mason Hurley, Vice President and Senior Relationship Manager; and (c) if to the Deed of Trust Trustee, to The Fidelity Company, 555 Fayetteville Street, Suite 1100, Raleigh, North Carolina 27601, Attention: John C. Cooke.

The City, the Deed of Trust Trustee and the Beneficiary may, by notice given hereunder, designate any further or different addresses to which subsequent notices, approvals, consents, requests or other communications shall be sent or persons to whose attention the same shall be directed.

(b) Substitution of Deed of Trust Trustee. The City and the Deed of Trust Trustee covenant and agree to and with the Beneficiary that in case the Deed of Trust Trustee, or any successor trustee, shall die, become incapable of acting, renounce his trust, or for any reason the Beneficiary desires to replace the Deed of Trust Trustee, then the Beneficiary may appoint, in writing, a trustee to take the place of the Deed of Trust Trustee; and upon the probate and registration of the same, the trustee thus appointed shall succeed to all rights, powers and duties of the Deed of Trust Trustee. This granting of power to the Beneficiary is coupled with an interest and is irrevocable.

(c) Successors and Assigns. This Deed of Trust shall inure to the benefit of and be enforceable by the Deed of Trust Trustee and the Beneficiary and their respective successors and assigns.

(d) Amendments and Supplements. This Deed of Trust may be amended and supplemented only as provided in the Agreement.

(e) Applicable Law. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of North Carolina.

(f) Execution in Counterparts. This Deed of Trust may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(g) Severability. In the event any term, provision or covenant herein contained or the application thereof to any circumstances or situation shall be invalid or unenforceable in whole or in part, the remainder hereof and the application of said term or provision or covenant to any other circumstances or situation shall not be affected thereby, and every other term, provision or covenant herein shall be valid and enforceable to the full extent permitted by law.

[signatures to follow]

IN WITNESS WHEREOF, the City has caused this Deed of Trust to be executed in its name by its Mayor and its seal to be impressed hereon and attested by the City Clerk of the City, all as of the date first above written.

CITY OF NEW BERN, NORTH CAROLINA

[SEAL]

By: _____
Jeffrey T. Odham, Mayor

Attest:

Brenda E. Blanco, City Clerk

ACKNOWLEDGEMENT FOR CITY

STATE OF NORTH CAROLINA

COUNTY OF CRAVEN

This ____ day of September, 2023, personally came before me, a Notary Public in and for the said County and State, Brenda E. Blanco, who, being by me duly sworn, says that she is the City Clerk of the City of New Bern, North Carolina, a municipal corporation duly organized and validly existing under the laws of the State of North Carolina and acting through the Board of Aldermen of said City, and by authority duly given and as the act of said City, the foregoing instrument was signed in its name by Jeffrey T. Odham, as its Mayor, sealed with its seal and attested by herself as the City Clerk.

WITNESS my hand and notarial seal this ____ day of September, 2023.

(Notarial Seal)

Notary Public

Printed Name: _____

My commission expires:

LEGAL DESCRIPTION OF PROPERTY

[To be inserted.]

INSTALLMENT FINANCING AGREEMENT

Dated as of September 20, 2023

between

CITY OF NEW BERN, NORTH CAROLINA

and

TD BANK, N.A.

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INSTALLMENT FINANCING AGREEMENT

This INSTALLMENT FINANCING AGREEMENT, dated as of September 20, 2023 (the "Agreement"), between the CITY OF NEW BERN, NORTH CAROLINA, a municipal corporation duly organized and validly existing under the laws of the State of North Carolina (the "City"), and TD BANK, N.A., a national banking association duly organized and existing under the laws of the United States of America (the "Lender");

WITNESSETH:

WHEREAS, the City is a municipal corporation duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina;

WHEREAS, pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, the City may finance the acquisition of property and the construction of fixtures or improvements on real property by contracts that create in the fixtures or improvements, or in all or some portion of the property upon which the fixtures or improvements are located, or in both, a security interest to secure repayment of the moneys advanced or made available for construction;

WHEREAS, after a public hearing and due consideration, the Board of Aldermen for the City has determined to finance the cost of acquiring, constructing and equipping the new Stanley White Recreation Center for the City (the "Project");

WHEREAS, in order for the City to obtain the funds to pay the costs of financing the Project, the City has determined to enter into this Agreement whereby the Lender will advance funds to the City to be applied, together with any other available funds, to (a) pay the costs of the Project and (b) pay certain financing costs relating thereto, and the City will repay such advancement with interest in installments pursuant to the terms of this Agreement;

WHEREAS, as security for the performance of its obligation under this Agreement, including the payment of the installment payments hereunder, the City will execute and deliver a Deed of Trust, dated as of the date hereof (the "Deed of Trust"), to the Deed of Trust trustee named therein, for the benefit of the Lender, pursuant to which the City will grant a first priority lien on the Site (hereinafter defined), together with all buildings, improvements and fixtures located and to be located thereon, subject to certain Permitted Encumbrances (as defined herein);

WHEREAS, the Lender is willing to advance moneys to the City for the purpose of financing the costs of the Project, and the City is willing to repay the moneys so advanced by the Lender in installments as more fully provided herein; and

WHEREAS, the City and the Lender have each duly authorized the execution and delivery of this Agreement.

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBIT

SECTION 1.1. Definitions and Rules of Construction. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa. The words "hereby", "herein", "hereof", "hereto", "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof. All references herein to "Articles", "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement unless some other reference is indicated.

"Act" means Section 160A-20 of the General Statutes of North Carolina, as amended.

"Advancement" means, collectively, the Component A Advancement and the Component B Advancement.

"Agreement" means this Installment Financing Agreement, including any amendment, restatement or supplement hereto as permitted hereby.

"Board" means the Board of Aldermen for the City.

"City" means the City of New Bern, North Carolina, a municipal corporation duly organized and validly existing under and by virtue of the Constitution and laws of the State, and any successor entity.

"Closing" means the date on which the City executes and delivers this Agreement, and the Lender makes the Advancement to the City.

"Closing Costs" means and further includes all items of expense directly or indirectly payable by or reimbursable to the City relating to the financing of the Project, including, but not limited to, filing and recording costs, settlement costs, printing costs, word processing costs, reproduction and binding costs, legal fees and charges and financing and other professional consultant fees.

"Component A Advancement" means the advance being made by the Lender to the City in the amount of \$ _____ pursuant to Section 3.1 to pay the costs of the Project and the Closing Costs.

"Component B Advancement" means the advance being made by the Lender to the City in the amount of \$ _____ pursuant to Section 3.1 to pay the costs of the Project and the Closing Costs.

"Deed of Trust" means the Deed of Trust, of even date herewith, from the City to the Deed of Trust Trustee, for the benefit of the Lender, securing the payment of the Installment Payments and the other obligations specified hereunder and thereunder, as supplemented and amended from time to time.

“Deed of Trust Trustee” means the person or other entity at the time serving as trustee under the Deed of Trust.

“Default Rate” means the lesser of (a) the interest rate in effect under this Agreement immediately prior to an event of default hereunder, plus 4.00% per annum and (b) the maximum rate of interest permitted by law.

“Determination of Taxability” means and shall be deemed to have occurred on the date when either (a) the Internal Revenue Service or a court of competent jurisdiction has made a final determination that the interest component of the Installment Payments paid or payable by the City under this Agreement is includable in gross income of the Lender for federal income tax purposes (in the event that such final determination results from the occurrence of an Event of Taxability) or (b) the City or the Lender shall receive notice from the Commissioner or any District Director of the Internal Revenue Service that the interest component of the Installment Payments paid or payable by the City under this Agreement is includable in the gross income of the Lender for federal income tax purposes (in the event that such determination results from the occurrence of an Event of Taxability).

“Enforcement Limitation” means the provisions of the Act that provide that no deficiency judgment may be rendered against the City in any action for breach of a contractual obligation incurred under the Act and that the taxing power of the City is not and may not be pledged directly or indirectly to secure any moneys due under this Agreement.

“Event of Nonappropriation” means (a) the failure by the Board to budget and appropriate in its budget for the ensuing Fiscal Year adopted on or about June 30 of each year moneys sufficient to pay all Installment Payments and any reasonably estimated additional payments under this Agreement coming due in the next ensuing Fiscal Year or (b) the Board’s deletion from its duly adopted budget of any appropriation for the purposes specified in clause (a) above. In the event that during any Fiscal Year, any additional payments shall become due that were not included in the City’s current budget, and if there are no moneys available to pay such additional payments prior to the date upon which such additional payments are due, an Event of Nonappropriation shall be deemed to have occurred upon notice by the City to the Lender to such effect.

“Event of Taxability” means the occurrence or existence of any fact, event or circumstance caused by the failure of the City to comply with any covenants in this Agreement or any document or certificate executed by the City in connection with the transactions contemplated by this Agreement which has the effect of causing the interest component of the Installment Payments made by the City under this Agreement to be includable in the gross income of the Lender for federal income tax purposes.

“Fiscal Year” means the period beginning on July 1 of any year and ending on June 30 of the following year.

“Inclusion Date” means the earliest effective date that the interest component of the Installment Payments made by the City under this Agreement is includable in the gross income of the Lender for federal income tax purposes as a result of a Determination of Taxability (which may be earlier than the date of a Determination of Taxability).

“Installment Payment Date” means each of the dates set forth on the Installment Payment Schedule attached hereto as Exhibit A in order to repay the Advancement (consisting of the Component A Advancement and the Component B Advancement).

“Installment Payments” means the payments required to be paid by the City pursuant to Section 4.1 in order to repay the Advancement, as specified in Exhibit A attached hereto.

“Investment Obligation” means any security or investment authorized by Section 159-30 of the General Statutes of North Carolina, as may be amended from time to time, or any substitute or successor statute.

“Lender” means TD Bank, N.A., a national banking association duly organized and existing under the laws of the United States of America, and any of its successors or assigns.

“LGC” means the Local Government Commission of North Carolina, a division of the Department of the State Treasurer, and any successor thereto.

“Mortgaged Property” means the property subject to the lien of the Deed of Trust, consisting of the Site, together with all buildings, improvements and fixtures located or to be located thereon.

“Net Proceeds” means any proceeds of insurance or taking by eminent domain or condemnation paid with respect to the Mortgaged Property remaining after payment therefrom of any expenses (including attorneys’ fees) incurred in the collection thereof.

“Permitted Encumbrances” means and includes (a) any liens, conditions, exceptions to title or encumbrances existing with respect to the Mortgaged Property on the date of execution and delivery of the Deed of Trust; (b) liens for taxes, assessments and other governmental charges due but not yet delinquent; (c) landlord’s, warehouseman’s, carrier’s, worker’s, vendor’s, mechanic’s and materialmen’s liens and similar liens incurred in the ordinary course of business remaining undischarged for not longer than sixty (60) days from the filing thereof; (d) attachments remaining undischarged for not longer than sixty (60) days from the making thereof; (e) liens in respect of pledges or deposits under workers’ compensation laws, unemployment insurance or similar legislation and in respect of pledges or deposits to secure bids, tenders, contracts (other than contracts for the payment of money), leases or statutory obligations, or in connection with surety, appeal and similar bonds incidental to the conduct of litigation; (f) the lien created by the Deed of Trust and any lease of all or any portion of the Mortgaged Property permitted by Section 8.2; (g) this Agreement; (h) any easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions, restrictions or encumbrances as shown in the written title report provided by the City to the Lender prior to the Closing; (i) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions, restrictions or encumbrances which the City certifies in writing to the Lender will not materially impair the use of the Mortgaged Property for its intended purpose or the marketability of the Mortgaged Property; and (j) any mortgage or encumbrance on the Mortgaged Property consented to by the Lender pursuant to Section 9 of the Deed of Trust.

“Project” means the acquisition, construction and equipping of the new Stanley White Recreation Center for the City.

“Site” means the real property identified in Exhibit A to the Deed of Trust, such site being the site where a portion of the Project will be located.

“State” means the State of North Carolina.

“Taxable Rate” means ____% per annum.

“Tax Certificate” means the Tax Certificate, dated as of the date hereof, executed and delivered by the City relating to this Agreement.

SECTION 1.2. Exhibit. The following exhibit is attached to, and by reference made a part of, this Agreement:

Exhibit A Installment Payment Schedule

ARTICLE II

REPRESENTATIONS OF THE CITY AND THE LENDER

SECTION 2.1. Representations, Covenants and Warranties of the City. The City represents, covenants and warrants to the Lender as follows:

(a) The City is a municipal corporation duly organized and validly existing under and by virtue of the Constitution and laws of the State.

(b) The Constitution and laws of the State authorize the City to (i) execute and deliver this Agreement and the Deed of Trust, (ii) enter into the transactions contemplated by this Agreement and the Deed of Trust and (iii) carry out its obligations under this Agreement and the Deed of Trust.

(c) The City has duly authorized, executed and delivered this Agreement and the Deed of Trust in accordance with the Constitution and laws of the State.

(d) Neither the execution and delivery of this Agreement or the Deed of Trust, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any charter provision, restriction or any agreement or instrument to which the City is now a party or by which the City or any of its properties is bound, or constitutes a default under any of the foregoing.

(e) No approval or consent is required from any governmental authority with respect to the entering into or performance by the City of this Agreement, the Deed of Trust or any other documents related thereto and the transactions contemplated hereby or thereby, or if such approval is required, it has been duly obtained.

(f) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or threatened against or affecting the City challenging the validity or enforceability of this Agreement, the Deed of Trust or any other documents relating hereto or the performance of the City's obligations hereunder and thereunder.

(g) The City shall obtain or cause to be obtained all licenses, permits and other approvals of any other governmental entity having jurisdiction over the City or the Project that are necessary for the acquisition, construction and equipping of the Project.

(h) The City shall not (i) request the assignment of any rating on this Agreement by any municipal securities rating agency, (ii) register this Agreement with The Depository Trust Company or any other securities depository, (iii) offer this Agreement pursuant to any type of offering document or official statement or (iv) request the assignment of a CUSIP number by Standard & Poor's CUSIP Service.

(i) The City agrees for the benefit of the Lender to comply with all representations and covenants set forth in the Tax Certificate and all applicable provisions of the Internal Revenue Code of 1986, as amended, that are required to ensure that the interest component of the

Installment Payments made by the City under this Agreement shall not be includable in gross income of the Lender for federal income tax purposes.

SECTION 2.2. Representations, Covenants and Warranties of the Lender. The Lender represents, covenants and warrants to the City as follows:

(a) The Lender is a national banking association duly organized and existing under and by virtue of the laws of the United States of America and has the power and authority to enter into this Agreement.

(b) The Lender has duly authorized, executed and delivered this Agreement in accordance with applicable law.

(c) Neither the execution and delivery of this Agreement nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of the organizational documents of the Lender or any restriction or any agreement or instrument to which the Lender is now a party or by which the Lender is bound.

(d) The Lender (i) is familiar with the City; (ii) has been furnished certain financial information about the City; (iii) acknowledges that the City has made available to it the opportunity to obtain additional information to verify the accuracy of the information supplied and to evaluate the merits and risks of entering into this Agreement; (iv) has had the opportunity to ask questions of and receive answers from the City representatives, including officers, attorneys, advisors and accountants, concerning the terms of this Agreement, the information supplied to it and the City's condition, financial and otherwise; and (v) acknowledges that the City has been responsive to all of its requests for information.

(e) The Lender is capable of evaluating the merits and risks of entering into this Agreement and has agreed to enter into this Agreement although no formal offering material has been provided to it.

(f) The Lender has undertaken to discuss and investigate the form and substance of this Agreement and the transactions related thereto with such counsel and other persons as it has deemed appropriate.

(g) The Lender acknowledges that this Agreement is not registered under the United States Securities Act of 1933, as amended, and that the City is not presently required to register this Agreement under the United States Securities Exchange Act of 1934, as amended. Therefore, if and when the Lender wishes to sell or assign part or all of the Agreement, current financial and other information may not be available. The Lender further realizes that the City may, but is not under any obligation to, provide current financial and other information upon the sale or assignment of all or part of the Agreement at some subsequent time, or to pay any costs associated with any such sale or assignment. Further, the Lender understands that it may need to bear the risks of this Agreement for an indefinite period of time, because any sale or assignment of this Agreement may not be possible or, if possible, may be at a price below that which the Lender is entering into this Agreement.

(h) The Lender represents that it is entering into the Agreement for its own account with the present intent to hold the loan to maturity with no present intention to resell or distribute the Agreement or any interest therein; provided, however, that the Lender reserves the right at all times to control the disposition of its assets, including this Agreement. The Lender or its assignees may assign or reassign all or any part of the Agreement in accordance with the provisions of Section 8.1.

ARTICLE III

ADVANCEMENT; ACQUISITION, CONSTRUCTION AND EQUIPPING OF PROJECT

SECTION 3.1. Advancement; Creation of Project Fund. In consideration of the covenants, warranties and representations contained herein, and in consideration of the City's agreement to repay the moneys advanced hereunder and interest thereon, the Lender hereby agrees to advance the Advancement to the City. The Advancement shall consist of the Component A Advancement in the amount of \$_____ and the Component B Advancement in the amount of \$_____. On the date of Closing, the proceeds of the Component A Advancement and the Component B Advancement shall be wired by the Lender to, or as directed by, the City and deposited in a segregated account established with a depository bank or other financial institution selected by the City (herein referred to as the "Project Fund") and shall be applied solely to pay the costs of the Project and the Closing Costs in accordance with the provisions of this Article.

SECTION 3.2. Acquisition, Construction and Equipping of Project. The City shall enter into, or cause to be entered into, one or more contracts or purchase orders providing for the acquisition, construction and equipping of the Project. The City shall cause the acquisition, construction and equipping of the Project to be carried on expeditiously in accordance with the plans and specifications therefor and in compliance with all applicable ordinances and statutes and requirements of all regularly constituted authorities having jurisdiction over the same.

SECTION 3.3. Investment. The City may invest and reinvest moneys deposited in the Project Fund solely in Investment Obligations as determined by the City from time to time, and investment earnings on the Project Fund shall be retained in the Project Fund pending disbursement in accordance with Section 3.4. The City shall be solely responsible for ascertaining that all proposed investments and reinvestments of amounts held in the Project Fund comply with federal, state and local laws, regulations and ordinances governing investment of such funds. Accordingly, the Lender shall not be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to investment or reinvestment of all or a portion of the moneys held in the Project Fund, and the City hereby agrees, to the extent permitted by law, to release and indemnify and hold harmless the Lender from any such liability, cost, expense, loss or claim.

SECTION 3.4. Disbursements. Unless the Project Fund is earlier terminated in accordance with the provisions of Section 3.5, the moneys held in the Project Fund shall be used solely to pay, or to reimburse the City for payment of, the Closing Costs and the costs of the Project. If the moneys held in the Project Fund and any other moneys provided by the City are insufficient to pay all of the Closing Costs and the costs of the Project, the City shall provide any balance of the funds needed to complete the acquisition and construction of the Project. Any moneys remaining in the Project Fund after completion of the acquisition, construction and equipping of the Project, as evidenced by a written certificate of completion executed by the City Manager or the Director of Finance of the City and delivered to the Lender stating that the Project has been completed and that, to the best of such person's knowledge, there are no mechanic's or other liens against the Project for labor or materials furnished in connection with the Project, may be applied either (a) to the next succeeding Installment Payments until such time as such moneys are fully expended or (b) to the prepayment in part the outstanding principal

component of the Installment Payments in accordance with the terms and provisions of Section 10.1.

If the Project Fund is terminated early in accordance with the provisions of Section 3.5(b) or (c), any moneys remaining in the Project Fund not otherwise legally obligated to be used to pay costs of the Project shall be applied by the City to the repayment of the Installment Payments as the same shall become due and payable.

SECTION 3.5. Termination. The Project Fund shall be terminated at the earliest of (a) the final distribution of moneys from the Project Fund, (b) written notice given by the Lender of an event of default by the City under this Agreement and (c) termination of this Agreement. Notwithstanding the foregoing, the Project Fund shall not be terminated until all funds deposited therein have been disbursed in accordance with the provisions of this Article.

SECTION 3.6. Reliance of the Lender on Documents. The Lender may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Lender shall not be liable in any manner for the sufficiency or correctness as to the form, manner of execution, or validity of any instrument or as to the identity, authority, or right of any person executing the same; and the Lender's duties hereunder shall be limited to the receipts of such moneys, instruments or other documents received by it as the Lender, and for the disposition of the same in accordance herewith.

SECTION 3.7. Disclaimer of Lender. The City acknowledges and agrees that the design of the Project has not been made by the Lender, the Lender has not supplied any plans or specifications with respect thereto, and that the Lender (a) is not a manufacturer of, nor a dealer in, any of the component parts of the Project or similar projects, (b) has not made any recommendation, given any advice nor taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any contractor with respect to, the Project or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Project or any component part thereof or any property or rights relating thereto at any stage of the construction or equipping thereof, (c) has not at any time had physical possession of the Project or any component part thereof or made any inspection thereof or any property or rights relating thereto, and (d) has not made any warranty or other representation, express or implied, that the Project or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the results which the City intends therefor, or (iii) is safe in any manner or respect.

THE LENDER MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE PROJECT OR ANY COMPONENT PART THEREOF TO THE CITY OR ANY OTHER CIRCUMSTANCE WHATSOEVER WITH RESPECT THERETO, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE; THE DESIGN OR CONDITION THEREOF; THE SAFETY, WORKMANSHIP, QUALITY OR CAPACITY THEREOF; COMPLIANCE THEREOF WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING

THERETO; ANY LATENT DEFECT; THE TITLE TO OR INTEREST OF THE LENDER THEREIN BEYOND THAT TITLE OR INTEREST WHICH THE CITY OBTAINS FROM THE LENDER PURSUANT HERETO; THE ABILITY THEREOF TO PERFORM ANY FUNCTION; THAT THE PROCEEDS DERIVED FROM THE ADVANCEMENT WILL BE SUFFICIENT, TOGETHER WITH ANY OTHER AVAILABLE FUNDS OF THE CITY, TO PAY THE COST OF ACQUIRING, CONSTRUCTING AND EQUIPPING THE PROJECT; OR ANY OTHER CHARACTERISTICS OF THE PROJECT, IT BEING AGREED THAT ALL RISKS RELATING TO THE PROJECT, THE COMPLETION THEREOF OR THE TRANSACTIONS CONTEMPLATED HEREBY ARE TO BE BORNE BY THE CITY, AND THE BENEFITS OF ANY AND ALL IMPLIED WARRANTIES AND REPRESENTATIONS OF THE LENDER ARE HEREBY WAIVED BY THE CITY.

ARTICLE IV

REPAYMENT OF THE ADVANCEMENT; SECURITY FOR REPAYMENT

SECTION 4.1. Repayment of the Advancement. (a) The City shall repay the Advancement (consisting of the Component A Advancement and the Component B Advancement), with interest computed at the rate of 4.50% per annum (calculated based upon a 360-day year consisting of twelve 30-day months), in installments due at the times and in the amounts set forth in Exhibit A attached hereto and made a part hereof. Notwithstanding the foregoing, upon the occurrence and during the continuation of an event of default under Section 9.1, at the written direction of the Lender, interest with respect to the outstanding principal amount the Advancement shall be computed at the Default Rate.

(b) All Installment Payments required to be made to the Lender hereunder shall be made to the Lender in accordance with wire instructions provided by the Lender or as may otherwise be directed in writing by the Lender.

(c) Notwithstanding the provisions of subsection (a) of this Section, in the event of a Determination of Taxability, the interest rate payable under this Agreement, from and after the Inclusion Date, shall be adjusted to the Taxable Rate. In addition, the City shall pay to the Lender upon its request (i) any amounts necessary to reimburse the Lender for any interest, penalties, or other charges assessed by the Internal Revenue Service and the Department of Revenue by reason of the Lender's failure to include the interest portion of the Installment Payments in its gross income for income tax purposes, and (ii) any additional interest as a result of the increase in the interest rate on all previous Installment Payments made by the City after the Inclusion Date. In the event of a Determination of Taxability, the Lender shall provide the City with a new Installment Payment Schedule which reflects the new interest rate, which will replace the Installment Payment Schedule set forth in Exhibit A.

(d) The City agrees to give prompt written notice to the Lender upon the City's determination or receipt of any notice or information from any source whatsoever to the effect that an Event of Taxability or a Determination of Taxability shall have occurred or that an event of default has occurred under Section 9.1.

SECTION 4.2. Budget and Appropriation. (a) The officer of the City at any time charged with the responsibility for formulating budget proposals shall include in the budget proposals for review and consideration by the Board in any Fiscal Year in which this Agreement shall be in effect, items for all Installment Payments and any additional payments required for such Fiscal Year under this Agreement or the Deed of Trust. Any budget item referred to in this Section shall be deleted from the applicable budget by the Board only by the adoption of a resolution to such effect containing a statement of its reasons therefor, which resolution shall be adopted by roll-call vote and shall be included in the minutes of the Board. The City shall furnish the Lender with copies of its annual budget within thirty (30) days after its adoption and copies of any amended budget affecting appropriations for Installment Payments or additional payments required under this Agreement or the Deed of Trust. The City shall promptly provide written notice to the Lender and the LGC of any Event of Nonappropriation.

(b) NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A DELEGATION OF GOVERNMENTAL POWERS NOR AS A DONATION BY OR A LENDING OF THE CREDIT OF THE CITY WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE. THIS AGREEMENT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE CITY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE CITY FOR ANY FISCAL YEAR IN WHICH THIS AGREEMENT IS IN EFFECT; PROVIDED, HOWEVER, THAT ANY FAILURE OR REFUSAL BY THE CITY TO APPROPRIATE FUNDS WHICH RESULTS IN THE FAILURE BY THE CITY TO MAKE ANY PAYMENT COMING DUE HEREUNDER WILL IN NO WAY OBTVIATE THE OCCURRENCE OF THE EVENT OF DEFAULT RESULTING FROM SUCH NONPAYMENT. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE CITY IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION UNDER THIS AGREEMENT AND THE TAXING POWER OF THE CITY IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY MONEYS DUE UNDER THIS AGREEMENT.

No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the City's moneys, nor shall any provision of this Agreement restrict the future issuance of any of the City's bonds or moneys. To the extent of any conflict between this Section and any other provision of this Agreement, this Section shall take priority.

SECTION 4.3. Deed of Trust. In order to secure its obligations under this Agreement, including its obligation to make the Installment Payments hereunder, the City shall execute and deliver the Deed of Trust simultaneously with the execution and delivery of this Agreement.

SECTION 4.4. No Set-Off; Recoupment, Etc. Subject to Section 4.2 and the Enforcement Limitation, the obligation of the City to make the Installment Payments hereunder and to perform and observe the other covenants of this Agreement shall be absolute and unconditional, and the City will pay without abatement, diminution or deduction all such amounts regardless of any cause or circumstance whatsoever, including, without limitation, any defense, set-off, recoupment or counterclaim that the City may have against the Lender or any vendor or contractor for the Project.

ARTICLE V

INSURANCE

SECTION 5.1. Comprehensive General Liability. The City shall maintain or cause to be maintained throughout the term of this Agreement, a comprehensive general liability policy or policies in protection of the City, its officers, agents and employees. Said policy shall cover such losses and for such amounts and shall have such deductible amounts as shall be satisfactory to the Board and, in the judgment of the Board, shall protect the City against losses not protected under the principles of sovereign immunity. The net proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

SECTION 5.2. Workers' Compensation. The City shall maintain workers' compensation insurance issued by a responsible carrier authorized under the laws of the State to insure its employees against liability for compensation under the laws now in force in the State, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof. The proceeds of such workers' compensation insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

SECTION 5.3. Property and Flood Insurance. (a) The City shall procure and maintain, or cause to be procured and maintained, throughout the term of this Agreement, insurance against loss or damage to any portion of the Mortgaged Property by fire and lightning, with extended coverage, and vandalism, theft and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Such insurance policies shall name the Lender as a loss payee/mortgagee and shall provide for notice to the Lender in advance of any cancellation or reduction in the amount of such insurance. To the extent that any contractor shall provide an insurance policy or certificate of insurance (naming the Lender as mortgagee or loss payee) demonstrating that the same coverage as is required by this subsection is being carried by such contractor with respect to the Mortgaged Property or any part thereof and adequately protects the interest of the City and the Lender, the insurance provided for by this subsection shall not be required with respect to the Mortgaged Property or such part thereof while the Mortgaged Property or such part thereof is so covered by such other insurance. The City shall cause to be delivered to the Lender prior to construction of the Project a certificate of insurance evidencing that the insurance required by this subsection is in full force and effect.

(b) If any buildings, fixtures or other improvements are located on any portion of the Mortgaged Property that is located in a special flood hazard area according to the Federal Emergency Management Agency ("FEMA"), then the City must maintain a flood insurance policy on the Mortgaged Property. If at any time during the term of the Agreement, such portion of the Mortgaged Property is classified by FEMA as being located in a special flood hazard area, flood insurance will be mandatory. Should this occur, federal law requires the Lender to notify the City of the reclassification. If, within forty-five (45) days of receipt of notification from the Lender that any portion of the Mortgaged Property has been reclassified by the FEMA as being located in a special flood hazard area, the City has not provided sufficient evidence of flood insurance, the Lender is mandated under federal law to purchase flood insurance on behalf of the

City, and any amounts so expended shall immediately become debts of the City, shall bear interest at the rate specified in the Agreement, and payment thereof shall be secured by the Deed of Trust.

(c) Such insurance required by this Section shall be in an amount equal to 100% of the replacement cost of the Mortgaged Property (except that such insurance may be subject to a reasonable and customary deductible clause for any one loss).

(d) The Net Proceeds of such insurance required by this Section shall be applied as provided in Section 6.1 or Section 6.2.

SECTION 5.4. General Insurance Provisions. (a) The City shall pay or cause to be paid when due the premiums for all insurance policies required by this Agreement.

(b) All insurance policies required by this Article shall be issued by a responsible carrier authorized to do business under the laws of the State.

(c) The Lender shall not be responsible for the sufficiency or adequacy of any insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the Lender.

(d) Notwithstanding the foregoing, in lieu of obtaining the policies of insurance required by Section 5.1, Section 5.2 and Section 5.3, the City may adopt alternative risk management programs which it determines to be reasonable, including, without limitation, to self-insure in whole or in part, individually or in connection with other units of local government or other institutions, to participate in programs of captive insurance companies, to participate with other units of local government or other institutions in mutual or other cooperative insurance or other risk management programs, to participate in State or federal insurance programs, to take advantage of State or federal laws now or hereafter in existence limiting liability, or to establish or participate in other alternative risk management programs, all as may be reasonable and appropriate risk management by the City. In addition, any insurance coverage pursuant to this Section may also be pursuant to a program whereby the City self-insures against certain losses up to a stated loss amount, and retains excess coverage from an insurer meeting the requirements of this Section. Notwithstanding the foregoing, any self-insurance program shall be consistent with prudent business practices for insuring against such risks and shall be properly funded to realistically provide the minimum coverage required for the Mortgaged Property by this Section.

(e) The insurance coverage required under Section 5.3 may be maintained under a blanket policy covering other properties of the City.

(f) The City shall cause to be delivered to the Lender annually a certificate stating that the insurance policies or alternative risk management programs required or permitted by this Agreement are in full force and effect. Furthermore, the City shall not cancel or modify such insurance or other coverage required by this Section in any way that would affect the interests of the Lender without first giving, or causing to be given, written notice thereof to the Lender at least 30 days in advance of such cancellation or modification.

(g) The City shall cooperate fully with the Lender in filing any proof of loss with respect to any insurance policy maintained pursuant to this Article and in the prosecution or defense of

any prospective or pending condemnation proceeding with respect to the Mortgaged Property or any portion thereof.

ARTICLE VI

DAMAGE AND DESTRUCTION; USE OF NET PROCEEDS

SECTION 6.1. Obligation of the City to Repair and Replace the Mortgaged Property. Unless applied to the payment in full of the remaining Installment Payments pursuant to Section 6.2 and Section 10.1, the City shall cause the Net Proceeds of any insurance policies or condemnation proceedings to be applied to the prompt repair, restoration or replacement of the Mortgaged Property. In the event that any such Net Proceeds exceeds \$500,000, the City shall cause such Net Proceeds to be deposited in a separate fund maintained by the City with the Lender or its designee unless applied to the payment in whole or in part of the remaining Installment Payments pursuant to Section 6.2. The Lender shall cooperate with the City in the administration and application of such Net Proceeds. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of such Net Proceeds shall be the property of the City, subject to the Deed of Trust and Permitted Encumbrances, and shall be included as part of the Mortgaged Property under this Agreement.

SECTION 6.2. Insufficiency of Net Proceeds; Discharge of the Obligation of the City to Repair or Replace the Mortgaged Property. (a) If the Net Proceeds shall be insufficient to pay in full the cost of repair, restoration or replacement of the Mortgaged Property, the City may elect to complete the work and pay any cost in excess of the amount of the Net Proceeds, and the City agrees that, if by reason of any such insufficiency of the Net Proceeds, the City shall make any payments pursuant to the provisions of this subsection (a), the City shall not be entitled to any reimbursement therefor from the Lender, nor shall the City be entitled to any diminution of the Installment Payments payable under Section 4.1.

(b) If the City elects not to apply the Net Proceeds to the repair, restoration or replacement of the Mortgaged Property, the City shall apply such Net Proceeds, together with any other available funds of the City, to the prepayment of all or a portion of the outstanding principal component of the Installment Payments pursuant to Section 10.1. In the event the amount of such Net Proceeds exceeds the amount necessary to prepay the principal component of all remaining Installment Payments, plus the interest component of the Installment Payments accrued to the date of prepayment, such excess shall be paid to or retained by the City.

Within 90 days following the receipt of Net Proceeds, unless a further extension is approved by the Lender, the City shall commence the repair, restoration or replacement of the Mortgaged Property, or shall elect, by written notice to the Lender, to apply the Net Proceeds, together with any other available funds of the City, to the prepayment of the Installment Payments under the provisions of this Section and Section 10.1. For purposes of this subsection, "commence" shall include the retention of an engineer in anticipation of the repair, restoration, modification, improvement or replacement of the Mortgaged Property. In the event that the City shall, after commencing the repair, restoration, modification, improvement or replacement of the Mortgaged Property, determine that the Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) shall be insufficient for the accomplishment thereof, the City may elect to apply the Net Proceeds to the prepayment of the Installment Payments under the provisions of this Section and Section 10.1.

SECTION 6.3. Notice to and Cooperation of the Lender. The City shall promptly provide notice to the Lender of any material damage or destruction of the Mortgaged Property or any prospective or pending condemnation proceeding relating to the Mortgaged Property. The Lender shall cooperate fully with the City in filing any proof of loss with respect to any insurance policy covering the events specified in Section 5.3. In no event shall the Lender or the City voluntarily settle, or consent to the settlement of, any insurance proceeding arising out of any insurance claim with respect to the Mortgaged Property or with respect to any condemnation or eminent domain proceedings with respect to the Mortgage Property without the written consent of the other.

ARTICLE VII

COVENANTS OF THE CITY

SECTION 7.1. Installation of Additional Improvements. The City may at any time and from time to time, in the sole discretion of the City, and at its own expense, construct real property improvements and install items of equipment or other personal property in or upon any portion of the Mortgaged Property that does not materially impair the effective use, nor materially decrease the value, of the Mortgaged Property; provided, however, that the City shall repair and restore any and all damage resulting from the construction, installation, modification or removal of any such items. All such items provided by the City shall be subject to the lien of the Deed of Trust.

SECTION 7.2. Access to the Mortgaged Property. The City agrees that the Lender and its agents and employees, shall have the right, at all reasonable times during normal business hours of the City upon the furnishing of reasonable notice to the City under the circumstances, and subject to such safety restrictions or requirements that the City may deem appropriate, to enter upon the Mortgaged Property or any portion thereof to examine and inspect the same. The City further agrees that the Lender and the Lender's successors, assigns or designees shall have such rights of access to the Mortgaged Property as may be reasonably necessary to cause the proper maintenance of the Mortgaged Property in the event of failure by the City to perform its obligations hereunder. No right of inspection shall be deemed to impose on the Lender any duty or obligation whatsoever to undertake any inspection, and no inspection made by the Lender shall be deemed to impose upon the Lender any duty or obligation to identify any defects in the Mortgaged Property or to notify any person with respect thereto.

SECTION 7.3. Maintenance, Utilities, Taxes and Assessments. (a) Subject to the Enforcement Limitation, the City shall provide for the repair and replacement of any portion of the Mortgaged Property required on account of ordinary wear and tear or want of care.

(b) Subject to the Enforcement Limitation, the City shall also pay, or provide for the payment of, all taxes and assessments, including, but not limited to, utility charges of any type or nature levied, assessed or charged against any portion of the Mortgaged Property; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid as and when the same become due.

(c) The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom; provided, however, that prior to such nonpayment, the City shall furnish to the Lender an opinion of counsel acceptable to the Lender to the effect that, by nonpayment of any such items, the interest of the Lender in the Mortgaged Property will not be materially endangered and that all or any portion of the Mortgaged Property will not be subject to loss or forfeiture. Otherwise, subject to the Enforcement Limitation, the City shall promptly pay such taxes, assessments or charges or make provisions for the payment thereof.

SECTION 7.4. Modification of the Mortgaged Property. The City shall, in its sole discretion and at its own expense, have the right to make additions, modifications and improvements to any portion of the Mortgaged Property if such additions, modifications or improvements are necessary or beneficial for the use of the Mortgaged Property. Such additions, modifications and improvements shall not in any way damage any of the Mortgaged Property (unless such damage is to be repaired as provided in Section 6.1) or cause the Mortgaged Property to be used for purposes other than those authorized under the provisions of law, and the Mortgaged Property, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is not less than the value of the Mortgaged Property immediately prior to the making of such additions, modifications and improvements. The Mortgaged Property, as so modified, shall be subject to the lien of the Deed of Trust.

Except for Permitted Encumbrances, the City shall not permit any lien to be established or remain against the Mortgaged Property for labor or materials furnished in connection with any additions, modifications or improvements made by the City pursuant to this Section; provided, however, that if any such lien is established, the City may, at its own expense and in its name, in good faith contest any lien filed or established against the Mortgaged Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, provided that the City shall furnish to the Lender full security against any loss or forfeiture which might arise from the nonpayment of any such item in form satisfactory to the Lender.

SECTION 7.5. Encumbrances. Except as provided in this Article (including, without limitation, Section 7.4 and this Section), the City shall not, directly or indirectly, create, incur, assume or suffer to exist any pledge, lien, charge, encumbrance or claim, as applicable, on or with respect to the Mortgaged Property, other than Permitted Encumbrances. Except as expressly provided in this Article and subject to the Enforcement Limitation, the City shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such pledge, lien, charge, encumbrance or claim for which it is responsible if the same shall arise at any time; provided, however, that the City may contest any such lien, charge, encumbrance or claim if it desires to do so and if it provides the Lender with full security against any loss or forfeiture which might arise from the nonpayment of any such item in form satisfactory to the Lender.

SECTION 7.6. Indemnification of the Lender and the LGC. To the fullest extent permitted by law, the City covenants to defend, indemnify and hold harmless the Lender and the LGC and their respective officers, directors, members, employees and agents (collectively, the "Indemnified Party") against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such Indemnified Party may become subject under any statute or at law or in equity or otherwise in connection with the transactions contemplated by this Agreement or the Deed of Trust and shall reimburse any such Indemnified Party for any legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the transactions contemplated by this Agreement or the Deed of Trust. In particular, without limitation, the City shall and hereby agrees to indemnify and save the Indemnified Party harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of any breach or default on the part of the City in the performance of any of its obligations under this Agreement or the Deed of Trust.

SECTION 7.7. Financial Statements and Other Information. The City shall furnish to the Lender, when the same become available, but in no event later than 210 days after the end of the Fiscal Year, its annual audited financial statements. The City also agrees that it will furnish the Lender copies of its annual budget as approved within 30 days after such approval. The City shall also furnish to the Lender, at such reasonable times as the Lender shall request, all other financial information as the Lender may reasonably request (excluding any privileged or confidential information).

ARTICLE VIII

ASSIGNMENT AND LEASING

SECTION 8.1. Assignment by the Lender. The Lender may, at any time and from time to time, without the consent of the City assign to (i) an affiliate of the Lender, (ii) any bank, insurance company or similar financial institution (or their respective affiliates) or (iii) any other entity approved by the LGC all or any part of its interest in the Mortgaged Property or this Agreement, including, without limitation, the Lender's rights to receive the Installment Payments and any additional payments due and to become due hereunder (including participation arrangements with such entities). For the avoidance of doubt, no consent of the LGC is required if the assignment is to any of the entities described in clause (i) or (ii) of the preceding sentence. Reassignment by any assignee may also only be to (i) an affiliate of the assignee, (ii) a bank, insurance company or similar financial institution (or their respective affiliates) or (iii) to any other entity approved by the LGC. The City agrees that this Agreement may become part of a pool of obligations at the Lender's or its assignee's option. The Lender or its assignees may assign or reassign either the entire pool or any partial interest herein. Notwithstanding the foregoing, no assignment or reassignment of the Lender's interest in the Mortgaged Property or this Agreement shall be effective unless and until the City shall receive a duplicate original counterpart of the document by which such assignment or reassignment is made disclosing the name and address of each assignee. The City covenants and agrees with the Lender and each subsequent assignee of the Lender to maintain for the full term of this Agreement a written record of each such assignment or reassignment in a form necessary to comply with Section 149 of the Internal Revenue Code of 1986, as amended. The City hereby appoints the Lender as its agent for the purpose of maintaining any written record in connection with an assignment under this Section, and the Lender hereby accepts such appointment. The City agrees to execute any document reasonably required by the Lender in connection with any assignment. Notwithstanding any assignment by the Lender of its interest in this Agreement, the City shall not be obligated to provide any financial or other information to any assignee of the Lender except as set forth in Section 7.7.

After the giving of notice described above to the City, the City shall thereafter make all payments in accordance with the notice to the assignee named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgement shall in no way be deemed to make the assignment effective.

The Lender covenants that any disclosure document circulated by it or an assignee in connection with the sale of the Lender's rights in this Agreement will contain a statement to the effect that the City has not reviewed and is not responsible for the disclosure document. The Lender covenants to defend, indemnify and hold harmless the City and its officers, employees and agents against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such Indemnified Party may become subject on account of any statement included in a disclosure document, or failure to include a statement in a disclosure document, unless the City shall have expressly approved the use of such disclosure document.

SECTION 8.2. Assignment and Leasing by the City. (a) This Agreement may not be assigned by the City.

(b) The City may lease all or any portion of the Mortgaged Property, subject to each of the following conditions:

(i) the obligation of the City to make Installment Payments hereunder shall remain obligations of the City;

(ii) the City shall within thirty (30) days prior to the execution and delivery of any such lease, furnish or cause to be furnished to the Lender, a true and complete copy of the form of such lease;

(iii) the Lender shall have received evidence satisfactory to the Lender that such lease is subordinate in all respects to the lien of the Deed of Trust; and

(iv) the lease by the City shall not cause the Mortgaged Property to be used for a purpose other than a governmental or proprietary function of the City authorized under the provisions of the Constitution and laws of the State and shall not cause the interest component in the Installment Payments to be includable in gross income of the Lender for federal income tax purposes (which shall be evidenced by an opinion of counsel acceptable to the Lender if so requested by the Lender).

Notwithstanding the foregoing, the City may enter into any routine event lease of parks and recreation and community center facilities being improved by the City constituting a portion of the Project without complying with the foregoing conditions.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

SECTION 9.1. Events of Default Defined. The following shall be "events of default" under this Agreement and the terms "events of default" and "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) The failure by the City to pay any Installment Payment required to be paid hereunder when due.

(b) The occurrence of an Event of Nonappropriation.

(c) Failure by the City to observe and perform any warranty, covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto other than as referred to in clause (a) or (b) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Lender; provided, however, that if the failure stated in the notice cannot be corrected within the applicable period and if corrective action is instituted by the City within the applicable period and diligently pursued, the City shall have such additional period of time to correct the failure as shall be necessary to correct such failure so long as such correction is diligently pursued, but in no event for an additional period of time in excess of sixty (60) days after the end of such thirty (30) day period.

(d) The City becomes insolvent or the subject of insolvency proceedings; or is unable, or admits in writing its inability, to pay its debts as they mature; or makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its property; or files a petition or other pleading seeking reorganization, composition, readjustment or liquidation of assets, or requesting similar relief; or applies to a court for the appointment of a receiver for it or for the whole or any part of its property; or has a receiver or liquidator appointed for it or for the whole or any part of its property (with or without the consent of the City) and such receiver is not discharged within ninety (90) consecutive days after his appointment; or becomes the subject of an "order for relief" within the meaning of the United States Bankruptcy Code; or files an answer to a creditor's petition admitting the material allegations thereof for liquidation, reorganization, readjustment or composition or to effect a plan or other arrangement with creditors or fail to have such petition dismissed within sixty (60) consecutive days after the same is filed against the City.

(e) The occurrence of an "Event of Default" under the Deed of Trust as defined therein.

(f) Any warranty, representation or statement made by the City herein or in the Deed of Trust or any other document executed and delivered by the City in connection herewith is found to be incorrect or misleading in any material respect as of the date made.

(g) any lien, charge or encumbrance (other than Permitted Encumbrances) prior to or affecting the validity of the Deed of Trust is found to exist.

SECTION 9.2. Remedies on Default. Upon the occurrence of any event of default under Section 9.1, the Lender may, without any further demand or notice, exercise any one or more of the following remedies:

(a) declare the entire amount of the principal component of the Installment Payments and the accrued and unpaid interest component to the date of declaration to be immediately due and payable;

(b) exercise all remedies available at law or in equity or under the Deed of Trust, including foreclosure and sale of the Mortgaged Property, and apply the proceeds of any such sale or other disposition, after deducting all costs and expenses, including court costs and reasonable attorneys' fees incurred with the recovery, repair, storage and other sale or other disposition costs, toward the principal component and accrued and unpaid interest of the balance of Installment Payments due; and

(c) subject to the Enforcement Limitation, proceed by appropriate court action to enforce performance by the City of the applicable covenants of this Agreement or to recover for the breach thereof.

NOTWITHSTANDING ANY OTHER PROVISIONS HEREIN, IT IS THE INTENT OF THE PARTIES HERETO TO COMPLY WITH SECTION 160A-20 OF THE GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED. NO DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST THE CITY IN FAVOR OF THE LENDER OR ANY OTHER PERSON IN VIOLATION OF SAID SECTION 160A-20, INCLUDING, WITHOUT LIMITATION, ANY DEFICIENCY JUDGMENT FOR AMOUNTS THAT MAY BE OWED HEREUNDER WHEN THE SALE OF ALL OR ANY PORTION OF THE MORTGAGED PROPERTY IS INSUFFICIENT TO PRODUCE ENOUGH MONEYS TO PAY IN FULL ALL REMAINING OBLIGATIONS HEREUNDER.

SECTION 9.3. No Remedy Exclusive. No remedy conferred herein upon or reserved to the Lender is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. To the extent permitted by law, any delay or omission to exercise any right or power accruing upon any default shall not impair any such right or power nor shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lender to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required in this Article or by law.

SECTION 9.4. Agreement to Pay Attorneys' Fees and Expenses. In the event the City should default under any of the provisions hereof and the Lender should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the City contained herein, the City agrees that it will pay on demand to the Lender, subject to the limitations and provisions of Section 6-21.2 of the General Statutes of North Carolina, as amended, the reasonable fees of such attorneys and such other expenses so incurred by the Lender. For purposes of this Section, the reasonable fees of attorneys shall mean attorneys' fees actually incurred at such attorneys' standard hourly rate for such services and shall not be based on any percentage of the

outstanding amount due; provided, however that such attorneys' fees shall not exceed the maximum amount permitted by law.

SECTION 9.5. No Additional Waiver Implied by One Waiver. In the event any provision contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder except as may be provided by law.

ARTICLE X

PREPAYMENT OF INSTALLMENT PAYMENTS

SECTION 10.1. Optional Prepayment of Installment Payments. (a) Upon at least thirty (30) days' prior written notice to the Lender (unless otherwise waived by the Lender), which prepayment may be conditioned on the availability of funds on the prepayment date, the City may prepay the outstanding principal component of the Installment Payments in whole or in part on any date at a prepayment price equal to 100% of the principal component of the Installment Payments to be prepaid, plus accrued interest thereon to the prepayment date.

(b) In the event of a partial prepayment, the City shall designate the amount of prepayment applicable to the Component A Advancement and the Component B Advancement in the prepayment notice required by Section 10.1(a) hereof. Any amount designated to prepay the Component A Advancement in part shall be applied pro rata to reduce the principal components within the Component A Advancement. Any amount designated to prepay the Component B Advancement in part shall be applied pro rata to reduce the principal components within the Component B Advancement. In the event of any such prepayment in part, the Lender shall provide the City with a new Installment Payment Schedule which reflects such prepayment which will replace the Installment Payment Schedule set forth in Exhibit A.

ARTICLE XI

MISCELLANEOUS

SECTION 11.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received upon the earlier of actual receipt or three days after deposit in the United States first-class, registered or certified mail (unless otherwise provided herein), postage prepaid, at the following addresses:

If to the City:

City of New Bern, North Carolina
300 Pollock Street
Post Office Box 1129
New Bern, North Carolina 28560-1129
Attention: Director of Finance

If to the Lender:

TD Bank, N.A.
11325 N. Community House Road
Suite 500
Charlotte, North Carolina 28255
Attention: Mason Hurley, Vice President and Senior Relationship Manager

The City and the Lender, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

SECTION 11.2. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the City and the Lender and their respective successors and assigns. Whenever in this Agreement either the City or the Lender is named or referred to, such reference shall be deemed to include the successors or assigns thereof and all the covenants and agreements in this Agreement contained by or on behalf of the City or the Lender shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 11.3. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 11.4. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 11.5. Commitment Letter. The terms of this Agreement shall supersede the terms of any commitment letter, proposal or other term sheet provided by the Lender. To the extent of any conflict between this Agreement and such other documents, this Agreement shall take priority.

SECTION 11.6. Applicable Law. This Agreement shall be construed and governed in accordance with the laws of the State.

SECTION 11.7. No Advisory Services. The City acknowledges and agrees that (i) this Agreement is an arm's length commercial transaction between the City and the Lender in which the Lender is acting solely as a principal to make a loan to the City, and not as a municipal advisor, financial advisor or fiduciary to the City or any other person or entity regardless of whether the Lender or an affiliate has or is currently acting as such on a separate transaction; (ii) the Lender has not assumed any advisory or fiduciary responsibility to the City with respect to the transaction contemplated by this Agreement, and the discussions, undertakings and procedures leading to this Agreement (irrespective of whether the Lender or its affiliates have provided other services or are currently providing other services to the City on other matters); (iii) the only obligations the Lender has to the City with respect to the transaction contemplated by this Agreement are expressly set forth herein or the relating financing documents; and (iv) the City has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

SECTION 11.8. E-Verify. The Lender hereby certifies that the Lender understands that "E-Verify" is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. The Lender uses E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended. The Lender shall require that any subcontractor that it uses in connection with the transactions contemplated by this Agreement certify to such subcontractor's compliance with E-Verify.

SECTION 11.9. Patriot Act Notice. The Lender is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56) (signed into law October 26, 2001) (the "Act") and hereby notifies the City that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the City, which information includes the name and address of the City and other information that will allow the Lender to identify the City in accordance with the Act.

(signatures to follow)

IN WITNESS WHEREOF, the City and the Lender have caused this Agreement to be executed in their respective names by their respective duly authorized officers as of the date first above written.

CITY OF NEW BERN, NORTH CAROLINA

[SEAL]

By: _____
Jeffrey T. Odham, Mayor

Attest:

Brenda E. Blanco, City Clerk

TD BANK, N.A.

By: _____
Vice President

[Signature page to the Installment Financing Agreement, dated as of September 20, 2023, between the City of New Bern, North Carolina and TD Bank, N.A.]

CERTIFICATE OF LOCAL GOVERNMENT COMMISSION

The foregoing Installment Financing Agreement has been approved under the provisions of Section 160A-20 and Article 8 of Chapter 159 of the General Statutes of North Carolina, as amended.

Secretary, Local Government Commission
of North Carolina

INSTALLMENT PAYMENT SCHEDULE

[To be inserted – Table will show debt service on Component A, Component B and on an aggregate basis]

0900 LEGALS

ESTATE NOTICE

The undersigned, having qualified as Executor of the Estate of Sylvia Cox Simmons, deceased, late of Craven County, this is to notify all persons having claims against said estate to present them to the undersigned on or before the 1st day of December, 2023, or this notice will be pleaded in bar of their recovery. All persons indebted to said estate will please make immediate payment to the undersigned.

This the 31st day of August, 2023.

Gina Marie Miller
Executor
for the Estate of
Sylvia Cox Simmons
2608 Cameron Pond Dr
Cary NC 27519
August 31, September 7, 14, 21,
2023

**NORTH CAROLINA
CRAVEN COUNTY
IN THE GENERAL COURT OF
JUSTICE
DISTRICT COURT DIVISION
FILE NO. 07 CVD 1415
NOTICE OF SERVICE
OF PROCESS BY
PUBLICATION**

COUNTY OF CRAVEN
Plaintiff,

vs.
The HEIRS, ASSIGNS, and DE-
VISEES
of FLORENCE ELNORA TUR-
MAN, et al
Defendants.

TO: The HEIRS, ASSIGNS and
DEVISEES of FLORENCE EL-
NORA TURMAN and spouse, if
any, which may include The
HEIRS, ASSIGNS and DE-
VISEES of RUDOLPH J. TUR-
MAN and spouse, if any, or any
other person or entity claiming
thereunder A pleading seeking re-
lief against you has been filed in
the above-entitled action and no-
tice of service of process by pub-
lication began on August 31, 2023.
The nature of the relief being
sought is as follows: Foreclosure
on tax parcel(s) more completely
described in the Complaint, to col-
lect delinquent ad valorem taxes
(assessments). Plaintiff seeks to
extinguish any and all claim or in-

0900 LEGALS

terest that you may
have in said property.
You are required to make defense
to such pleading not later than
forty (40) days after the date of the
first publication of notice stated
above, exclusive of such date, be-
ing forty (40) days after August
31, 2023, or by October 10, 2023,
and upon your failure to do so, the
party seeking service of process by
publication will apply to the Court
for relief sought.

This the 24th day of August, 2023.

ZACCHAEUS LEGAL SER-
VICES
By:

MARK D. BARDILL/MARK B.
BARDILL
Attorney for Plaintiff
NC Bar #12852/56782
310 W. Jones St.
P. O. Box 25
Trenton, North Carolina 28585
Telephone: (252) 448-4541
August 31, 2023
September 7, 2023
September 14, 2023

**NORTH CAROLINA
CRAVEN COUNTY 23-E-617
NOTICE TO CREDITORS
NORTH CAROLINA,
CRAVEN COUNTY**

All persons, firms and corpora-
tions having claims against the Es-
tate of Barbara Willis. File No.
23-E-617, deceased, of Craven
County, NC, are notified to present
the same to the personal represent-
ative listed below on or before
December 1, 2023, or this notice
will be pleaded in bar of recovery.
All debtors of the said estate are
asked to make immediate pay-
ment.

This 31st day of August, 2023.

Christine Novak, Executor of the
Estate of Barbara Willis
c/o Ernest C. Richardson, III
503 Pollock St.
New Bern, NC 28562
August 31, September 7, 14, 21,
2023



0900 LEGALS

**NOTICE OF
PUBLIC HEARING**

The Board of Aldermen of the City
of New Bern, North Carolina (the
"City") has determined to con-
sider whether to enter into an in-
stallment financing agreement (the
"Agreement"), pursuant to Section
160A-20 of the General Statutes of
North Carolina obligating the City
to make installment payments
thereunder in a principal amount
not to exceed \$10,000,000, plus
interest thereon. The Agreement is
for the purpose of providing
funds, together with any other
available funds, to pay the cost of
acquiring, constructing and equip-
ping the new Stanley White Recrea-
tion Center for the City (the
"Project"). To secure its obliga-
tions under the Agreement, the
City will grant a lien on all or a
portion of the Project, together
with any improvements or fixtures
located or to be located thereon.
Section 160A-20(g) of the Gener-
al Statutes of North Carolina re-
quires that the City hold a public
hearing prior to entering into the
Agreement. If the Board of Alder-
men of the City so determines, an
application will be submitted to the
Local Government Commission of
North Carolina for approval of the
Agreement.

Please take notice that the Board
of Aldermen of the City will con-
duct a public hearing in the City
Hall Courtroom located at 300 Pol-
lock Street in New Bern, North
Carolina at 6:00 p.m. on Septem-
ber 12, 2023 at which time any
person may be heard regarding the
proposed Agreement.

Any person wishing to comment in
writing regarding the proposed
Agreement should do so prior to
September 12, 2023 to the City of
New Bern, North Carolina, 300
Pollock Street, New Bern, North
Carolina 28560, Attention: Brenda
E. Blanco, City Clerk.

Brenda E. Blanco
City Clerk of the
City of New Bern, North Carolina
August 31

**Classifieds
Get The Job Done**

0900 LEGALS

**NOTICE TO CREDITORS
NORTH CAROLINA,
CRAVEN COUNTY**

All persons, firms and corpora-
tions having claims against the Es-
tate of Billy Gene Mitchell, File
No.: 2023 E 46, deceased, of
Craven County, NC, are notified to
present the same to the personal
representative listed below on or
before December 1, 2023, or this
notice will be pleaded in bar of re-
covery. All debtors of the said es-
tate are asked to make immediate
payment.

This 31st day of August, 2023.

Jessica Mitchell Bush and
William Mitchell,
Co-Administrators of the Estate
of Billy Gene Mitchell
c/o Moeller, PA
607 Broad St.
New Bern, NC 28560
8/31, 9/7, 9/14, 9/21

Notice to Creditors

North Carolina. Craven County
All persons, firms and corpora-
tions having claims against the Es-
tate of William Fippinger, de-
ceased, of Vanceboro, NC, are no-
tified to present the same to the
personal representative listed be-
low on or before November 17
2023, or this notice will be pleaded
in bar of recovery. All debtors of
the said estate are asked to make
immediate payment. This the 17th
day of August, 2023.

Jennifer Elson, Executrix
of the Estate of William Fippinger
c/o Quay & Associates, P.A.
412 Broad Street
New Bern, NC 28560
PUBLICATION DATES: 8/17/23;
8/24/23; 8/31/23; 9/7/23

NOTICE TO CREDITORS

All persons, firms and corpora-
tions having claims against the Es-
tate of HELEN R. YOUNG, De-
ceased, of Craven County, N.C.,
are notified to present the same to
the Personal Representative listed
below on or before November 24,
2023, or this Notice will be
pleaded in bar of recovery. All
debtors of the said Estate are asked
to make immediate payment. This
24th day of August, 2023.

0900 LEGALS

SAN

c/o T
War

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New Bern
August 24, 31

Notice to
North Carolina
All persons, fi-
tions having clai-
tate of Jimmy
ceased, of New I
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on or before No
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day of August
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c/o Quay

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pairs, pair
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AGENDA ITEM COVER SHEET

Agenda Item Title:

Presentation: Project Lifesaver

Date of Meeting: 9/12/2023	Ward # if applicable: N/A
Department: Police and Fire	Person Submitting Item: Chief Patrick Gallagher and Battalion Chief McConnell
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing:

Explanation of Item:	The MOU for Project Lifesaver was approved by the BOA on August 8, 2023. This agreement allows for the full implementation of the program in New Bern. The presentation today will provide additional information and help educate the Board and the public of the benefits of the program. Mrs. January Brown and Mr. David Bone will participate.
Actions Needed by Board:	No action
Backup Attached:	Memo to Mayor Odham
Is item time sensitive? <input type="checkbox"/> Yes <input type="checkbox"/> No	

Cost of Agenda Item: \$0

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

Additional Notes: We are considering showing a very brief video as an introduction to our presentation. See Cover Memo for additional information.



Founded 1797

NEW BERN

NEW BERN POLICE DEPARTMENT

P.O. Box 1129, New Bern, NC 28563-1129

(252) 672-4100

Police and Community Come Together Here



Patrick L. Gallagher
Chief of Police

To: Mayor Jeffrey T. Odham and the Board of Alderman
From: Chief Patrick Gallagher
Date: September 12, 2023
Subject: **Project Lifesaver Presentation**

The New Bern Police and Fire and Rescue Departments have been associated with the Dementia Friendly Community Taskforce for several years. The taskforce's chair is Mrs. January Brown with Eastern Carolina Council / Eastern Carolina Council Area Agency on Aging. Through the association of this taskforce, we discussed the viability of bringing Project Lifesaver to New Bern.

Project Lifesaver is the premier search and rescue program operated internationally by public safety agencies and is strategically designed for "at risk" individuals who are prone to the life-threatening behavior of wandering. The primary mission of Project Lifesaver is to provide timely response to save lives and reduce potential injury for adults and children with the propensity to wander due to a cognitive condition, such as Alzheimer's or dementia. Within 100 miles of New Bern, there are 17 other agencies utilizing this program, the closest are Onslow County Sheriff's Office and Morehead City.

On August 8, 2023, the Board of Alderman approved the Memo of Understanding between the City of New Bern and the Eastern Carolina Council Area Agency on Aging to bring Project Lifesaver to our city. We are currently bringing new clients into the program. Our current plan is to support as many as 20 clients based on availability and funding.

Today, we wish to present some brief presentation to help educate the community of this new program. We currently have trained Police and Fire personnel who are fully trained in the utilization of Project Lifesaver equipment. The equipment utilized will aid in our ability to quickly locate a client once he/she is discovered missing. The equipment, which we will present today, is currently stored at the NB Fire and Rescue and Police facilities and are easily accessible and ready for deployment. Joining us today are representatives of Eastern Carolina Council Area Agency on Aging, Mrs. January Brown, and Mr. David Bone. Both will provide additional information associated with the case management and criteria that will be used in the selection process for the program.



A Nationally Accredited Agency

Integrity – Motivation – Professionalism – Accountability – Commitment – Trust

AGENDA ITEM COVER SHEET

Agenda Item Title:

Considering Adopting a Resolution to Amend the Resolution #23-050 Street Closures for Swiss Bear Street Cafes and Family Entertainment.

Date of Meeting: September 12, 2023	Ward # if applicable: Ward 1
Department: Parks & Recreation	Person Submitting Item: Kari Warren Director of Parks & Recreation
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing: N/A

Explanation of Item:	<p>Earlier this year, Swiss Bear requested to close portions of downtown streets to allow for the operation of street cafes and family entertainment. The Board adopted Resolution #23-050 on May 23, 2023, approving the request. Recently, Swiss Bear has requested that one of the approved closure dates be designated for MumFeast and that the closure be modified as followed:</p> <ul style="list-style-type: none"> • the closure on September 29, 2023, be designated for MumFeast and begin at 5:00 p.m. instead of 6:00 p.m.; and • the closure be extended to include the 400 block of Pollock Street and the entire 300 block of Middle Street, and that a rain date of October 6, 2023 be approved.
Actions Needed by Board:	Adopt the Resolution
Backup Attached:	Resolution - Memo – Application
Is item time sensitive? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

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

Additional Notes: N/A



Aldermen

Rick Prill
Hazel B. Royal
Bobby Aster
Johnnie Ray Kinsey
Barbara J. Best
Robert Brinson, Jr.

Kari Warren, CPRP
Director of Parks & Recreation

Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance



Memo To: Mayor and Board of Aldermen
From: Kari Warren, CPRP *KW*
Director of Parks and Recreation
Re: Downtown Street Closure Request

Background Information:

Earlier this year, Swiss Bear requested to close portions of downtown streets to allow for the operation of street cafes and family entertainment. The Board adopted Resolution #23-050 on May 23, 2023, approving the request. Recently, Swiss Bear has requested that one of the approved closure dates be designated for MumFeast and that the closure be modified as followed:

- the closure on September 29, 2023, be designated for MumFeast and begin at 5:00 p.m. instead of 6:00 p.m.; and
- the closure be extended to include the 400 block of Pollock Street and the entire 300 block of Middle Street, and that a rain date of October 6, 2023 be approved.

Recommendation:

The Director of Parks and Recreation recommends approval and requests the Board adopt a resolution approving the request.

If you have any questions concerning this matter, please let me know.

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

AMENDMENT TO RESOLUTION #23-050

THAT WHEREAS, the Board of Alderman adopted Resolution #23-050 on May 23, 2023, approving a series of dates for street closures as requested by Swiss Bear Downtown Development Corporation for the operation of street cafes; and

WHEREAS, the streets to be closed included the 200 block of Middle Street, the 300 block of Middle Street from First Citizens Bank's driveway to Broad Street, and the 300 block of Pollock Street from 6 p.m. until 10:45 p.m.; and

WHEREAS, one of the dates of closure was listed as Friday, September 29, 2023, and Swiss Bear has now requested that date be designated as MumFeast and that the closure begin at 5:00 p.m.; and

WHEREAS, Swiss Bear is also requesting that the street closure for MumFeast be extended to include the 400 block of Pollock Street and the entire 300 block of Middle Street, and that a rain date of October 6, 2023 be approved; and

WHEREAS, the Director of Parks and Recreation of the City of New Bern recommends the changes requested.

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

That Resolution #23-050 is amended to modify the street closure for September 29, 2023 to reflect the 200-300 blocks of Middle Street and 300-400 blocks of Pollock Street shall be closed to vehicular traffic from 5:00 p.m. until 10:45 p.m. for MumFeast with a rain date of October 06, 2023.

ADOPTED THIS 12th DAY OF SEPTEMBER 2023.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

Kari Greene-Warren

From: Lynne Harakal <director@swissbear.org>
Sent: Wednesday, August 16, 2023 10:46 AM
To: Ann Marie Byrd; Kari Greene-Warren
Cc: Foster Hughes
Subject: FW: Street Closures

Importance: High

This is the flyer and email that will be distributed to downtown businesses and residents on the affected blocks.

The date for MumFeast! is September 29, the last Friday of Street Cafes. Under normal circumstances we do not have rain dates for Street Cafes. Since MumFeast! has Sponsors, we are making a request to the Board of Alderman for a rain date of October 6. We will also be requesting MumFeast! street closures to begin at 5pm so music can kick off at 6pm. Every other Street Café Friday in September will remain with 6pm closures. The 400 block of Pollock and the 300 block of Middle between the First Citizens Bank parking lot and Pollock will also be added to the request for MumFeast! ONLY. Thank you for your understanding.

Swiss Bear Team

Lynne Harakal, *Executive Director*
Swiss Bear, Inc. , *Main Street program for City of New Bern since 1980*
252-626-6280
director@swissbear.org



2023 Accredited As a Main Street America™ Accredited program, Swiss Bear, Inc. is a recognized leading program among the national network of more than 1,200 neighborhoods and communities who share both a commitment to creating high-quality places and to building stronger communities through preservation-based economic development. All Main Street America™ Accredited programs meet a set of National Accreditation Standards of Performance as outlined by the National Main Street Center.



NC MAIN STREET
Designated Community

New Bern is a North Carolina Main Street Community, designated by the NC Department of Commerce and Main Street and Rural Planning Center. Swiss Bear, Inc. is charged with administering the program at the local level and building a public-private partnership to spur economic development in partnership with the state agency.

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Kari Greene-Warren

From: Ann Marie Byrd <Events@swissbear.org>
Sent: Wednesday, August 16, 2023 10:44 AM
To: Lynne Harakal; Kari Greene-Warren
Subject: RE: MumFeast Rain Date - Follow Up

Importance: High

Hi Kari,

I think in order for this event to be most successful, the music should start at 6. I would like the street closures to therefore begin at 5 for both Sept 29 and the rain date of Oct 6. That would allow your team to start setting up the stage at 5:00pm. Please add the closure to the 400 block of Pollock and 300 Middle. Lynne and I are working on the notifications now.

Thank you for your help! We appreciate you!

AM

Ann Marie Byrd, Ph.D.

Events Director, Swiss Bear, Inc.

Main Street program for the City of New Bern since 1980

252-571-5460 (Cell & Text)

events@swissbear.org



As a Main Street America™ Accredited program, Swiss Bear, Inc. is a recognized leading program among the national network of more than 1,200 neighborhoods and communities who share both a commitment to creating high-quality places and to building stronger communities through preservation-based economic development. All Main Street America™ Accredited programs meet a set of National Accreditation Standards of Performance as outlined by the National Main Street Center.



New Bern is a North Carolina Main Street Community, designated by the NC Department of Commerce and Main Street and Rural Planning Center. Swiss Bear, Inc. is charged with administering the program at the local level and building a public-private partnership to spur economic development in partnership with the state agency.



From: Lynne Harakal <director@swissbear.org>
Sent: Wednesday, August 16, 2023 6:29 AM
To: Kari Greene-Warren <Greene-WarrenK@newbernnc.gov>; Ann Marie Byrd <Events@swissbear.org>
Subject: Re: MumFeast Rain Date - Follow Up

AM will have to address the time closure based on the entertainment scheduled. My only comment is that if 400 Pollock is closed, we should also close between Pollock and the First Citizens Bank parking lot (300 Middle).
Thanks for your help with this Kari!
Lynne

Get [Outlook for Android](#)

From: Kari Greene-Warren <Greene-WarrenK@newbernnc.gov>
Sent: Tuesday, August 15, 2023 3:27:38 PM
To: Ann Marie Byrd <Events@swissbear.org>; Lynne Harakal <director@swissbear.org>
Subject: MumFeast Rain Date - Follow Up

Hey ladies,

I wanted to follow up on the conversation we had last Friday, August 11 regarding MumFeast. We discussed requesting a rain date for this event. Please confirm what I have below is correct.

- October 6th will be the requested rain date for MumFeast. This request will be the same as what has been and will be added to the September 29th closure.
- September 29th is the current MumFeast date (a closure already approved through Downtown Dining).
- We are going to add a request for the 400 block of Pollock Street to be closed on the September 29th to accommodate stage & tent set up.
- The current closure time for September 29th is 6:00pm – 10:45pm. Please let me know if this needs to be adjusted. What time will the band need to set up?

Additionally, SB will reach out to residents and businesses affected by the closure request to inform them about the rain date closure. I will need proof of this notification by signatures or emails by Friday, August 25 to submit with the Agenda Item to the Board of Alderman.

Please let me know if you have any questions.

Kari A. Warren, CPRP, LRT
Director of Parks & Recreation
Office: 252.639.2902
Email: warrenk@newbernnc.gov



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RESOLUTION

THAT WHEREAS, Swiss Bear Downtown Development Corporation is planning their series of restaurant street cafes and family entertainment activities and has requested the 200 block of Middle Street, 300 block of Middle Street from First Citizens Bank driveway to Broad Street, and the 300 block of Pollock Street be closed to vehicular traffic from 6:00 p.m. until 10:45 p.m. The dates of the closures are as follows:

- Friday, May 26, 2023,
- Friday, June 2, 2023,
- Friday, June 9, 2023,
- Friday, June 16, 2023,
- Friday, June 23, 2023,
- Friday, June 30, 2023,
- Friday, September 1, 2023
- Friday, September 8, 2023,
- Friday, September 15, 2023,
- Friday, September 22, 2023, and
- Friday, September 29, 2023,

WHEREAS, the Director of Parks and Recreation of the City of New Bern recommends the streets be closed as requested.

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

That the 200 block of Middle Street, 300 block of Middle Street from First Citizens Bank driveway to Broad Street, and the 300 block of Pollock Street be closed to vehicular traffic from 6:00 p.m. until 10:45 p.m. on the following dates to accommodate street cafes and entertainment:

- Friday, May 26, 2023,
- Friday, June 2, 2023,
- Friday, June 9, 2023,
- Friday, June 16, 2023,
- Friday, June 23, 2023,
- Friday, June 30, 2023,
- Friday, September 1, 2023,
- Friday, September 8, 2023,
- Friday, September 15, 2023,

- Friday, September 22, 2023, and
- Friday, September 29, 2023,

ADOPTED THIS 23rd DAY OF MAY 2023.



JEFFREY T. ODHAM, MAYOR



BRENDA E. BLANCO, CITY CLERK

AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider Adopting a Resolution Approving the NBAMPO 5303 Grant Contract with the NC Department of Transportation.

Date of Meeting: 9/12/2023	Ward # if applicable: N/A
Department: MPO/Development Services	Person Submitting Item: Deanna Trebil
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing: N/A

Explanation of Item:	The City of New Bern, on behalf of the New Bern Area Metropolitan Planning Organization (NBAMPO), is identified as the direct recipient of Section 5303 Federal Transit Administration Urban Planning Funds. The funds are managed by the NCDOT Public Transportation Division (PTD). Every year NCDOT-PTD requires that the MPO Lead Planning Agency (City of New Bern) elected officials approve a Resolution authorizing their representative to sign the Grant Agreement with NCDOT, to receive such funds. For Fiscal year 2024, the total 5303 allocation is \$60,080 with a Federal and State share of \$54,072 and local share of \$6,008 to be provided by NBAMPO's participating member agencies as described in attached memo.
Actions Needed by Board:	Adopt Resolution
Backup Attached:	Resolution, Memo, Grant Contract
Is item time sensitive? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

Cost of Agenda Item: \$3,333.24 local match share for the City of New Bern
If this requires an expenditure, has it been budgeted and are funds available and certified by the Finance Director? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Additional Notes:



Transportation Advisory Committee (TAC)

August 25, 2023

Memorandum

To: Foster Hughes - City Manager, New Bern
Jack B. Veit III - Manager, Craven County
Tonya Bell - Town Clerk, Bridgeton
Delane Jackson - Town Manager, River Bend
Holly Willis - Town Clerk, Trent Woods

From: Deanna Trebil, MPO Administrator

Subject: FY 2024 MPO Funding and Local Match

As of March 23, 2023, the New Bern Area MPO Transportation Advisory Committee unanimously approved the FY 2024 Unified Planning Work Program.

The 104f Federal Highway Planning grant request is for \$196,300, with a required local match of \$48,175, for a total of \$244,475 programmed for FY 2024. The 5303 Federal Transit Planning grant request is for \$48,064 with a State match of \$6,008 and a required local match of \$6,008 for a total of \$60,080 programmed for FY 2024. The combined required local match is \$54,183.

Please use the following amounts when including the MPO's local match in your jurisdiction's FY 2024 annual budget:

FY 2024 104 f and 5303 Local Match	Jurisdiction	% of UZA	FHWA Cost Share	FTA Cost Share	Total Cost Share
\$54,183	New Bern	55.48%	\$26,727.49	\$3,333.24	\$30,060.73
	River Bend	5.94%	\$2,861.60	\$356.88	\$3,218.47
	Trent Woods	8.14%	\$3,921.45	\$489.05	\$4,410.50
	Bridgeton	0.84%	\$404.67	\$50.47	\$455.14
	Craven County	29.60%	\$14,259.80	\$1,778.37	\$16,038.17

Please contact me at 639-7592 or via email at trebil.deanna@newbernnc.gov if you require additional information.

**RESOLUTION
AUTHORIZING THE CITY OF NEW BERN
TO ENTER INTO AN AGREEMENT WITH
THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION**

WHEREAS, the State of North Carolina is the Designated Recipient of Section 5303 Federal Transit Administration (FTA) Planning Funds; and

WHEREAS, the City of New Bern, on behalf of the New Bern Area Metropolitan Planning Organization (NBAMPO) has been identified as the Direct Recipient of Section 5303 FTA Planning Funds.

NOW THEREFORE, BE IT RESOLVED that the New Bern City Manager is hereby authorized to enter into contracts with the Department of Transportation and execute all agreements and contracts with the North Carolina Department of Transportation, Public Transportation Division that address Section 5303 FTA Planning Funds.

This the 12th day of September, 2023.

The motion to adopt this Resolution was made by Alderman _____,
seconded by Alderman _____ and passed by a vote of _____ to _____.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

INSTRUCTIONS FOR EXECUTING GRANT AGREEMENTS NONPROFIT GRANTEES

Included in this correspondence is an electronic file in a PDF format of the grant agreement(s) to be executed between the local grant recipient and the North Carolina Department of Transportation.

1. The person officially authorized by resolution of the governing body to accept the department's offer of financial assistance should electronically sign each agreement where indicated. The signature must be witnessed. Stamped signatures are not acceptable.
2. Enter your agency's **Federal Tax ID Number** and Fiscal Year-End on the signature page. Complete the section on the table for **Contract Administrators: For the Contractor: "If Delivered by US Postal Service" and "If Delivered by Any Other Means"**.
3. **Do not date the agreements.** This will be done upon execution by the department.
4. **Return 1 copy within thirty (30) days** via DocuSign.
5. **Submit a copy of your tax exemption letter, ruling and determination letter, or other document issued by the Internal Revenue Service as applicable.** This will be incorporated into the grant agreement as Attachment A.
6. **Complete and submit a "No Overdue Tax Debts Certification" as defined by G. S. 105-243.1 using the form and instructions on the Office of State Auditor's Web site at: <http://www.ncauditor.net>**
The link to the form (State Grant Certification - No Overdue Tax Debt) is located at the bottom of the Web page.
This will be incorporated into the grant agreement as Attachment B.
7. **Conflict of Interest Policy. Grantees must submit a copy of their policy addressing Conflicts of Interest.**

A fully executed agreement will be returned to you via email and will be available for review in EBS upon the approval of your Agreement.

In the event the contract cannot be returned within thirty (30) days, please call me immediately at (919) 707-4672.

Please note that the department cannot reimburse the grant recipient for any eligible project expenses until the agreements are fully executed.



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

ROY COOPER
GOVERNOR

J. ERIC BOYETTE
SECRETARY

June 9, 2023

Mr. Foster Hughes, City Manager
City of New Bern
P. O. Box 1129
New Bern, NC 28563-1129

RE: FY2024 Metropolitan Planning Program (Section 5303)
Project No. 24-08-125
WBS Element No: 36230.42.10.6
Period of Performance: 7/1/2023 – 6/30/2024

Dear Mr. Hughes:

On May 4, 2023, the Board of Transportation approved your organization's request for a FY24 Metropolitan Planning Program Grant in the amount of \$60,080. The agreement to be executed between City of New Bern and NCDOT is enclosed. The individual authorized to enter into this agreement for the financial assistance on behalf of your agency will sign the agreement. Please provide a copy of the agreement to all parties that will be involved in the administration of the grant, and request that the agreement be reviewed carefully. Instructions for completion of the grant agreement process are enclosed.

Please refer to Section 6b of the grant agreement that requires sub-recipients to submit monthly or quarterly requests for reimbursement.

If you have any questions related to the grant agreement, please contact Myra Freeman, Financial Manager at 919-707-4672 or your assigned Accounting Specialist. In any correspondence, please reference your assigned project number, WBS element, Agreement number and period of performance referenced in this letter.

Sincerely,

Ryan Brumfield
Director

RB\mf

cc: Kim Rose, Senior Accountant
Attachments

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

and

CITY OF NEW BERN

On behalf of

NEW BERN AREA METROPOLITAN

PLANNING ORGANIZATION

**PUBLIC TRANSPORTATION GRANT AGREEMENT FOR
METROPOLITAN PANNING GRANT PROGRAM**

Federal Award Identification

Application Number: **1000017561**
Agreement Number:
NCDOT Project Number(s): **24-08-125**
Federal Awarding Agency:
Federal Award Identification
Number(s) (FAIN) Number(s):
CFDA Number: **20.505**
Unique Entity Identifier (UEI)
Number: **CKYTDKAT93Z3**
Total Amount of this Award(s): **\$60,080**
Federal Funds Awarded: **\$48,064**
State Funds: **\$6,008**
Local Funds: **\$6,008**

Federal Award Date:
*(date signed by authorized
official of USDOT)*

Award Period of Performance

Start Date: **JULY 1, 2023**
End Date: **JUNE 30, 2024**

Budget Period

Start Date: **JULY 1, 2023**
End Date: **JUNE 30, 2024**

*End date is date that
subrecipient if authorized to*

*expend funds awarded
including any carry-over*

Approved Indirect Cost Rate: **N/A**

Award is for R&D: yes/no **NO**

Federal Funded Programs:

- 5303 Metropolitan Planning Grant**
- 5307 Urbanized Area Formula Grant**
- 5310 Enhanced Mobility of Seniors & Individuals with Disabilities Grant**
- 5311 Community Transportation Rural Formula Grant**
- 5311 Appalachian Development Transit Assistance Grant**
- 5311f Intercity Bus Grant**
- 5317 New Freedom Grant**
- 5339 Bus and Bus Facility Grant**
- FTA American Rescue Plan Act (ARPA) Grant**

THIS AGREEMENT made this the _____ day of _____, 20____, (hereinafter referred to as AGREEMENT) by and between the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as "Department", an agency of the State of North Carolina) and **CITY OF NEW BERN on behalf of NEW BERN AREA METROPOLITAN PLANNING ORGANIZATION**,, (acting in its capacity as the grant recipient hereinafter referred to as the "Subrecipient" and together with Department as "Parties").

1. Purpose of Agreement

The purpose of this Agreement is to provide for the undertaking of nonurbanized and small urban public transportation services as described in the project application (hereinafter referred to as "Project") and to state the terms and conditions as to the manner in which the Project will be undertaken and completed. This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein. This Agreement is solely for the benefit of the identified parties to the Agreement and is not intended to give any rights, claims, or benefits to third parties or to the public at large.

2. Availability of Funds

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation and appropriation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

3. Period of Performance

This Agreement shall commence upon the date of execution with a period of performance for all expenditures that extends from **July 1, 2023, to June 30, 2024**. Any requests to change the Period of Performance must be made in accordance with the policies and procedures established by the Department or FTA. The Subrecipient shall commence, carry on, and complete the approved Project in a sound, economical, and efficient manner.

4. Project Implementation

- a. **Scope of Project.** **The City of New Bern, operating as the New Bern Urban Area MPO, will use the funding for transit planning in the MPO area.**
Federal award project description as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA)
- b. The Subrecipient shall undertake and complete the project in accordance with the procedures, terms, and conditions herein and as included in the related grant application for financial assistance, the terms of which are incorporated by reference.

- c. Amendment. Any amendment to this Agreement shall be done in writing and in accordance with established policies and procedures and only by mutual consent of the Parties.

5. Cost of Project/Project Budget

The total cost of the Project approved by the Department is **SIXTY THOUSAND EIGHTY DOLLARS (\$60,080)** as set forth in the Project Description and Budget, incorporated into this Agreement as **Attachment A**. The Department shall provide, from Federal and State funds, the percentages of the actual net cost of the Project as indicated below, not in excess of the identified amounts for eligible Administrative, Operating, and Capital expenses. The Subrecipient hereby agrees that it will provide the percentages of the actual net cost of the Project, as indicated below, and any amounts in excess of the Department's maximum (Federal plus State shares) contribution. The net cost is the price paid minus any refunds, rebates, or other items of value received by the Subrecipient which have the effect of reducing the actual cost.

Operating WBS	Operating Total	Operating Federal (80%)	Operating State (10%)	Operating Local (10%)
36230.42.10.6 Agreement #	\$60,080	\$48,064	\$6,008	\$6,008
Project Total	Project Total	Project Total Federal	Project Total State	Project Total Local
	\$60,080	\$48,064	\$6,008	\$6,008

6. Project Expenditures, Payments, and Reimbursement

- a. General. The Department, utilizing available state and federal funds, shall reimburse the Subrecipient for allowable costs for work performed under the terms of this Agreement.
- b. Reimbursement Procedures. The Subrecipient shall submit for reimbursement all eligible costs incurred within the agreement Period of Performance.
 - i. Claims for reimbursement shall be made no more than monthly or less than quarterly, using the State's grant system, Enterprise Business Services (EBS) Partner Application.

- ii. All requests for reimbursement must be submitted within (30) days following the end of the project's reporting period. Any Subrecipient that fails to submit a request for reimbursement for the first two quarters of agreement fiscal year by January 31 or the last two quarters by July 31 will forfeit its ability to receive reimbursement for those periods.
 - iii. All payments issued by the Department will be on a reimbursable basis unless the Subrecipient requests and the Department approves an advance payment.
 - iv. Supporting documentation for proof of payment shall be provided upon request.
- c. Subrecipient Funds. Prior to reimbursement, the Subrecipient shall provide the Department with proof that the Subrecipient has met its proportionate share of project costs from sources other than FTA or the Department. Any costs for work not eligible for Federal and State participation shall be financed one hundred percent (100%) by the Subrecipient.
- d. Operating Expenditures. In order to assist in financing the operating costs of the project, the Department shall reimburse the Subrecipient for the lesser of the following when providing operating assistance:
 - i. The balance of unrecovered operating expenditures after deducting all operating revenue, or
 - ii. The percentage specified in the Approved Project Budget of the allowable total operating expenditures which shall be determined by available funding.
- e. Travel Expenditures. The Subrecipient shall limit reimbursement for meals, lodging and travel to rates established by the State of North Carolina Travel Policy. Costs incurred by the Subrecipient in excess of these rates shall be borne by the Subrecipient.
- f. Allowable Costs. Expenditures made by the Subrecipient shall be reimbursed as allowable costs to the extent they meet all of the requirements set forth below. They must be:
 - i. Consistent with the Project Description, plans, specifications, and Project Budget and all other provisions of this Agreement

- ii. Necessary in order to accomplish the Project
 - iii. Reasonable in amount for the goods or services purchased
 - iv. Actual net costs to the Subrecipient, i.e., the price paid minus any refunds (e.g., refundable sales and use taxes pursuant to NCGS 105-164.14), rebates, or other items of value received by the Subrecipient that have the effect of reducing the cost actually incurred
 - v. Incurred (and be for work performed) within the period of performance and period covered of this Agreement unless specific authorization from the Department to the contrary is received
 - vi. Satisfactorily documented
 - vii. Treated uniformly and consistently under accounting principles and procedures approved or prescribed by the Department
- g. Excluded Costs.** The Subrecipient understands and agrees that, except to the extent the Department determines otherwise in writing, the Department will exclude:
- i. Any Project cost incurred by the Subrecipient before the period of performance of the agreement,
 - ii. Any cost that is not included in the latest Approved Project Budget,
 - iii. Any cost for Project property or services received in connection with a third-party contract, sub-agreement, lease, or other arrangement that is required to be, but has not been, concurred in or approved in writing by the Department, and
 - iv. Any cost ineligible for FTA participation as provided by applicable Federal or State laws, regulations, or directives.

- h. Final Allowability Determination. The subrecipient understands and agrees that payment to the subrecipient on any Project cost does not constitute the Federal or State Government's final decision about whether that cost is allowable and eligible for payment and does not constitute a waiver of any violation by the subrecipient of the terms of this Agreement. The subrecipient acknowledges that the Federal or State Government will not make a final determination about the allowability and eligibility of any cost until an audit of the Project has been completed. If the Federal or State Government determines that the subrecipient is not entitled to receive any portion of the Federal or State assistance the subrecipient has requested or provided, the Department will notify the Subrecipient in writing, stating its reasons. The Subrecipient agrees that Project closeout will not alter the Subrecipient's responsibility to return any funds due the Federal or State Government as a result of later refunds, corrections, or other transactions; nor will Project closeout alter the Federal or State Government's right to disallow costs and recover funds on the basis of a later audit or other review. Unless prohibited by Federal or State law or regulation, the Federal or State Government may recover any Federal or State assistance funds made available for the Project as necessary to satisfy any outstanding monetary claims that the Federal or State Government may have against the Subrecipient.
- i. Federal or State Claims, Excess Payments, Disallowed Costs, Including Interest.
- i. Subrecipient's Responsibility to Pay. Upon notification to the Subrecipient that specific amounts are owed to the Federal or State Government, whether for excess payments of Federal or State assistance, disallowed costs, or funds recovered from third parties or elsewhere, the Subrecipient agrees to remit to the Department promptly the amounts owed, including applicable interest and any penalties and administrative charges within 60 days of notification.
 - ii. Interest Paid to the Department. The Subrecipient agrees to remit to the Department interest owed as determined in accordance with NCGS § 147-86.23.
 - iii. Interest and Fees Paid on Federal Funds. For amounts owed by the Subrecipient to the Federal Government, whether for excess payments of Federal assistance, disallowed costs, or funds recovered from third parties or elsewhere, the Subrecipient agrees to remit to the Federal Government promptly the amounts owed, including applicable interest, penalties and administrative charges as established by the Federal Transit Authority Master Agreement with NCDOT.

- j. De-obligation of Funds. The Subrecipient agrees that the Department may de-obligate unexpended Federal and State funds for grants that are inactive for six months or more.
- k. Project Closeout. Project closeout occurs when the Department issues the final project payment or acknowledges that the Subrecipient has remitted the proper refund. The Subrecipient agrees that Project closeout by the Department does not invalidate any continuing requirements imposed by this Agreement.

7. Accounting Records

- a. Establishment and Maintenance of Accounting Records. The Subrecipient shall establish and maintain separate accounts for the public transportation program, either independently or within the existing accounting system. All costs charged to the program shall be in accordance with most current approved Project Budget and shall be reported to the Department in accordance with NCDOT Uniform Public Transportation Accounting System (UPTAS) guide.
- b. Documentation of Project Costs. All costs charged to the Project, including any approved services performed by the Subrecipient or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and propriety of the charges.

8. Reporting, Record Retention, and Access

- a. Progress Reports. The Subrecipient shall advise the Department, through EBS, regarding the progress of the Project at a minimum quarterly, and at such time and in such a manner as the Department may require. Such reporting and documentation may include, but not be limited to: operating statistics, equipment usage, meetings, progress reports, and monthly performance reports. The Subrecipient shall collect and submit to the Department such financial statements, data, records, contracts, and other documents related to the Project as may be deemed necessary by the Department. Reports shall include narrative and financial statements of sufficient substance to be in conformance with the reporting requirements of the Department. Progress reports throughout the useful life of the project equipment shall be used, in part, to document utilization of the project equipment. Failure to fully utilize the project equipment in the manner directed by the Department shall constitute a breach of contract, and after written notification by the Department, may result in termination of the Agreement or any such remedy as the Department deems appropriate.
- b. Failure to comply with grant reporting and compliance guidelines set forth in the NCDOT PTD State Management Plan could result in financial penalties up to and including loss of current and future grant funding.

- c. Record Retention. The Subrecipient and its third party subrecipients shall retain all records pertaining to this Project for a period of five (5) years from the date of final payment to the Subrecipient, or until all audit exceptions have been resolved, whichever is longer.
- d. Project Closeout. The Subrecipient agrees that Project closeout does not alter the reporting and record retention requirements of this Agreement.
- e. Auditor Oversight. The Subrecipient agrees to audit oversight by the Office of the State Auditor, the Department, and the Department's Office of Inspector General, to provide the Office of the State Auditor, the Department, and the Department's Office of Inspector General with access to accounting records, and to make available any audit work papers in the possession of any auditor of the Subrecipient.
- f. Financial Reporting and Audit Requirements. In accordance with 09 NCAC 03M.0205, all reports shall be filed with the Department in the format and method specified by the agency no later than three (3) months after the end of the recipient's fiscal year, unless the same information is already required through more frequent reporting. Audit Reports must be provided to the funding agency no later than nine (9) months after the end of the recipient's fiscal year.
- g. Parts Inventory. Financial audits must address parts inventory management.
- h. Third Party Loans. Within 30 days of receipt, the Subrecipient shall disclose to the Department any loans received from a local government entity or other entity not party to this agreement.
- i. Audit Costs. Unless prohibited by law, the costs of audits made in accordance with Title 2 CFR 200, Subpart F "Audit Requirements" are allowable charges to State and Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with cost principles outlined in Title 2 CFR 200, Subpart E "Cost Principles." The cost of any audit not conducted in accordance with Title 2 CFR 200 and NCGS§ 159-34 is unallowable and shall not be charged to State or Federal grants.

9. Compliance with Laws and Regulations

- a. No terms herein shall be construed in a manner that conflicts with the rules and regulations of the Department or with state or federal law.

- b. The Subrecipient agrees to comply with all applicable state and federal laws and regulations, including titles 09 NCAC 3M and 19A NCAC 5B, as amended.

10. Conflicts of Interest Policy

The subrecipient agrees to file with the Department a copy of the subrecipient's policy addressing conflicts of interest that may arise involving the subrecipient's management employees and the members of its board of directors or other governing body. The subrecipient's policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the subrecipient's employees or members of its board or other governing body, from the subrecipient's disbursing of State funds, and shall include actions to be taken by the subrecipient or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. The conflicts of interest policy shall be filed with the Department prior to the Department disbursing funds to the subrecipient.

Prohibition on Bonus or Commission Payments

The Subrecipient affirms that it has not paid and will not pay any bonus or commission to any party to obtain approval of its Federal or State assistance application for the Project.

11. Tax Compliance Certification

The Subrecipient shall complete and submit to the Department a sworn written statement pursuant to NCGS 143C-6-23(c), stating that the Subrecipient does not have any overdue tax debts, as defined by GS 105-243.1, at the Federal, State, or local level. The Subrecipient acknowledges that the written statement must be submitted to the Department prior to execution of this Agreement and disbursement of funds. The certification will be incorporated into this Agreement as Attachment B.

12. Assignment

- a. Unless otherwise authorized in writing by the Department, the Subrecipient shall not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment, or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written concurrence of the Department. Neither Grantee nor any subrecipient is relieved of any of the duties and responsibilities of this Agreement as a result of assignment.

- b. The Subrecipient agrees to incorporate the terms of this agreement and any applicable State or Federal requirements into written third-party contracts, sub-

agreements, and leases, and to take the appropriate measures necessary to ensure that all Project participants comply with applicable Federal and State laws, regulations, and directives affecting their performance, except to the extent the Department determines otherwise in writing. Any subrecipient/subgrantee agrees to abide by, among other things the standards contained in 09 NCAC Subchapter 03M and to provide information in its possession that is needed by the Grantee to comply with these standards.

13. Hold Harmless.

Except as prohibited or otherwise limited by law, the Subrecipient agrees to indemnify, save, and hold harmless the Department, the State of North Carolina and the United States of America and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Subrecipient of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project.

14. Real Property, Equipment, and Supplies.

Federal or State Interest. The Subrecipient understands and agrees that the Federal or State Government retains an interest in any real property, equipment, and supplies financed with Federal or State assistance (Project property) until, and to the extent, that the Federal or State Government relinquishes its Federal or State interest in that Project property. NCDOT shall be informed and included in all ribbon cuttings / dedications / groundbreakings. With respect to any Project property financed with Federal or State assistance under this Agreement, the Subrecipient agrees to comply with the following provisions, except to the extent FTA or the Department determines otherwise in writing:

- a. Use of Project Property. The Subrecipient agrees to maintain continuing control of the use of Project property. The Subrecipient agrees to use Project property for appropriate Project purposes (which may include joint development purposes that generate program income, both during and after the award period and used to support public transportation activities) for the duration of the useful life of that property, as required by FTA or the Department. Should the Subrecipient unreasonably delay or fail to use Project property during the useful life of that property, the Subrecipient agrees that it may be required to return the entire amount of the Federal and State assistance expended on that property. The Subrecipient further agrees to notify the Department immediately when any Project property is withdrawn from Project use or when any Project property is used in a manner substantially different from the representations the Subrecipient has made in its Application or in the Project Description for this Agreement for the Project. In turn, the Department shall be responsible for notifying FTA.

- b. Maintenance and Inspection of Vehicles. The Subrecipient shall maintain vehicles at a high level of cleanliness, safety, and mechanical soundness in accordance with the minimum maintenance requirements recommended by the manufacturer and comply with the Department's State Management Plan ("SMP"). The Subrecipient shall register all vehicle maintenance activities into the Department's Asset Management System (AssetWorks) or an electronic version of same. The Department shall conduct frequent inspections to confirm proper maintenance pursuant to this subsection and the SMP. The Subrecipient shall collect and submit to the Department at such time and in such manner as it may require information for the purpose of the Department's Asset Management System (AssetWorks) and the Transit Asset Maintenance ("TAM") Plan.
- c. Maintenance and Inspection of Facilities and Equipment. The Subrecipient shall maintain any Project facility, including any and all equipment installed into or added on to the facility as part of the Project, in good operating order and at a high level of cleanliness, safety and mechanical soundness in accordance with good facility maintenance and upkeep practices and in accordance with the minimum maintenance requirements recommended by the manufacturer for all equipment installed in or added to the facility as part of the Project. Such maintenance shall be in compliance with applicable Federal and state regulations or directives that may be issued, except to the extent that the Department determines otherwise in writing. The Subrecipient shall document its maintenance program in a written plan. The Department shall conduct inspections as it deems necessary to confirm proper maintenance on the part of the Subrecipient pursuant to this subsection and SMP. Such inspections may or may not be scheduled ahead of time but will be conducted such that they shall not significantly interfere with the ongoing and necessary functions for which the Project was designed. The Subrecipient shall make every effort to accommodate such inspections by the Department in accordance with the Department's desired schedule for such inspections.
- d. The Subrecipient shall collect and submit to the Department at such time and in such manner as the Department may require information for the purpose of updating the TAM Plan Inventory and any and all other reports the Department deems necessary. The Subrecipient shall also maintain and make available to the Department upon its demand all documents, policies, procedures, purchase orders, bills of sale, internal work orders and similar items that demonstrate the Subrecipient's maintenance of the facility in good operating order and at a high level of cleanliness, safety and mechanical soundness.
- e. Incidental Use. The Subrecipient agrees that any incidental use of Project property will not exceed that permitted under applicable laws, regulations, and directives.
- f. Title to Vehicles. The Certificate of Title to all vehicles purchased under the Approved Budget for this Project shall be in the name of the Subrecipient. The Department's Public Transportation Division shall be recorded on the Certificate of Title as first lien-holder. In the event of project termination or breach of contract provisions, the Subrecipient shall, upon written notification by the Department,

surrender Project equipment and/or transfer the Certificate(s) of Title for Project equipment to the Department or the Department's designee within 30 days of request.

- g. Encumbrance of Project Property. The Subrecipient agrees to maintain satisfactory continuing control of Project property as follows:
- (1) Written Transactions. The Subrecipient agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, subagreement, grant anticipation note, alienation, innovative finance arrangement (such as a cross border lease, leveraged lease, or otherwise), or any other obligation pertaining to Project property, that in any way would affect the continuing Federal and State interest in that Project property.
 - (2) Oral Transactions. The Subrecipient agrees that it will not obligate itself in any manner to any third party with respect to Project property.
 - (3) Other Actions. The Subrecipient agrees that it will not take any action adversely affecting the Federal and State interest in or impair the Subrecipient's continuing control of the use of Project property.
- h. Alternative Use, Transfer, and Disposition of Project Property. The Subrecipient understands and agrees any alternative uses, transfers, or disposition of project property must be approved by the Department and done in accordance with Departmental procedures.
- i. Insurance Proceeds. If the Subrecipient receives insurance proceeds as a result of damage or destruction to the Project property that has not met its useful life, the Subrecipient agrees to:
- (1) Apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property taken out of service, or
 - (2) Return to the Department an amount equal to the remaining Federal and State interest in the damaged or destroyed Project property.
- j. Misused or Damaged Project Property. If any damage to Project property results from abuse or misuse occurring with the Subrecipient's knowledge and consent, the Subrecipient agrees to restore the Project property to its original condition or refund the value of the Federal and State interest in that property, as the Department may require.
- k. Responsibilities after Project Closeout. The Subrecipient agrees that Project closeout by the Department will not change the Subrecipient's Project property management responsibilities, and as may be set forth in subsequent Federal and

State laws, regulations, and directives, except to the extent the Department determines otherwise in writing.

15. Insurance

The Subrecipient shall be responsible for protecting the state and/or federal financial interest in the facility construction/renovation and equipment purchased under this Agreement throughout the useful life. The Subrecipient shall provide, as frequently and in such manner as the Department may require, written documentation that the facility and equipment are insured against loss in an amount equal to or greater than the state and/or federal share of the real value of the facility or equipment. Failure of the Subrecipient to provide adequate insurance shall be considered a breach of contract and, after notification may result in termination of this Agreement. In addition, other insurance requirements may apply. The Subrecipient agrees to comply with the insurance requirements normally imposed by North Carolina State and local laws, regulations, and ordinances, except to the extent that the Department determines otherwise in writing.

16. Termination

- a. Either party may terminate the Agreement by providing 60 days written notice to the other party, or as otherwise permitted by law. Any unexpended financial assistance shall revert to the Department upon termination of this Agreement.
- b. Should the Subrecipient terminate the Agreement without the concurrence of the Department, the Subrecipient shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the work.

17. Additional Repayment Requirements and Remedies

- a. The repayment requirements and remedies addressed in this Paragraph are in addition to those repayment requirements and other remedies set forth elsewhere in this Agreement, including the requirements to repay unspent funds. No remedy conferred or reserved by or to the Department is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy provided for in this Agreement, or now or hereinafter existing at law, in equity, or by statute, and any such right or power may be exercised from time to time and as often as may be deemed expedient.
- b. If there is a breach of any of the requirements, covenants or agreements in this Agreement (including, without limitation, any reporting requirements), or if there are any representations or warranties which are untrue as to a material fact in this Agreement or in relation to the Project (including the performance thereof), the Subrecipient agrees that the Department may require repayment from the Subrecipient of an amount of funds to be determined in the Department's sole

discretion but not to exceed the amount of funds the Subrecipient has already received under this Agreement.

18. Civil Rights and Equal Opportunity

Under this Agreement, the Subrecipient shall at all times comply with the requirements included as part of this agreement in the Federal Terms and Conditions that are included in the current FTA Master Agreement.

19. Choice of Law and Venue

This agreement is to be interpreted according to the laws of the State of North Carolina. The Parties hereby agree that the proper venue for any claims filed as a result of this Agreement shall be the Superior Court of Wake County, North Carolina.

20. Severability

If any provision of the FTA Master Agreement or this Agreement for the Project is determined invalid, the remainder of that Agreement shall not be affected if that remainder would continue to conform to the requirements of applicable Federal or State laws or regulations.

21. Incorporated Terms and Conditions

In addition to the Terms and Conditions contained in this agreement and the terms, conditions, certifications, and assurances included in the grant application, which are hereby incorporated by reference, additional terms and conditions incorporated by reference into this agreement are checked below.



Federal Terms and Conditions, Attached

22. Federal Terms and Conditions

State Management Plan. The State Management Plan for Federal and State Transportation Programs and any subsequent amendments or revisions thereto, are herewith incorporated by reference, and are on file with and approved by the Department. Nothing shall be construed under the terms of this Agreement by the Department or the Subrecipient that shall cause any conflict with Department, State, or Federal statutes, rules, or regulations.

Allowable Costs. Eligible costs are those costs attributable to and allowed under the FTA program and the provisions of 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

No Federal Government Obligations to Third Parties. The Subrecipient acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Subrecipient or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Agreement.

The Subrecipient agrees to include the above clause in each contract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts. The Subrecipient acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, apply to its actions pertaining to this project. Upon execution of the underlying Agreement, the Subrecipient certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the Subrecipient further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Subrecipient to the extent the Federal Government deems appropriate.

The Subrecipient also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 USC chapter 53, the Government reserves the right to impose the penalties of 18 USC § 1001 and 49 USC § 5323(l) on the Subrecipient, to the extent the Federal Government deems appropriate.

The Subrecipient agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Access to Records and Reports.

a. Record Retention. The Subrecipient will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the Agreement, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.

c. Access to Records. The Subrecipient agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this Agreement as reasonably may be required.

d. Access to the Sites of Performance. The Subrecipient agrees to permit FTA and its contractors access to the sites of performance under this Agreement as reasonably may be required.

Federal Changes. The Subrecipient agrees to comply with all applicable federal requirements and federal guidance. All the standards or limits included in this agreement are minimum requirements. The federal requirements and guidance that applied at the time of the award this Agreement may be modified from time to time, and the modifications will apply to the Subrecipient.

Civil Rights and Equal Opportunity. Under this Agreement, the Subrecipient shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. Nondiscrimination. In accordance with Federal transit law at 49 USC § 5332, the Subrecipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Subrecipient agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 USC § 2000e et seq., and Federal transit laws at 49 USC § 5332, the Subrecipient agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 USC § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 USC § 2000e note. The Subrecipient agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such

action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Subrecipient agrees to comply with any implementing requirements FTA may issue.

3. Age. In accordance with the Age Discrimination in Employment Act, 29 USC §§ 621634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 CFR part 1625, the Age Discrimination Act of 1975, as amended, 42 USC § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 CFR part 90, and Federal transit law at 49 USC § 5332, the Subrecipient agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Subrecipient agrees to comply with any implementing requirements FTA may issue.

4. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, the Americans with Disabilities Act of 1990, as amended, 42 USC § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 USC § 4151 et seq., and Federal transit law at 49 USC § 5332, the Subrecipient agrees that it will not discriminate against individuals on the basis of disability. In addition, the Subrecipient agrees to comply with any implementing requirements FTA may issue.

Disadvantaged Business Enterprises. It is the policy of the North Carolina Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26 shall have the equal opportunity to compete fairly for and to participate in the performance of contracts financed in whole or in part by Federal Funds. The Subrecipient is also encouraged to give every opportunity to allow DBE participation in Supplemental Agreements. The Subrecipient, subconsultant, and subcontractor shall not discriminate on the basis of race, religion, color, national origin, age, disability or sex in the performance of this contract. The Subrecipient shall comply with applicable requirements of 49 CFR Part 26 in the award and administration of federally assisted contracts. Failure by the Subrecipient to comply with these requirements is a material breach of this contract, which will result in the termination of this contract or such other remedy, as the Department deems necessary.

When payments are made to Disadvantaged Business Enterprise (DBE) Subrecipients, including material suppliers, Subrecipients at all levels (Subrecipient, Subconsultant or Subrecipient) shall provide the Contract Administrator with an accounting of said payments. The accounting shall be listed on the Department's Subrecipient Payment Information Form (Form DBE-IS). In the event the Subrecipient has no DBE participation, the Subrecipient shall indicate this on the Form DBE-IS by entering the word 'None' or the number 'zero' and the form shall be signed. Form DBE-IS may be accessed on the website at: <https://apps.dot.state.nc.us/quickfind/forms/Default.aspx>.

A responsible fiscal officer of the payee Subrecipient, subconsultant or Subrecipient who can attest to the date and amounts of the payments shall certify that the accounting is

correct. A copy of an acceptable report may be obtained from the Department of Transportation. This information shall be submitted as part of the requests for payments made to the Department.

Prompt payment provisions. When a subcontractor has performed in accordance with the provisions of his contract, the contractor shall pay to his subcontractor and each subcontractor shall pay to his subcontractor, within seven days of receipt by the contractor or subcontractor of each periodic or final payment, the full amount received for such subcontractor's work and materials based on work completed or service provided under the subcontract NCGS §22C-1.

Incorporation of FTA Terms. Provisions of this Agreement include, in part, certain standard terms and conditions required by the U.S. DOT. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1, as amended, are incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Subrecipient shall not perform any act, fail to perform any act, or refuse to comply with any Department request, which would cause the Department to be in violation of FTA terms and conditions, as referenced in the current FTA Master Agreement shall prevail and be the instrument governing the receipt of Federal assistance from the Federal Transit Administration.

Energy Conservation. The Subrecipient agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Debarment, Suspension, Ineligibility and Voluntary Exclusion. The Subrecipient shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," 2 CFR part 180. As such, the Subrecipient shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded Agreement and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting this Agreement, Subrecipient certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Department. If it is later determined by the Department that the Subrecipient knowingly rendered an erroneous certification, in addition to remedies available to the Department, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Subrecipient agrees to comply with the requirements of 2 CFR part 180, subpart C, as supplemented by 2 CFR part 1200, throughout the period of this Agreement. The Subrecipient further agrees to include a provision requiring such compliance in its lower tier covered transactions. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount.

Lobbying Restrictions. The Subrecipient agrees that neither it nor any third-party participant will use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve this agreement, including any extension or modification, according to the following:

(1) Laws, Regulations, Requirements, and Guidance. This includes:

(a) The Byrd Anti-Lobbying Amendment, 31 USC § 1352, as amended,

(b) U.S. DOT regulations, "New Restrictions on Lobbying," 49 CFR part 20, to the extent consistent with 31 USC § 1352, as amended, and (c) Other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature, and

(2) Exception. If permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through the subrecipient's proper official channels.

The Subrecipient agrees to submit a signed and dated Certification on Lobbying that appears in the attachment.

Clean Air Act and Federal Water Pollution Control Act. The Subrecipient agrees:

1) It will not use any violating facilities;

2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"

3) It will report violations of use of prohibited facilities to FTA; and

4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 USC §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 USC §§ 1251-1387).

Public Transportation Employee Protective Arrangements. The Subrecipient agrees to comply with the following employee protective arrangements of 49 USC § 5333(b):

1. Sections 5307 and 5339. Under this Agreement or any Amendments thereto that involve public transportation operations that are supported with 49 USC § 5307 or 49 USC § 5339 federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
2. Section 5311. When the Agreement involves public transportation operations and is supported with federal assistance appropriated or made available for 49 USC § 5311, U.S. DOL will provide a Special Warranty for its Award. The U.S. DOL Special Warranty is a condition of the Agreement.
3. Section 5310. The conditions of 49 USC § 5333(b) do not apply to Subrecipients providing public transportation operations pursuant to 49 USC § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 USC § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

Charter Service. The Subrecipient agrees to comply with 49 USC 5323(d), 5323(r), and 49 CFR part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

1. Federal transit laws, specifically 49 USC § 5323(d);
2. FTA regulations, "Charter Service," 49 CFR part 604;
3. Any other federal Charter Service regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

The Subrecipient agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
3. Any other appropriate remedy that may apply. The Subrecipient should also include the substance of this clause in each subcontract that may involve operating public transit services.

School Bus Operations. The Subrecipient agrees to comply with 49 USC 5323(f), and 49 CFR part 605, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 USC § 5323(f);
2. FTA regulations, "School Bus Operations," 49 CFR part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Subrecipient violates this School Bus Agreement, FTA may:

1. Bar the Subrecipient from receiving Federal assistance for public transportation; or
2. Require the Subrecipient to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Subrecipient shall include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

Substance Abuse Requirements (Recipients of Sections 5307, 5311, and 5339 funds only). The Subrecipient agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR parts 40 and 655, as amended, and produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations or the Department to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR part 655 and review the testing process. The Subrecipient agrees further to submit the Drug and Alcohol Management Information System (DAMIS) reports before February 15 to NCDOT Public Transportation Compliance Office or its designee.

23. Contract Administrators.

All notices permitted or required to be given by one Party to the other and all questions about this Agreement from one Party to the other shall be addressed and delivered to the other Party's Contract Administrator. The name, postal address, street address, telephone number, fax number, and email address of the Parties' respective initial Contract Administrators are set out below. Either Party may change the name, postal address, street address, telephone number, fax number, or email address of its Contract Administrator by giving timely written notice to the other Party.

For the Department:

Name: Myra Freeman
Title: Financial Manager
Agency: NCDOT/PTD
Email: Msfreeman1@ncdot.gov
MSC: 1550 Mail Service Center – Raleigh, NC 27699-1550
Physical Address: 1 S. Wilmington St, Rm 542, Transportation Building, Raleigh, NC 27601
Phone: 919-707-4672 Fax: 919-733-2304

For the Subrecipient:

Name: _____
Title: _____
Agency: _____
Address: _____
Email: _____
Phone: _____

IN WITNESS WHEREOF, this Agreement has been executed by the Department, an agency of the State of North Carolina, and the Subrecipient by and through a duly authorized representative and is effective the date and year first above written.

CITY OF NEW BERN

On behalf of

**New Bern Area Metropolitan
Planning Organization**

SUBRECIPIENT'S FEDERAL TAX ID
NUMBER:

SUBRECIPIENT'S FISCAL YEAR END:

JUNE 30, 2024

BY:

TITLE:

CITY MANAGER

ATTEST:

TITLE:

DEPARTMENT OF
TRANSPORTATION

BY:

TITLE:

**DEPUTY SECRETARY FOR
MULTI-MODAL TRANSPORTATION**

**Attachment 1
Certification Regarding Lobbying**

The Subrecipient certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Subrecipient's Authorized Representative: _____

Title: _____

Date: _____



Transportation Advisory Committee (TAC)

John Kirkland
Chairman

E.T. Mitchell
Vice-Chairman

RESOLUTION

CERTIFYING THE NEW BERN AREA METROPOLITAN PLANNING ORGANIZATION'S TRANSPORTATION PLANNING PROCESS FOR FY 2023-2024

WHEREAS, the Transportation Advisory Committee has found that the New Bern Area Metropolitan Planning Organization is conducting transportation planning in a continuous, cooperative, and comprehensive manner in accordance with 23 U.S.C. 134 and 49 U.S.C. 5303; and

WHEREAS, the Transportation Advisory Committee has found the Transportation Planning Process to be in full compliance with Title VI of the Civil Rights Act of 1964 and the Title VI Assurance executed by each State as amended (42 U.S.C. 2000d-1, 49 CFR part 21 and 49 U.S.C. 5332); and

WHEREAS, the Transportation Advisory Committee has considered how the Transportation Planning Process will affect the involvement of Disadvantaged Business Enterprises in the FHWA and the FTA FUNDED PLANNING PROJECTS (Sec. 1101(v), Pub. L. 109-59, and 49 CFR part 26), and

WHEREAS, the Transportation Advisory Committee has considered how the Transportation Planning Process will affect the elderly and the disabled per the provision of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), 49 CFR parts 24, 37, and 38, and the U.S.D.O.T. implementing regulations; and


WHEREAS, the Transportation Advisory Committee has considered how the Transportation Planning Process will prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance in accordance with the Older Americans Act, as amended (24 U.S.C. 6101); and

WHEREAS, the Transportation Advisory Committee has found the New Bern Area MPO to be in compliance with the Rehabilitation Act of 1973, Section 504 (29 U.S.C. 704) and 49 CFR part 27, regarding individuals with disabilities full participation in or benefit from the Transportation Planning Process programs or activities; and

WHEREAS, the New Bern Area MPO updated and adopted a Metropolitan Transportation Plan, which has a planning horizon of 2045 and meets all the requirements for an adequate Transportation Plan.

NOW THEREFORE, BE IT RESOLVED, that the New Bern Area MPO Transportation Advisory Committee certifies the transportation planning process for the New Bern Area Metropolitan Planning Organization on this, the 26th day of January 2023.

By: _____



John Kirkland
NBAMPO TAC Chairman

APPENDIX A

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
PUBLIC TRANSPORTATION DIVISION
PROJECT NUMBER: 24-08-125
APPROVED BUDGET SUMMARY
EFFECTIVE DATE JULY 1, 2023

PROJECT SPONSOR: CITY OF NEW BERN
PROJECT DESCRIPTION: FY24 METROPOLITAN PLANNING PROGRAM (SECTION 5303)

I. TOTAL PROJECT EXPENDITURES

DEPARTMENT - 4526 PLANNING - 36230.42.10.6 \$60,080
PERIOD OF PERFORMANCE JULY 01, 2023 - JUNE 30, 2024

II. TOTAL PROJECT FUNDING

		<u>TOTAL</u>	<u>FEDERAL</u>	<u>STATE</u>	<u>LOCAL</u>
PLANNING -	36230.42.10.6	100%	80.00%	10.00%	10.00%
AGREEMENT		\$60,080	\$48,064	\$6,008	\$6,008
TOTAL		\$60,080	\$48,064	\$6,008	\$6,008

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
PUBLIC TRANSPORTATION DIVISION
APPROVED PROJECT BUDGET

PROJECT: 24-08-125
SPONSOR: CITY OF NEW BERN
WBS: 36230.42.10.6

DEPARTMENT 4526 - PLANNING I

<u>OBJECT</u>	<u>TITLE</u>	<u>APPROVED BUDGET</u>
M302	442100-PROG SUPT ADMIN	2,500
M304	442301-L-RNG TRN PLN SYS	10,000
M305	442302-L-RNG TRN PLN PROJ	6,000
M306	442400-S-RNG TRNSP PLN	7,000
M313	442700-OTHER ACTIVITIES	34,580
	TOTAL PLANNING	60,080

PROGRAM SUMMARY SHEET REQUIREMENTS



NORTH CAROLINA
Department of Transportation

5303 Metropolitan Transportation Planning
FEDERAL

Planning

PRINCIPLE	This guidance is for all subrecipients receiving planning assistance to support multimodal transportation planning projects in metropolitan areas and states that is cooperative, continuous, and comprehensive, resulting in long-range plans and short-range programs of transportation investment priorities. The planning programs are jointly administered by the Federal Transportation Administration (FTA) and the Federal Highway Administration (FHWA), which provides additional planning funding.
ELIGIBLE SUBRECIPIENTS and ACTIVITIES	PTD is the Designated Recipient (DR) and is the only entity eligible to apply for and receive this program assistance directly from FTA. PTD is required by law to distribute these funds to each UZA, or portion of a UZA, within North Carolina (NC), according to a formula developed by the State of NC in cooperation with the MPO and approved by FTA. Eligible activities are: develop transportation plans and programs; plan, design and evaluate a public transportation projects; and conduct technical studies related to public transportation.
FINANCIAL CAPACITY and MANAGEMENT	Subrecipients must have sufficient funds to match FTA funds. Subrecipients must have fiscal control and accounting procedures sufficient to permit tracking and reporting of grant funds. Any funds borrowed from a parent organization or governmental organization must be reported to NCDOT within 15 days.
AUDIT REPORTS and FINANCIAL STATEMENTS	Subrecipients that expend more than \$750,000 in federal funds from all sources per 09 NCAC 03M .0205 Minimum Reporting Requirements for Recipients and Subrecipients (including federal funds provided through NCDOT) in a year must submit the annual single audit required and evidence of resolution of findings related to the transit program to NCDOT.
PROGRAM REPORTING	Subrecipients are required to report monthly or quarterly when claims are submitted and at the end of the year with the final claim. Penalties will be imposed when reports have not been submitted by the published reporting deadlines.
OVERSIGHT	Oversight is performed through desk reviews of financial and grant project reporting, correspondence, and phone calls, as needed.
REFERENCES	<p><u>Section 5303 Circular - C 8100.1C</u></p> <p><u>Award Management Requirements 5010.1E</u></p> <p><u>OMB's Uniform Administrative Requirements 2 CFR 200</u></p> <p><u>NC Public Transportation Business Guide</u></p> <p><u>09 NCAC 03M .0205 Minimum Reporting Requirements for Recipients and Subrecipients</u></p> <p><u>State Management Plan</u></p>
UPDATES/REVISIONS	<p>Original Date: April 20, 2018</p> <p>Last Amended Date: December 16, 2022</p>

PROGRAM SUMMARY SHEET REQUIREMENTS

AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider Adopting a Resolution to establish the Municipal Service District Advisory Committee.

Date of Meeting: 9/12/2023	Ward # if applicable: 1
Department: Administration	Person Submitting Item: Foster Hughes, City Manager
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing:

Explanation of Item:	In response to interest in reviving an MSD committee, Public input meetings were held on May 25th, and June 15th to discuss potential interest in reviving a committee, the structure of a committee, and potential projects. All MSD taxpayers were invited to participate. 62 people participated in the meetings. The attached Resolution reflects input received from the Aldermen during the August 22nd meeting.
Actions Needed by Board:	Adopt the resolution to establish the MSD Committee
Backup Attached:	Resolution
Is item time sensitive? <input type="checkbox"/> Yes <input 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:

Aldermen
Rick Prill
Hazel B. Royal
Robert V. Aster
Johnnie Ray Kinsey
Barbara J. Best
Robert Brinson, Jr.



300 Pollock Street, P.O. Box 1129
New Bern, NC 28563-1129
(252) 636-4000

Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

To: Mayor and Board of Aldermen
From: Foster Hughes, City Manager
Date: September 6, 2023
Subject: Consider Adopting a Resolution to establish the Municipal Service District Advisory Committee

Background Information:

In response to interest in the Municipal Service District, public input meetings were held on May 25th and June 15th to discuss whether there was enough interest in creating a committee, its proposed structure, and potential projects.

Letters were mailed to all MSD taxpayers on two different occasions. The meetings were promoted through press and social media releases. The meetings were also broadcast live on the city website, Facebook, Roku, and Suddenlink. Total attendance for both meetings was 62.

This item was presented at the August 22nd Board meeting. Based on the feedback received from the Aldermen, adjustments have been made to the resolution.

Recommendation:

Adopt a resolution to establish the MSD Advisory committee.

**RESOLUTION TO ESTABLISH
THE MUNICIPAL SERVICE DISTRICT ADVISORY COMMITTEE**

THAT WHEREAS, the Board of Aldermen of the City of New Bern ("Board of Aldermen") adopted a resolution on June 27, 1978 by which a municipal service district was established ("Municipal Service District"); and

WHEREAS, by subsequent resolutions adopted pursuant to and consistent with the Municipal Service District Act of 1973 ("Act"), the original Municipal Service District was further enlarged; and

WHEREAS, on June 11, 1985, the Board of Aldermen appointed certain property owners within the Municipal Service District to serve as a Municipal Service District Advisory Committee for the specific purpose of making recommendations to the City of New Bern with respect to further revitalization of the central business district; and

WHEREAS, once the initial Municipal Service District Advisory Committee made its recommendations to the Board of Aldermen, no further appointments were made; and

WHEREAS, the Board of Aldermen desires to re-establish a Municipal Service District Advisory Committee to provide advisory recommendations to the Board of Aldermen as more specifically provided herein; and

WHEREAS, the Board of Aldermen deems it advisable and in the public interest to establish the Municipal Service District Advisory Committee with such membership and objectives as set forth herein.

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

- Section 1.** There is hereby established the Municipal Service District Advisory Committee.
- Section 2.** The Municipal Service District Advisory Committee shall serve the Board of Aldermen in an advisory capacity, and shall no less than annually recommend to the Board of Aldermen how the property taxes generated within the Municipal Service District may be spent consistent with Act.
- Section 3.** The Municipal Service District Advisory Committee shall meet as a public body on no less than a quarterly basis at regularly scheduled meetings. Special meetings may be called by the Chairman at any time. All meetings shall comply with North Carolina open meetings laws.

Section 4. The Municipal Service District Advisory Committee shall be comprised of ten (10) voting members representing the following interests within the Municipal Service District:

Six (6) Commercial Members*

- (1) Large commercial representative (Real property tax value of \$2 million or more)
- (2) Hospitality representative (Hotel/bed and breakfast)
- (3) Restaurant representative
- (4) Retail establishment representative
- (5) Entertainment/nightlife representative
- (6) Professional services representative (Legal, banking, insurance, dental, etc.)

*Commercial members may be individual property owners, or a representative of an owner if a commercial property is owned by a legal entity.

Four (4) Residential Members

Each of the four (4) residential representatives must maintain their primary residence in a residential dwelling located within the Municipal Service District.

Section 5. The Municipal Service District Advisory Committee shall also include the following five (5) ex officio, non-voting members:

Ex Officio Members

- (1) Ward 1 Aldermen
- (2) At-Large Appointment from the Board of Aldermen
- (3) City Manager
- (4) Finance Director
- (5) Swiss Bear Executive Director

Section 6. Municipal Service District Advisory Committee members shall be appointed for a term of three (3) years by the Board of Aldermen. Any vacancies shall be filled by the Board of Aldermen. Members may continue to serve until their successors have been appointed. Members may not serve more than two (2) successive terms as a Commercial Member representing the same commercial interest, or as a Residential Member. The Board of Aldermen, in its discretion, may replace any voting member who fails to attend three (3) of the four (4) quarterly meetings within any twelve (12) month period, or who no longer owns real property or resides within the Municipal Service District.

Section 7. The Municipal Service District Advisory Committee shall elect one of its members to serve as chair who shall preside over the committee's meetings. The person so elected shall serve a term of one year or until their term expires, whichever comes

first. The chair may succeed himself or herself. The chair may take part in all deliberations and vote on all issues.

Section 8. This resolution shall be effective on adoption.

ADOPTED THIS 12th DAY OF SEPTEMBER, 2023.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

**RESOLUTION TO ESTABLISH
THE MUNICIPAL SERVICE DISTRICT ADVISORY COMMITTEE**

THAT WHEREAS, the Board of Aldermen of the City of New Bern (“Board of Aldermen”) adopted a resolution on June 27, 1978 by which a municipal service district was established (“Municipal Service District”); and

WHEREAS, by subsequent resolutions adopted pursuant to and consistent with the Municipal Service District Act of 1973 (“Act”), the original Municipal Service District was further enlarged; and

WHEREAS, on June 11, 1985, the Board of Aldermen appointed certain property owners within the Municipal Service District to serve as a Municipal Service District Advisory Committee for the specific purpose of making recommendations to the City of New Bern with respect to further revitalization of the central business district; and

WHEREAS, once the initial Municipal Service District Advisory Committee made its recommendations to the Board of Aldermen, no further appointments were made; and

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- (3) Restaurant representative
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Each of the four (4) residential representatives must maintain their primary residence in a residential dwelling located within the Municipal Service District.

Section 5. The Municipal Service District Advisory Committee shall also include the following ~~four (4)~~ five (5) ex officio, non-voting members:

Ex Officio Members

- (1) Ward 1 Aldermen
- (2) At-Large Appointment from the Board of Aldermen
- (3) City Manager
- (4) Finance Director
- (5) Swiss Bear Executive Director

Section 6. Municipal Service District Advisory Committee members shall be appointed for a term of three (3) years by the Board of Aldermen. Any vacancies shall be filled by the Board of Aldermen. Members may continue to serve until their successors have been appointed. ~~There shall be no limit on successive terms. Members may not serve more than two (2) successive terms as a Commercial Member representing the same commercial interest, or as a Residential Member.~~ The Board of Aldermen, in its discretion, may replace any voting member who fails to attend three (3) of the four (4) quarterly meetings within any twelve (12) month period, or who no longer owns real property or resides within the Municipal Service District.

Section 7. The Municipal Service District Advisory Committee shall elect one of its members to serve as chair who shall preside over the committee's meetings. The person so elected shall serve a term of one year or until their term expires, whichever comes

first. The chair may succeed himself or herself. The chair may take part in all deliberations and vote on all issues.

Section 8. This resolution shall be effective on adoption.

ADOPTED THIS 12th DAY OF SEPTEMBER, 2023.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

AGENDA ITEM COVER SHEET

Agenda Item Title:

Adopt Resolution Approving Sewer Use Agreement with the Owners of 3277 Old Airport Road.

Date of Meeting: 9/12/2023	Ward # if applicable: 3
Department: Public Utilities – Water Resources	Person Submitting Item: Jordan Hughes
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing: N/A

Explanation of Item:	Standard water & sewer use agreement that is required when service is requested for a property that is currently located outside of the New Bern municipal limits.
Actions Needed by Board:	Adopt Resolution Approving Water & Sewer Use Agreement with the owners of 3277 Old Airport Road.
Backup Attached:	Memo from Jordan Hughes, copy of Water & Sewer Use Agreement, map of property, and draft resolution for approving the Agreement.
Is item time sensitive? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

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

Additional Notes:



NEW BERN

NORTH CAROLINA

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

MEMORANDUM

TO: Mayor and Board of Aldermen
FROM: Jordan B. Hughes P.E., Director of Water Resources
DATE: August 24, 2023
SUBJECT: **Recommendation to Approve Water and Sewer Use Agreement
For 3277 Old Airport Road**

Background Information:

The owners of 3277 Old Airport Road are planning to build a single family, residential home on the subject property, which is currently outside of the New Bern municipal limits. The owners of the property have indicated that they desire to connect their home to the City's water and sewer systems along Old Airport Road. The proposed home has a calculated average daily sewer demand of 360 gallons per day (GPD). To facilitate the proposed connection to the City's water and sewer systems, standard water and sewer service connections can be provided to the property without the need for main extensions.

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

Recommendation:

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

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

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

Everything comes together here.

RESOLUTION

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

That the Agreement dated September 12, 2023, by and between the City of New Bern and Rose Marie Miller and spouse, Michael J. Miller, Sr., a copy of which is attached hereto and incorporated herein by reference, be and the same is hereby approved, and the Mayor and the City Clerk are hereby authorized and directed to execute the same, in duplicate originals, for and on behalf of the City.

ADOPTED THIS 12th DAY OF SEPTEMBER, 2023.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

NORTH CAROLINA

CRAVEN COUNTY

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 12th day of September 2023, by and between the CITY OF NEW BERN, a North Carolina municipal corporation ("City"), ROSE MARIE MILLER and spouse, MICHAEL J. MILLER, SR. (collectively "Owner").

WITNESSETH:

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

WHEREAS, Owner intends to use or develop the Property as a single-family residence requiring permitted water and sewerage treatment capacity of 360 gallons per day; and

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

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

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

1. Definitions

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

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

1.1.2. "Owner" – means Rose Marie Miller and spouse, Michael J. Miller, Sr., citizens of Craven County, North Carolina.

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

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

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

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

1.1.7. "Property Water System" – means the unified and independent system of pipes, lines, conduits and appurtenances for transmitting and distributing water to residences, industrial establishments or any other buildings within the Property. It shall also include the rights-of-way, easements, and land parcels dedicated for the construction, operation, and maintenance of such system.

1.1.8. "Property Systems" – means the Property Sewer System and the Property Water System.

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

1.1.10. "City Water System" – means the unified and independent system of pipes, lines, conduits and appurtenances for transmitting and distributing water that are owned and maintained by the City of New Bern.

1.1.11. "City Systems" – means the City Sewer System and the City Water System.

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

1.1.13. "NCDEQ" – means the North Carolina Department of Environmental Quality.

2. City Obligations

2.1. The City shall provide sewer and water service to the Property in an amount not to exceed 360 gallons per day (average monthly flow) of permitted water and sewer flow.

2.2. The City's obligation herein to provide sewer service to the Property is solely based upon permitted sewer flow, and not actual sewer flow. Additionally, the City's obligation to provide water and sewer service to the Property does not constitute a transfer or sale of the City's water or sewer treatment capacity to Owner. Owner shall have no ownership interest in the City's water or sewer treatment capacity, other than Owner's contract rights established herein.

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

2.3.1 The Connection Location for water shall be a standard service connection provided by the City along Old Airport Road.

2.3.2 The Connection Location for sewer shall be a standard service connection provided by the City along Old Airport Road.

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

2.5. The City represents and warrants that it shall reserve and guarantee sufficient water and sewer collection and treatment capacity to fulfill its obligations established herein pursuant to the terms and conditions contained herein, SUBJECT ALWAYS to a force majeure, and the rights of the State of North Carolina, or any agency or department thereof, to restrict or

preclude the City's ability to comply with its obligations hereunder. In the event of a force majeure, or any limitation or moratorium imposed on the City by the State of North Carolina or any agency or department thereof that limits or precludes the City's ability to comply with its obligations hereunder, the City shall use reasonable efforts and proceed in good faith to cure its inability to comply with the terms of this Agreement as promptly as reasonably possible.

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

3. Owner Obligations

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

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

4. Miscellaneous

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

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

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

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

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

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

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

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

IN TESTIMONY WHEREOF, the City has caused this instrument to be executed as its act and deed by the Mayor, and its corporate seal to be hereunto affixed, and attested by its City Clerk, all by the authority of its Board of Aldermen; and Owner has executed or caused this document to be executed by them, all as of the day and year first above written.

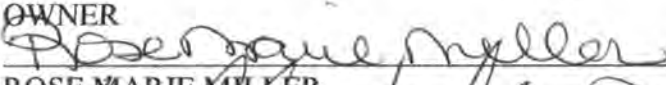
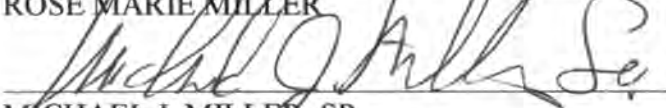
CITY OF NEW BERN

By: _____
JEFFREY T. ODHAM, MAYOR

ATTEST:

BRENDA E. BLANCO, CITY CLERK

(CORPORATE SEAL)

OWNER

ROSE MARIE MILLER

MICHAEL J. MILLER, SR.



Craven County GIS 3277 Old Airport Road

1 inch = 344 feet

Craven County does NOT warrant the information shown on this map and should be used ONLY for tax assessment purposes. Printed on August 24, 2023 at 1:17:26 PM



AGENDA ITEM COVER SHEET



Agenda Item Title: Amendment to Ordinance 6-14 (Dangerous – Potentially Dangerous Dog)

Date of Meeting: 9/12/2023	Ward # if applicable: N/A
Department: Police	Person Submitting Item: Chief Gallagher
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing: N/A

Explanation of Item:	Clarification language requested for city ordinance 6-14. One additional, new, section added that requires the dog owner to notify New Bern Animal Control immediately when their dog escapes their property or their restraints.
Actions Needed by Board:	Approve the ordinance amendment.
Backup Attached:	Memorandum
Is item time sensitive? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Cost of Agenda Item: \$0
If this requires an expenditure, has it been budgeted and are funds available and certified by the Finance Director? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Additional Notes: City Attorney will supply language change.



Founded 1797

NEW BERN

NEW BERN POLICE DEPARTMENT

P.O. Box 1129, New Bern, NC 28563-1129
(252) 672-4100

Police and Community Come Together Here



Patrick L. Gallagher
Chief of Police

To: Mayor Jeffrey T. Odham and Board of Aldermen
From: Chief Patrick Gallagher
Date: September 12, 2023
Subject: Amendment to Ordinance 6-14 (Dangerous – Potentially Dangerous Dog)

The New Bern Police Department has found the current language embedded in city ordinance 6-14, needs clarification.

One additional section has been added to this ordinance which requires the dog owner to notify New Bern Animal Control immediately when their dog escapes their property or their restraints.

I respectfully recommend Board approval.



A Nationally Accredited Agency

Integrity – Motivation – Professionalism – Accountability – Commitment – Trust

AN ORDINANCE TO AMEND SECTION 6-14. "DANGEROUS AND POTENTIALLY DANGEROUS DOG" OF CHAPTER 6 "ANIMALS" OF THE CODE OF ORDINANCES OF THE CITY OF NEW BERN

THAT WHEREAS, the Board of Alderman of the City of New Bern deems it advisable and in the public interest to amend subsection 6-14(a) "Housing and control." of Section 6-14. "Dangerous or potentially dangerous dog." of Chapter 6 "Animals" of the Code of Ordinances of the City of New Bern.

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

SECTION 1. That subsection 6-14(a) "Housing and control." of Section 6-14. "Dangerous or potentially dangerous dog." of Chapter 6 "Animals" of the Code of Ordinances of the City of New Bern be and the same is hereby amended by deleting subsection 6-14(a) in its entirety and inserting in its stead the following:

"(a) *Confinement and control.* A dangerous or potentially dangerous dog shall be kept and secured in a "secure enclosure."

(1) A secure enclosure is one which is:

- (i) *Outdoors.* If the dog is confined outdoors, it shall be confined in an outdoor pen which is padlocked, with a concrete bottom, and so constructed as to prevent the dog from escaping under the fence and with a secure wire top, so as to preclude the animal from escaping over the top of the fence. The fencing will be kept in good repair at all times to prevent the escape of the dog. All outdoor pens will be at least six (6) feet in height, and at least ten (10) feet in width and ten (10) feet in length. Any other structure so used to confine the animal will be of similar size to prevent inhumane containment. All pens, structures and confinement areas will be inspected as necessary by the animal control officer.
- (ii) *Indoors.* If the dog is confined in a residence, the residence windows and doors will be secured so as to prevent the dog's escape.
- (iii) *Inside other building/structure.* If the dog is confined in an outbuilding, garage, storage shed, or other structure, the building will be so secured as to prevent the dog's escape. Ventilation will be provided by manner of windows or other openings to provide adequate air exchange to prevent the overheating of said outbuilding, said openings to be secured so as to prevent the dog's escape.

(2) The property will be posted with clearly visible warning signs, with dimensions of at least 10 inches by 14 inches, adequate to inform the public, including children, of the presence of a dangerous or potentially dangerous dog and placed on the property as designated by the animal control officer including, but not limited to, the pen and curtilage.

- (3) The dangerous or potentially dangerous dog is not permitted to be outside of a secure enclosure on the owner's property unless:
- (i) The dog is within a secure fence, fitted with a muzzle, and in the presence of a responsible adult. The secured fence shall be no less than four (4) feet high, in good condition, and constructed to prevent the escape of the dog. The muzzle will be properly fitted so as not to restrict the breathing or vision of the dog and not to cause harm by abrading or cutting into the skin; or
 - (ii) The dog is fitted with a muzzle, and is secured by means of a leash no more than six (6) feet in length being held by a responsible adult.
- (4) When off the property, in the accompaniment of the owner or other responsible adult, the dog will be secured by a leash no longer than four (4) feet. The leash will be attached to a collar or harness. Both leash and collar or harness must be manufactured specifically for the control of dogs. The dog will be muzzled at all times.
- (5) The owner shall notify the animal control office immediately if the dog escapes or is otherwise freed from the property of the owner, or escapes restraint when off the property of the owner.

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

ADOPTED THIS 12th DAY OF SEPTEMBER, 2023.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

AN ORDINANCE TO AMEND SECTION 6-14. "DANGEROUS AND POTENTIALLY DANGEROUS DOG" OF CHAPTER 6 "ANIMALS" OF THE CODE OF ORDINANCES OF THE CITY OF NEW BERN

THAT WHEREAS, the Board of Alderman of the City of New Bern deems it advisable and in the public interest to amend subsection 6-14(a) "Housing and control." of Section 6-14. "Dangerous or potentially dangerous dog." of Chapter 6 "Animals" of the Code of Ordinances of the City of New Bern.

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

SECTION 1. That subsection 6-14(a) "Housing and control." of Section 6-14. "Dangerous or potentially dangerous dog." of Chapter 6 "Animals" of the Code of Ordinances of the City of New Bern be and the same is hereby amended by deleting subsection 6-14(a) in its entirety and inserting in its stead the following:

"(a) Housing Confinement and control. A dangerous or potentially dangerous dog ~~will be housed~~ shall be kept and secured in a "secure enclosure."

(1) A secure enclosure is one which is:

(i) Outdoors. ~~Outdoors,~~ If the dog is confined outdoors, it shall be confined in an outdoor pen which is padlocked, with a concrete bottom, and so constructed as to prevent the dog from escaping under the fence and with a secure wire top, so as to preclude the animal from escaping over the top of the fence. The fencing will be kept in good repair at all times to prevent the escape of the dog. ~~+~~All outdoor pens will be at least six (6) feet in height, and at least ten (10) feet in width and ten (10) feet in length. Any other structure so used to confine the animal will be of similar size to prevent inhumane containment. All pens, structures and confinement areas will be inspected as necessary by the animal control officer.

~~2. The property will be posted with clearly visible warning signs adequate to inform the public, including children, of the presence of a dangerous or potentially dangerous dog and placed on the property as designated by the animal control officer including, but not limited to, the pen and curtilage.~~
{Moved to (2) below}

(ii) Indoors. If the dog is ~~housed in a residence all or part of the time~~ confined in a residence, the residence windows and doors will be secured so as to prevent the dog's escape.

(iii) Inside other building/structure. If the dog is ~~housed~~ confined in an outbuilding, garage, storage shed, or other structure, the building will be so secured as to prevent the dog's escape. Ventilation will be provided by manner of windows or other

openings to provide adequate air exchange to prevent the overheating of said outbuilding, said openings to be secured so as to prevent the dog's escape.

- (2) The property will be posted with clearly visible warning signs, with dimensions of at least 10 inches by 14 inches, adequate to inform the public, including children, of the presence of a dangerous or potentially dangerous dog and placed on the property as designated by the animal control officer including, but not limited to, the pen and curtilage.
- (23) The dangerous or potentially dangerous dog is not permitted to be ~~unconfined outside of a secure enclosure~~ on the owner's property ~~without a muzzle, regardless of whether in the presence of its owner or others.~~ unless:
- (i) The dog is within a secure fence, fitted with a muzzle, and in the presence of a responsible adult. The secured fence shall be no less than four (4) feet high, in good condition, and constructed to prevent the escape of the dog. The muzzle will be properly fitted so as not to restrict the breathing or vision of the dog and not to cause harm by abrading or cutting into the skin; or
 - (ii) The dog is fitted with a muzzle, and is secured by means of a leash no more than six (6) feet in length being held by a responsible adult.
- (34) When off the property, in the accompaniment of the owner or other responsible adult, the dog will be secured by a leash no longer than four (4) feet. The leash will be attached to a collar or harness. Both leash and collar or harness must be manufactured specifically for the control of dogs. The dog will be muzzled at all times.
- (5) The owner shall notify the animal control office immediately if the dog escapes or is otherwise freed from the property of the owner, or escapes restraint when off the property of the owner.

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

ADOPTED THIS 12th DAY OF SEPTEMBER, 2023.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider Adopting a Resolution Authorizing the City Manager to Negotiate and Execute a Contract with WithersRavenel, Inc for civil engineering services.

Date of Meeting: September 12, 2023	Ward # if applicable: NA
Department: Development Services	Person Submitting Item: Chris Seaberg, Community and Economic Development Manager
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing:

Explanation of Item:	Submittals were received in response to a Request for Qualifications (RFQ) seeking an individual or firm to provide civil engineering services as part of staff's administration the Local Assistance for Stormwater Infrastructure Investments (LASII) grant offered by the NCDEQ. WithersRavenel, Inc. was selected as the highest ranking of the five qualified responses evaluated by a three (3)-member review committee representing various City departments.
Actions Needed by Board:	Adopt Resolution
Backup Attached:	Memo, Resolution, RFQ, Addendum 1, Addendum 2
Is item time sensitive? <input type="checkbox"/> Yes <input 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:



MEMORANDUM

TO: Mayor Odham and Board of Aldermen

FROM: Christopher Seaberg, Community and Economic Development Manager

DATE: September 12, 2023

SUBJECT: Consider Adopting a Resolution Authorizing the City Manager to Negotiate and Execute a Contract with WithersRavenel, Inc. for Civil Engineering services.

The City publicly advertised a Request for Qualifications (RFQ) on July 28, 2023, seeking an individual or firm to provide Civil Engineering Services as part of administration of the Local Assistance for Stormwater Infrastructure Investments (LASII) grant offered by the North Carolina Department of Environmental Quality (NCDEQ). The City received a Letter of Intent to Fund from NCDEQ dated March 23, 2023, and a grant contract will be administered shortly after contracting with a qualifying firm. Submittals were received on August 18, 2023. The City received five (5) qualified responses. Each respondent was evaluated using the "Method of Selection" published in the RFQ. A three-member review committee represented various City departments and the total scores are displayed below:

Firm	Total Score
WithersRavenel, Inc.	289
TRC Engineers, Inc	277
McAdams	274
Rummel, Klepper & Kahl, LLP (RK&K)	264
ESP Associates, Inc.	253

The final rankings resulted in WithersRavenel, Inc. with 289 out of an available 300 points. Staff recommends the Board consider approving a Resolution Authorizing the City Manager to enter negotiations and execute a Contract with WithersRavenel, Inc., and furthermore, if negotiations fail to proceed, to the next highest ranked respondent until a mutually agreeable contract is approved for Civil Engineering Services.

If you have any questions or need additional information, please contact Christopher Seaberg at 252-639-7580.

RESOLUTION

THAT WHEREAS, a Request for Qualifications ("RFQ") for Civil Engineering Services was publicly advertised on July 28, 2023, and submittals were received on August 18, 2023; and

WHEREAS, the following five (5) submittals were received and scored:

WithersRavenel, Inc.	289
TRC Engineers, Inc.	277
McAdams	274
Rummel, Klepper & Kahl, LLP (RK&K)	264
ESP Associates, Inc.	253

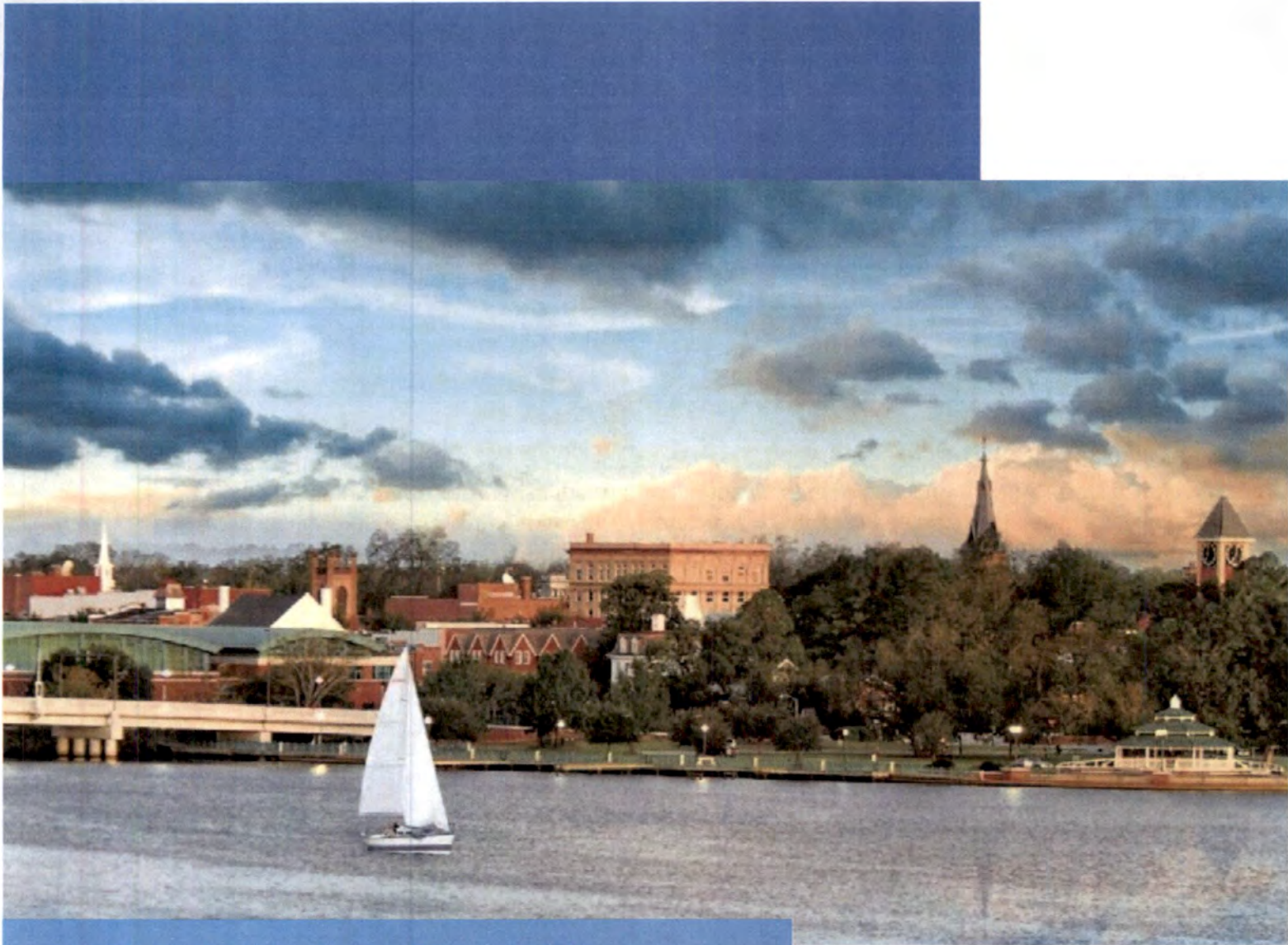
NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

That the City Manager is hereby authorized to Negotiate and Execute a Contract with the highest-ranking firm, WithersRavenel, Inc., for Civil Engineering Services for the City of New Bern.

ADOPTED THIS 12th DAY OF SEPTEMBER, 2023.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK



City of New Bern Request for Qualifications for Professional Services – Civil Engineering Services

CNB # 2024035

Release Date: July 28, 2023
Responses Due: 5:00 PM August 18, 2023

City of New Bern, North Carolina

Contact: Christopher D. Seaberg,
Community & Economic Development Manager
Email: seaberg.christopher@newbernnc.gov

Website: <https://www.newbernnc.gov/>

252.639.7580
303 First Street
PO Box 1129
New Bern, NC 28563



INTRODUCTION

The City of New Bern is requesting qualified professional engineering firms to submit a statement of qualifications to provide engineering services to undertake and complete an Asset Inventory and Assessment [AIA] of the Stormwater System.

This project is funded by the State Water Infrastructure Authority (SWIA), NC Department of Environmental Quality.

BACKGROUND – OVERVIEW

The City of New Bern created its Stormwater Maintenance Division in 2012, which maintains and repairs a stormwater drainage system that consists of more than 60 miles of piping, 80 miles of drainage conveyances, and 4,000 drainage structures. Lying in the lower stretch of the Neuse River, the City has implemented a stormwater ordinance and permitting program to reduce Total Nitrogen discharge into the Neuse River, which is classified as impaired in the section adjacent to New Bern.

This AIA project proposes to facilitate organization of acquired data and assist in documenting, prioritizing, and planning for the future needs of the system, as well as to preserve institutional knowledge of the municipal staff and contract operator. The AIA is expected to consist of:

- **Updated and Accurate Inventory:** New Bern’s Public Works Department needs an updated and accurate asset inventory. The updated database of where their assets are located, and the condition assessment of their assets is vital to effective and efficient planning. Similarly, there are older parts of New Bern that lack stormwater infrastructure and the City will need to update the GIS system to include those areas since they contribute significant contamination to the stormwater runoff.
- **Asset Management Plan:** The asset management plan will include a state of the system, condition assessment, undersized infrastructure identification, the identification of problem areas, a list of projects, a capital improvement plan, levels of service, and recommended operation and maintenance activities and strategies.
- **“Sunny Day Flood” Management Plan:** New Bern is vulnerable to multiple flooding threats due to climate change. The City experienced over \$100 million in damages from Hurricane Florence, but low lying areas, such as the Duffyfield Neighborhood, experience flooding from non-tropical rain events. The warming climate creates atmospheric conditions causing more severe storms, occurring more frequently, with greater amounts of precipitation. Some areas of New Bern are now experiencing tidal flooding, otherwise known as “sunny day floods,” which the Public Works Department must manage. Situated at the lower reach of the Neuse River, New Bern is susceptible to flooding due to either riverine flooding or from storm surge.

OBJECTIVES

The City of New Bern intends to hire a professional engineering firm to assist the City with the following aspects of the project. These tasks will include, but are not limited to:

- Grant Administration and Management.
- Funding Applications [if needed, not anticipated].
- Adhere to Project Schedules & Milestones established by NC DEQ-DWI.
- Preparation of Engineering Report and Environmental Information Document to comply with funding requirements, if needed.
- Final Design of the AIA Project.
- Field Surveying, as needed.
- Completion of Bid Documents including Specifications and Design Drawings for the project, if needed.
- Completion of AIA.
- Closeout, Final Reports, Presentation to the City of New Bern Board of Alderman [if requested].

ADDITIONAL INFORMATION

The selected consultant should be prepared to meet the General Liability and Professional Liability Insurance requirements of the City. Project scope, duration, and terms shall be negotiated with the selected consultant. The City may enter into more than one contract with the chosen consultant based on project phasing and funding.

CONTENTS OF RESPONSE

This Request for Qualifications is intended to provide consultants with an opportunity to demonstrate their ability to perform the required tasks. The content of the response should respond to the information presented in this Request for Qualifications. The City will require the electronic submittal of the responses from all interested firms. All responses shall not exceed 10 (8½" x 11") pages and must contain the following information:

1. Cover.
2. Cover Letter.
3. Table of Contents.
4. Background information about the Consultant Firm.
5. A proposed project schedule identifying the length of time required for each phase of the work.
6. A description of the background, experience, and qualifications of the project team including identification of the project manager, project engineer, and other key team members. Include an organizational chart showing the proposed project personnel and office location.
7. Similar projects completed by the firm.
8. Other Grant Funded and Stormwater projects.
9. References.
10. Resumes of Key Team Members.

The Cover, Cover Letter, Table of Contents, and Resume of Team Members will not be counted within the page limit. Responses are to be less than 15 megabytes in size or need to be hosted on an outside file sharing service. It is the engineering firm's responsibility to confirm that the outside file sharing service was received.

METHOD OF SELECTION

Responses will be reviewed by a selection committee consisting of City staff for the purpose of identifying and recommending, to the City of New Bern Board of Alderman, those Engineering Firms offering, in total, the highest qualifications and experience with this type of project. The individuals or firms recommended may also be interviewed by members of the selection committee for the express intention of recommending a final shortlist of individuals or firms, however, such is not required.

CRITERIA	POINTS
Qualifications, background, and prior experience of the firm and the proposed project team in executing similar projects.	20
Firm's capability to meet time and project budget requirements.	15
Management ability and familiarity with federal and state regulations.	15
Previous Experience with Water Distribution Line projects.	15
Previous Experience with AIA projects.	15
Content, technical approach, and understanding of the scope of the project.	10
Content, technical approach, and understanding of the scope of the project. 10 Recent and current work for the town or a nearby local government.	10
Maximum Total Points	100

SUBMITTAL

Please submit your Qualifications, by **electronic submittal** using the subject of “*Statement of Qualifications for Stormwater AIA Project*”, to be received by the City of New Bern **no later than 5:00 pm, Friday, August 18, 2023** to the attention of:

Christopher D. Seaberg
Community and Economic Development Manager
seaberg.christopher@newbernnc.gov

AND

cc: George Chiles
Director of Public Works
chilesg@newbernnc.gov

In the interest of fairness to all submitting firms, proposals received after the scheduled receipt time stated above will not be accepted and will be marked “LATE”. All submittals received become the property of the City of New Bern and will not be returned. **Faxed documents will not be accepted.** Early submission of Qualifications is welcome and appreciated.

CONTACT PERSON

In the event clarification or additional information is needed, contact:

Christopher D. Seaberg
Community and Economic Development Manager
seaberg.christopher@newbernnc.gov

Email is the preferred method of communication for questions or clarifications. Clarifications and/or additional information will be provided to all interested parties by the Owner by addenda to this package. **Questions asked after August 11, 2023 at 5 pm will not be answered.**

DISCRETION AND LIABILITY WAIVER

- The City of New Bern reserves the right to reject any and all proposals, waive any irregularities in the proposal, revise the scope of the project, and award the project to the consultant they believe to be the most qualified to perform the work. If a contract is not able to be negotiated, the City reserves the right to terminate all negotiations and select one of the other finalists or issue a new RFQ.
- The City of New Bern reserves the right to request and obtain, from consulting firms submitting proposals, supplementary information or request clarification of information submitted as may be necessary for City staff pursuant to the selection criteria contained herein.
- The City of New Bern does not compensate for the cost of proposal preparation, and all materials submitted with the proposal become the property of the City.

- The City of New Bern reserves the right, through this RFQ, to contract engineering services for the design and construction administration of any alternative process that is identified, as the result of this study, with the firm selected for this RFQ or enter into an agreement with another consulting engineering firm.
- The City of New Bern is an Equal Opportunity Employer and will not discriminate on the basis of race, color, religion, sex, national origin, age, or handicap.

END OF REQUEST FOR QUALIFICATIONS



CITY OF NEW BERN

CNB # 2024035

Request for Qualifications for Professional Services – Civil Engineering Services

ADDENDUM No 1, August 15, 2023

This addendum forms a part of the RFQ documents and clarifies questions regarding RFQ for Civil Engineering Services. **There is (2) two pages in the addendum.**

1. Contents of Response on page 3 of the RFQ does not include a request for a project or technical approach. Should this be included in the response/submittal? **Contents of Response on page 3 of the RFQ now includes a number 11 entitled “Technical Approach”.**
2. Could you please provide the grant application/award with all maps, funding task outlines, problem area descriptions, and data? **We have provided a copy of the grant application along with the Notice of Funding Intent received from the North Carolina Department of Environmental Quality...**
3. Under Method of Selection (4th criteria down – “Previous Experiences with Water Distribution Line projects”), were you looking for storm drainage network and mitigation structures or water distribution/collection lines that are interconnected/punching through the stormwater network (need a plan to account for relocation)? **This will be experience related to stormwater drainage network and mitigation.**
4. Did an outside consultant assist with acquiring the funding for this project? If so, may you please provide the name of the consultant and whether or not this organization is precluded from submitting an SOQ for this advertisement? **WithersRavenel, Inc. assisted the City with this grant application and can submit a response to this RFQ.**
5. Is the current Stormwater GIS and ESRI database? Please provide details if possible (i.e., Enterprise database). **Yes, there is a GIS and ESRI database. It’s a common platform that will be shared once a qualified firm is selected.**
6. Are you looking for a stormwater database re-design as part of this contract? **No, the current stormwater database will need to be updated or corrected with the new asset information, no re-design of the database or software platform is anticipated.**
7. Are you willing to share a copy of the stormwater database, or a link to a streaming service? **No, once a qualified firm is selected this information will be provided.**
8. How many of the 4,000 stormwater structures do you anticipate needing survey grade location? **This will be determined during project scoping and negotiation.**
9. Do you know what percent of structures and pipes will need attribute updates? **This will be determined during project scoping and negotiation.**

10. Are you looking to have all structures and pipe within the system assessed for condition?
This will be determined during project scoping and negotiation.
11. Under “Method of Selection”, in the last row for the selection criteria, the criteria column, reads as though there are two criteria in the same row, please confirm. **This column now reads: “Content, technical approach, and understanding of the scope of the project. Recent and current work for the town or a nearby local government.” The intent is to review each submittal received and score it based on the information provided for a maximum of 10 points.**
12. Under the “Method of Selection”, the fourth row for selection criteria, the RFQ references showing experience with water distribution line projects,. The RFP doesn't mention anywhere else about water distribution, and we were wondering if this is to be part of the scope of work? **Please see the answer to number 3 above.**

---END OF ADDENDUM NO 1---



CITY OF NEW BERN

CNB # 2024035

Request for Qualifications for Professional Services – Civil Engineering Services

ADDENDUM No 2, August 16, 2023

This addendum forms a part of the RFQ documents and corrects some clerical errors in the RFQ for Civil Engineering Services. **There is (1) one pages in the addendum.**

1. “Objectives” on page three now reads:

The City of New Bern intends to hire a professional engineering firm to assist the City with the following aspects of the project. The City encourages proposals/qualifications from MWBE firms. These tasks will include, but are not limited to:

- Grant Administration and Management.
- Funding Applications [if needed, not anticipated].
- Adhere to Project Schedules & Milestones established by NC DEQ-DWI.
- Preparation of Engineering Report and Environmental Information Document to comply with funding requirements, if needed.
- ~~Final Design of the AIA Project.~~ (This is a planning project. There will be no construction for this project to design.)
- Field Surveying, as needed.
- Completion of Bid Documents including Specifications and Design Drawings for the project, if needed.
- Completion of AIA.
- Closeout, Final Reports, Presentation to the City of New Bern Board of Alderman ~~[if requested]~~.

---END OF ADDENDUM NO 2---

AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider Adopting a Bond Order for the Combined Enterprise System Revenue Bond, Series 2023 for the Sewer Improvements Projects

Date of Meeting: 9/12/2023	Ward # if applicable:
Department: Finance	Person Submitting Item: Kim Ostrom, Director of Finance
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing:

Explanation of Item:	Requesting to adopt an order authorizing the sale and issuance by the City of a Combined Enterprise System Revenue Bond, Series 2023 and authorizing the execution and delivery of certain documents.
Actions Needed by Board:	Adopt bond order
Backup Attached:	Memo; Bond Order; Purchase Agreement; Trust Agreement
Is item time sensitive? <input checked="" type="checkbox"/> Yes <input 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:



NEW BERN
CITY OF NEW BERN

300 Pollock Street, P.O. Box 1129
New Bern, NC 28563-1129
(252) 636-4000

Aldermen

Rick Prill
Hazel B. Royal
Robert V. Aster
Johnnie Ray Kinsey
Barbara J. Best
Robert Brinson, Jr.

Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

TO: City Manager, Honorable Mayor and Members of the Board of Aldermen
FROM: Kim Ostrom - Director of Finance
DATE: August 28, 2023
RE: Bond Order for the Combined Enterprise System Revenue Bond, Series 2023 for the Sewer Improvements Projects

Current

The City is pursuing the issuance of its Combined Enterprise System Revenue Bonds, Series 2023 in an amount not to exceed \$6,100,000 for the purpose of financing project costs related to the Northwest Sewer Interceptor Rehabilitation Phase II Project and the Township 7 Sewer Improvements Phase III Project. The Series 2023 Revenue Bond will be privately placed with Webster Bank. The attached Bond Order (a) grants final approval for the issuance of the Series 2023 Bonds, (b) authorizes the sale of the Series 2023 Bonds to Webster Bank, (c) approves the forms of the financing documents related to the issuance of the Series 2023 Bonds, and (d) authorizes certain officers and officials of the City to take all further action related to the Series 2023 Bonds including execution of the final forms of the financing documents. The Series 2023 Bonds are scheduled to close on Thursday, September 21st.

Requested Action

It is recommended that the Board adopt the attached bond order for the Series 2023 Bonds.

**ORDER AUTHORIZING THE SALE AND ISSUANCE BY THE CITY OF
NEW BERN, NORTH CAROLINA OF A COMBINED ENTERPRISE
SYSTEM REVENUE BOND, SERIES 2023 AND AUTHORIZING THE
EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN
CONNECTION THEREWITH**

BE IT ORDERED by the Board of Aldermen (the "Board") of the City of New Bern, North Carolina (the "City"):

Section 1. The Board does hereby find and determine as follows:

(a) Pursuant to a Trust Agreement, dated as of June 1, 2013 (the "Trust Agreement"), between the City and Branch Banking and Trust Company (succeeded by Truist Bank), as trustee (the "Trustee"), the City created a combined enterprise system (the "Combined Enterprise System") which consists of the City's water system, sanitary sewer system and electric system. The Trust Agreement provides for the issuance of revenue bonds thereunder to finance and refinance improvements to the Combined Enterprise System and to refund certain indebtedness of the City relating to the Combined Enterprise System. The revenue bonds issued under the Trust Agreement are secured by the net receipts of the Combined Enterprise System as provided in the Trust Agreement.

(b) The Board has determined to acquire, construct and equip certain improvements to the City's Combined Enterprise System, including, without limitation, the Northwest Sewer Interceptor Rehabilitation Phase II Project and the Township 7 Sewer Improvements Phase III Project (collectively, the "Project").

(c) At a meeting held on August 8, 2023, the Board authorized the filing of an application with the North Carolina Local Government Commission (the "LGC") requesting approval of the issuance of revenue bonds of the City for the purpose of providing funds, together with other available funds, to (i) pay the costs of the Project and (ii) pay certain other costs associated with the issuance and sale of such revenue bonds.

(d) The City, by resolution, also requested approval from the LGC to sell such revenue bonds at private sale without advertisement.

(e) The LGC is considering the approval of the application of the City for the issuance of the Series 2023 Bond (hereinafter defined) in an aggregate principal amount not to exceed \$6,100,000 in accordance with N.C.G.S. 159-86.

(f) The City has determined to issue its City of New Bern, North Carolina Combined Enterprise System Revenue Bond, Series 2023 (the "Series 2023 Bond") in an aggregate principal amount of not to exceed \$6,100,000 for the purpose of providing funds, together with any other available funds, to (i) pay the costs of the Project and (ii) pay certain other costs associated with the issuance and sale of the Series 2023 Bond.

(g) The City proposes to sell the Series 2023 Bond to Webster Bank, National Association (the "Purchaser"), pursuant to the provisions of a Bond Purchase Agreement (hereinafter defined), subject to the approval thereof by the City.

(h) There have been presented to the Board at this meeting drafts of the following documents relating to the sale and issuance of the Series 2023 Bond:

(1) Fourth Supplemental Trust Agreement, to be dated as of September 1, 2023 (the "Fourth Supplemental Trust Agreement"), between the City and the Trustee, supplementing the Trust Agreement; and

(2) Bond Purchase Agreement, to be dated as of the date of delivery thereof (the "Bond Purchase Agreement"), among the Purchaser, the LGC and the City.

(i) The City has determined that the sale and issuance of the Series 2023 Bond in the manner provided in this order is in the best interests of the City.

Section 2. Capitalized words and terms used in this order and not defined herein shall have the same meanings given such words and terms in the Trust Agreement and the Fourth Supplemental Trust Agreement.

Section 3. Pursuant to the provisions of The State and Local Government Revenue Bond Act, as amended (the "Act"), particularly G.S. 159-88, the City hereby authorizes the issuance of the Series 2023 Bond in an aggregate principal amount of not to exceed \$6,100,000 for the purposes set forth in Section 1(f) of this order. The amount of the Series 2023 Bond has been determined to be sufficient, together with any other available funds, to (a) pay the costs of the Project and (b) pay certain costs and expenses incurred in connection with the issuance of the Series 2023 Bond. The Series 2023 Bond shall mature at such times and in such amounts as shall be set forth in the Trust Agreement and the Fourth Supplemental Trust Agreement, subject to the provisions of this order.

The Series 2023 Bond shall be initially issued as one fully-registered bond in a principal amount of not to exceed \$6,100,000 with installment payments of principal being due and payable on March 1 and September 1 of each year from September 1, 2024 to March 1, 2039, inclusive, and interest being due and payable on each March 1 and September 1, as the case may be, beginning September 1, 2024, as set forth in the Fourth Supplemental Trust Agreement.

Section 4. The Series 2023 Bond shall be subject to optional redemption at the times, upon the terms and conditions, and at the redemption prices as shall be set forth in the Trust Agreement and the Fourth Supplemental Trust Agreement.

Section 5. The proceeds of the Series 2023 Bond shall be applied as provided in Section 204 of the Fourth Supplemental Trust Agreement.

Section 6. The Series 2023 Bond and any other obligations secured on a parity therewith pursuant to the provisions of the Trust Agreement, shall be secured on a parity basis by a pledge, charge and lien upon the Net Receipts and the money and Investment Obligations held in the accounts and subaccounts of the Bond Fund in the manner and to the extent provided in the Trust Agreement and the Fourth Supplemental Trust Agreement.

Section 7. The proposal set forth in the Bond Purchase Agreement submitted by the Purchaser offering to purchase the Series 2023 Bond bearing interest at the rate of 4.45% per annum at a purchase price equal to 100% of the principal amount of the Series 2023 Bond, subject to the approval thereof by the LGC, is hereby approved. The LGC is hereby requested to sell and award the Series 2023 Bond to the Purchaser on behalf of the City, subject to the approval of the City, in accordance with the terms of the Bond Purchase Agreement. The Mayor, the City Manager and the Director of Finance of the City are each hereby individually designated to approve on behalf of the City the sale of the Series 2023 Bond to the Purchaser at such interest rate, for such purchase price and upon such terms and conditions as the officer approving the sale shall determine, subject to the provisions of this order. The Mayor, the City Manager and the Director of Finance of the City are each hereby individually authorized and directed in the name and on behalf of the City to execute and deliver the Bond Purchase Agreement in substantially the form presented, together with such changes, additions and deletions as the officer executing and delivering the agreement, with the advice of counsel, may deem necessary and appropriate, such execution and delivery to be conclusive evidence of the approval and authorization in all respects of the form and content thereof.

Section 8. The form, terms and provisions of the Fourth Supplemental Trust Agreement are hereby approved, and the Mayor, the City Manager or the Director of Finance of the City and the City Clerk or any Assistant or Deputy City Clerk are hereby authorized and directed to execute the Fourth Supplemental Trust Agreement in substantially the form presented, together with such changes, additions and deletions as the Mayor, the City Manager or the Director of Finance, with the advice of counsel, may deem necessary and appropriate, such execution and delivery to be conclusive evidence of the approval and authorization in all respects of the form and content thereof.

Section 9. The Mayor, the City Manager, the Director of Finance, the City Clerk and the City Attorney, or any of them or their deputies, are each hereby authorized and directed (without limitation except as may be expressly set forth in this order) to take such action and to execute and deliver such certificates, agreements, instruments, opinions or other documents as they, with the advice of counsel, may deem necessary or appropriate to effect the transactions contemplated by this order, the Trust Agreement, the Fourth Supplemental Trust Agreement or the Bond Purchase Agreement.

The officers of the City and the agents and employees of the City are hereby authorized and directed to do all acts and things required of them by the provisions of this order, the Series 2023 Bond, the Trust Agreement, the Fourth Supplemental Trust

Agreement and the Bond Purchase Agreement for the full, punctual and complete performance of the terms, covenants, provisions and agreements of the same.

Section 10. The sale and issuance of the Series 2023 Bond is hereby approved subject to the terms and conditions set forth in this order.

Section 11. Pursuant to Section 101 of the Trust Agreement, the Board hereby confirms that the City's System Development Fees (formerly identified as "Capital Recovery Fees") constitute Revenues and Receipts for purposes of the Trust Agreement.

Section 12. This order shall take effect immediately upon its adoption.

ADOPTED THIS 12TH DAY OF SEPTEMBER, 2023.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

The Board of Aldermen of the City of New Bern, North Carolina met in a regular meeting in the City Hall Courtroom located at 300 Pollock Street in New Bern, North Carolina, the regular place of meeting, at 6:00 p.m. on September 12, 2023.

Present: Mayor Jeffrey T. Odham, presiding, and Aldermen

Absent: Aldermen

Also present: _____

* * * * *

_____ introduced the following order, the title of which was read and a copy of which had been previously distributed to each Alderman:

ORDER AUTHORIZING THE SALE AND ISSUANCE BY THE CITY OF NEW BERN, NORTH CAROLINA OF A COMBINED ENTERPRISE SYSTEM REVENUE BOND, SERIES 2023 AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH

BE IT ORDERED by the Board of Aldermen (the "Board") of the City of New Bern, North Carolina (the "City"):

Section 1. The Board does hereby find and determine as follows:

(a) Pursuant to a Trust Agreement, dated as of June 1, 2013 (the "Trust Agreement"), between the City and Branch Banking and Trust Company (succeeded by Truist Bank), as trustee (the "Trustee"), the City created a combined enterprise system (the "Combined Enterprise System") which consists of the City's water system, sanitary sewer system and electric system. The Trust Agreement provides for the issuance of revenue bonds thereunder to finance and refinance improvements to the Combined Enterprise System and to refund certain indebtedness of the City relating to the Combined Enterprise System. The revenue bonds issued under the Trust Agreement are secured by the net receipts of the Combined Enterprise System as provided in the Trust Agreement.

(b) The Board has determined to acquire, construct and equip certain improvements to the City's Combined Enterprise System, including, without limitation, the Northwest Sewer Interceptor Rehabilitation Phase II Project and the Township 7 Sewer Improvements Phase III Project (collectively, the "Project").

(c) At a meeting held on August 8, 2023, the Board authorized the filing of an application with the North Carolina Local Government Commission (the "LGC") requesting approval of the issuance of revenue bonds of the City for the purpose of providing funds, together with other available funds, to (i) pay the costs of the Project and (ii) pay certain other costs associated with the issuance and sale of such revenue bonds.

(d) The City, by resolution, also requested approval from the LGC to sell such revenue bonds at private sale without advertisement.

(e) The LGC is considering the approval of the application of the City for the issuance of the Series 2023 Bond (hereinafter defined) in an aggregate principal amount not to exceed \$6,100,000 in accordance with N.C.G.S. 159-86.

(f) The City has determined to issue its City of New Bern, North Carolina Combined Enterprise System Revenue Bond, Series 2023 (the "Series 2023 Bond") in an aggregate principal amount of not to exceed \$6,100,000 for the purpose of providing funds, together with any other available funds, to (i) pay the costs of the Project and (ii) pay certain other costs associated with the issuance and sale of the Series 2023 Bond.

(g) The City proposes to sell the Series 2023 Bond to Webster Bank, National Association (the "Purchaser"), pursuant to the provisions of a Bond Purchase Agreement (hereinafter defined), subject to the approval thereof by the City.

(h) There have been presented to the Board at this meeting drafts of the following documents relating to the sale and issuance of the Series 2023 Bond:

(1) Fourth Supplemental Trust Agreement, to be dated as of September 1, 2023 (the "Fourth Supplemental Trust Agreement"), between the City and the Trustee, supplementing the Trust Agreement; and

(2) Bond Purchase Agreement, to be dated as of the date of delivery thereof (the "Bond Purchase Agreement"), among the Purchaser, the LGC and the City.

(i) The City has determined that the sale and issuance of the Series 2023 Bond in the manner provided in this order is in the best interests of the City.

Section 2. Capitalized words and terms used in this order and not defined herein shall have the same meanings given such words and terms in the Trust Agreement and the Fourth Supplemental Trust Agreement.

Section 3. Pursuant to the provisions of The State and Local Government Revenue Bond Act, as amended (the "Act"), particularly G.S. 159-88, the City hereby authorizes the issuance of the Series 2023 Bond in an aggregate principal amount of not to exceed \$6,100,000 for the purposes set forth in Section 1(f) of this order. The amount of the Series 2023 Bond has been determined to be sufficient, together with any other available funds, to (a) pay the costs of the Project and (b) pay certain costs and expenses incurred in connection with the issuance of the Series 2023 Bond. The Series 2023 Bond shall mature at such times and in such amounts as

shall be set forth in the Trust Agreement and the Fourth Supplemental Trust Agreement, subject to the provisions of this order.

The Series 2023 Bond shall be initially issued as one fully-registered bond in a principal amount of not to exceed \$6,100,000 with installment payments of principal being due and payable on March 1 and September 1 of each year from September 1, 2024 to March 1, 2039, inclusive, and interest being due and payable on each March 1 and September 1, as the case may be, beginning September 1, 2024, as set forth in the Fourth Supplemental Trust Agreement.

Section 4. The Series 2023 Bond shall be subject to optional redemption at the times, upon the terms and conditions, and at the redemption prices as shall be set forth in the Trust Agreement and the Fourth Supplemental Trust Agreement.

Section 5. The proceeds of the Series 2023 Bond shall be applied as provided in Section 204 of the Fourth Supplemental Trust Agreement.

Section 6. The Series 2023 Bond and any other obligations secured on a parity therewith pursuant to the provisions of the Trust Agreement, shall be secured on a parity basis by a pledge, charge and lien upon the Net Receipts and the money and Investment Obligations held in the accounts and subaccounts of the Bond Fund in the manner and to the extent provided in the Trust Agreement and the Fourth Supplemental Trust Agreement.

Section 7. The proposal set forth in the Bond Purchase Agreement submitted by the Purchaser offering to purchase the Series 2023 Bond bearing interest at the rate of 4.45% per annum at a purchase price equal to 100% of the principal amount of the Series 2023 Bond, subject to the approval thereof by the LGC, is hereby approved. The LGC is hereby requested to sell and award the Series 2023 Bond to the Purchaser on behalf of the City, subject to the approval of the City, in accordance with the terms of the Bond Purchase Agreement. The Mayor, the City Manager and the Director of Finance of the City are each hereby individually designated to approve on behalf of the City the sale of the Series 2023 Bond to the Purchaser at such interest rate, for such purchase price and upon such terms and conditions as the officer approving the sale shall determine, subject to the provisions of this order. The Mayor, the City Manager and the Director of Finance of the City are each hereby individually authorized and directed in the name and on behalf of the City to execute and deliver the Bond Purchase Agreement in substantially the form presented, together with such changes, additions and deletions as the officer executing and delivering the agreement, with the advice of counsel, may deem necessary and appropriate, such execution and delivery to be conclusive evidence of the approval and authorization in all respects of the form and content thereof.

Section 8. The form, terms and provisions of the Fourth Supplemental Trust Agreement are hereby approved, and the Mayor, the City Manager or the Director of Finance of the City and the City Clerk or any Assistant or Deputy City Clerk are hereby authorized and directed to execute the Fourth Supplemental Trust Agreement in substantially the form presented, together with such changes, additions and deletions as the Mayor, the City Manager or the Director of Finance, with the advice of counsel, may deem necessary and appropriate, such execution and delivery to be conclusive evidence of the approval and authorization in all respects of the form and content thereof.

Section 9. The Mayor, the City Manager, the Director of Finance, the City Clerk and the City Attorney, or any of them or their deputies, are each hereby authorized and directed (without limitation except as may be expressly set forth in this order) to take such action and to execute and deliver such certificates, agreements, instruments, opinions or other documents as they, with the advice of counsel, may deem necessary or appropriate to effect the transactions contemplated by this order, the Trust Agreement, the Fourth Supplemental Trust Agreement or the Bond Purchase Agreement.

The officers of the City and the agents and employees of the City are hereby authorized and directed to do all acts and things required of them by the provisions of this order, the Series 2023 Bond, the Trust Agreement, the Fourth Supplemental Trust Agreement and the Bond Purchase Agreement for the full, punctual and complete performance of the terms, covenants, provisions and agreements of the same.

Section 10. The sale and issuance of the Series 2023 Bond is hereby approved subject to the terms and conditions set forth in this order.

Section 11. Pursuant to Section 101 of the Trust Agreement, the Board hereby confirms that the City's System Development Fees (formerly identified as "Capital Recovery Fees") constitute Revenues and Receipts for purposes of the Trust Agreement.

Section 12. This order shall take effect immediately upon its adoption.

Upon motion of Alderman _____, seconded by Alderman _____, the foregoing order entitled "ORDER AUTHORIZING THE SALE AND ISSUANCE BY THE CITY OF NEW BERN, NORTH CAROLINA OF A COMBINED ENTERPRISE SYSTEM REVENUE BOND, SERIES 2023 AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH" was adopted by the following vote:

Ayes: _____

Noes: _____

* * * * *

I, Brenda E. Blanco, City Clerk of the City of New Bern, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of so much of the proceedings of the Board of Aldermen of said City at a regular meeting held on September 12, 2023, as relates in any way to the adoption of the foregoing order and that said proceedings are recorded in the minute books of said Board of Aldermen.

I DO HEREBY FURTHER CERTIFY that proper notice of such regular meeting was given as required by North Carolina law.

WITNESS my hand and the official seal of the City this 12th day of September, 2023.

[SEAL]

Brenda E. Blanco, City Clerk

Draft No. 1
August 23, 2023

FOURTH SUPPLEMENTAL TRUST AGREEMENT

Dated as of September 1, 2023

Between

CITY OF NEW BERN, NORTH CAROLINA

and

TRUIST BANK,
Trustee

Authorizing and Securing

\$ _____
City of New Bern, North Carolina
Combined Enterprise System Revenue Bond
Series 2023

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This FOURTH SUPPLEMENTAL TRUST AGREEMENT, dated as of September 1, 2023 (the "Supplemental Agreement"), between the CITY OF NEW BERN, NORTH CAROLINA, a municipal corporation duly organized and existing under the laws of the State of North Carolina (the "City"), and TRUIST BANK, a state banking corporation duly organized and validly existing under the laws of the State of North Carolina, having an office and principal place of business in Wilson, North Carolina, which is authorized under such laws to exercise trust powers (the "Trustee");

WITNESSETH:

WHEREAS, the City has heretofore executed and delivered a Trust Agreement, dated as of June 1, 2013 (the "Trust Agreement"), between the City and Branch Banking and Trust Company (succeeded by the Trustee), which authorizes the City to issue revenue bonds in accordance with the terms thereof to finance and refinance, among other things, improvements to the City's Combined Enterprise System (as defined in the Trust Agreement); and

WHEREAS, the City has determined to finance the cost of certain improvements to the City's existing water system, sanitary sewer system and electric system as more fully described in Exhibit A attached hereto and made a part hereof (the "Series 2023 Project"); and

WHEREAS, the City has determined that the issuance of a revenue bond as authorized by the Trust Agreement and this Supplemental Agreement to finance the costs of the Series 2023 Project will benefit and be in the best interests of the City; and

WHEREAS, on September 12, 2023, the Board of Aldermen of the City adopted an order authorizing the issuance of the Series 2023 Bond; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Section 101. Meaning of Words and Terms. Unless otherwise required by the context, capitalized words and terms used herein which are defined in the Trust Agreement shall have the meanings assigned to them therein, and the following words and terms shall have the following meanings:

“Bond Year” means the period commencing on June 1 of any year and ending on the last day of May of the following year.

“Closing” means the delivery of and payment for the Series 2023 Bond.

“Closing Date” means the date of the Closing.

“Interest Payment Date” means each March 1 and September 1, as the case may be, beginning September 1, 2024.

“Principal Payment Date” means each March 1 and September 1, as the case may be, beginning September 1, 2024.

“Purchaser” means Webster Bank, as the original purchaser of the Series 2023 Bond.

“Regular Record Date” means the 15th day of the month preceding any Interest Payment Date, whether or not a Business Day.

“Series 2023 Bond” means the City of New Bern, North Carolina Combined Enterprise System Revenue Bond, Series 2023 issued pursuant to the Trust Agreement and this Supplemental Agreement.

“Series 2023 Project” means the improvements to the City’s water system, sanitary sewer system and electric system described in Exhibit A attached hereto, as such description may be amended or supplemented from time to time.

“Series 2023 Project Account” means the account created and so designated by Section 401.

“Series 2023 Subaccount of the Interest Account” means the subaccount created and so designated by Section 401.

“Series 2023 Subaccount of the Principal Account” means the subaccount created and so designated by Section 401.

“Series 2023 Subaccount of the Redemption Account” means the subaccount created and so designated by Section 401.

Section 102. Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words used herein shall include the plural as well as the singular number. References herein to particular articles or sections are references to articles or sections of this Supplemental Agreement unless some other reference is indicated.

ARTICLE II

AUTHORIZATION, FORM, ISSUANCE, DELIVERY AND REGISTRATION OF THE SERIES 2023 BOND

Section 201. Authorization and Issuance of Series 2023 Bond. The City hereby authorizes the issuance of a \$ _____ City of New Bern, North Carolina Combined Enterprise System Revenue Bond, Series 2023 for the purpose of providing funds, together with any other available funds, to (a) pay the Costs of the Series 2023 Project and (b) pay the other costs and expenses incurred in connection with the sale and issuance of the Series 2023 Bond. The Series 2023 Bond shall be issued under and pursuant to the Constitution and the laws of the State, including the Act, an order adopted by the Board of Aldermen of the City on September 12, 2023, the Trust Agreement and this Supplemental Agreement, subject to the conditions set forth herein and therein.

Section 202. Form of Series 2023 Bond. The definitive Series 2023 Bond shall be initially issued as one fully registered bond without coupons numbered R-1 in the aggregate principal amount of \$ _____, and shall be initially registered in the name of the Purchaser. The definitive Series 2023 Bond shall be substantially in the form set forth in Exhibit B attached hereto and made a part hereof, with such appropriate variations, omissions and insertions as are permitted or required by the Trust Agreement or this Supplemental Agreement. Notwithstanding anything in the Trust Agreement to the contrary, the Series 2023 Bond may be transferred in the manner specified in the Trust Agreement, but may not be exchanged for any denomination other than the outstanding principal amount thereof.

Notwithstanding any other provisions of the Trust Agreement or this Supplemental Agreement to the contrary, the Trustee shall not register the transfer of any Series 2023 Bond to any person other than a bank, insurance company or similar financial institution unless such transfer has been previously approved by the Local Government Commission. The provisions of this paragraph may not be amended without the prior written consent of the Local Government Commission.

Section 203. Details of Series 2023 Bond. The Series 2023 Bond shall be dated the Closing Date, shall bear interest at a rate of 4.45% per annum (computed on the basis of a 360-day year consisting of twelve 30-day months), such interest being payable on each Interest Payment Date, and shall mature (subject to the right of prior redemption) in principal installments payable on each Principal Payment Date as set forth in the Series 2023 Bond, with the final principal installment being due and payable on March 1, 2039.

Section 204. Terms and Condition for Issuance of Series 2023 Bond. The Series 2023 Bond shall be executed substantially in the form and in the manner herein set forth and shall be deposited with the Trustee for authentication, but before the Series 2023 Bond shall be authenticated and delivered to the State Treasurer for redelivery to the Purchaser, there shall be filed with the Trustee, in addition to the items required to be delivered to the Trustee pursuant to Section 208 of the Trust Agreement, the following:

- (a) a fully executed copy of this Supplemental Agreement;

(b) an opinion of the City Attorney to the effect that (i) to the best of his knowledge, no provisions of the Trust Agreement or this Supplemental Agreement violate any provisions of the City's charter or results in or constitutes a default under any agreement, indenture or other instrument to which the City is a party or by which the City may be bound, and (ii) the execution and delivery of the Trust Agreement and this Supplemental Agreement by the City and the issuance of the Series 2023 Bond by the City are not subject to any authorization, consent, approval or review of any governmental body, public officer or regulatory authority not theretofore obtained or effected; provided, however, that such opinion may except matters pertaining to compliance with The Local Government Finance Act of the State of North Carolina, including, without limitation, the Act, and federal and State taxation; and

(c) an opinion of bond counsel to the effect that the Series 2023 Bond has been validly issued in accordance with the provisions of the Trust Agreement and this Supplemental Agreement and that the interest on the Series 2023 Bond is excludable from the gross income of its Owner for federal income tax purposes.

When the documents mentioned in Section 208 of the Trust Agreement and subsections (a) through (c) of this Section shall have been filed with the Trustee, and when the Series 2023 Bond shall have been executed and authenticated by the Trustee as required by this Supplemental Agreement, the Series 2023 Bond shall be delivered to or upon the order of the State Treasurer for redelivery to or upon the order of the Purchaser, but only upon the payment by the Purchaser of the purchase price in the amount of \$_____.

Simultaneously with the Closing and the deposit of the proceeds of the Series 2023 Bond in the amount of \$_____ with the Trustee, the Trustee shall cause the proceeds of the Series 2023 Bond to be deposited to the credit of the Series 2023 Project Account to pay the Costs of the Series 2023 Project and costs of issuance related to the Series 2023 Bond.

ARTICLE III

REDEMPTION OF SERIES 2023 BOND

Section 301. Redemption of Series 2023 Bond. (a) The principal installments of the Series 2023 Bond shall not be subject to prior redemption except as provided in this Article III and in Article III of the Trust Agreement.

(b) The principal installments of the Series 2023 Bond are subject to redemption prior to their stated Principal Payment Dates, at the option of the City, from any moneys that may be available for such purpose, in whole or in part, on any date on or after September 21, 2027, at the following Redemption Prices (expressed as a percentage of the principal component of the principal installments of the Series 2023 Bond to be redeemed), plus accrued interest to the redemption date:

<u>Redemption Period (Inclusive)</u>	<u>Redemption Price</u>
September 21, 2027 to September 21, 2029	101%
September 21, 2029 and thereafter	100

Any redemption in part shall be limited to one time per calendar year, and, in the event of a partial redemption of the Series 2023 Bond, such partial redemption shall be applied by inverse order of maturity.

Section 302. Redemption Notice. At least thirty (30) days but not more than sixty (60) days prior to the redemption date of the Series 2023 Bond, the Trustee shall cause a notice of such redemption signed by the Trustee to be mailed, first class, postage prepaid, to the Owner of the Series 2023 Bond; provided, however, that for so long as the Purchaser is the registered owner of the Bond, such notice of redemption may be made in any manner determined by the Trustee but shall not become effective until the Trustee receives confirmation of receipt of such notice by the Purchaser. A copy of such notice shall also be given by first class mail, postage prepaid, to the Local Government Commission; provided, however, that failure to give such notice to the Local Government Commission or any defect therein shall not affect the sufficiency of the proceedings for redemption.

Such notice shall set forth the designation and date of the Series 2023 Bond, the date fixed for redemption, the principal amount of the Series 2023 Bond to be redeemed, the Redemption Price to be paid, the address and phone number of the Trustee and the date of the redemption notice.

Any notice of redemption, at the direction of the City, may state that the redemption to be effected is conditioned upon the receipt by the Trustee (or the Purchaser pursuant to Section 404(d) hereof) on or prior to the redemption date of moneys sufficient to pay the principal of and premium, if any, and interest on the Series 2023 Bond to be redeemed and that if such moneys are not so received such notice shall be of no force or effect and the Series 2023 Bond shall not be required to be redeemed. In the event that such notice contains such a condition and moneys sufficient to pay the principal of and premium, if any, and interest on the Series 2023 Bond to be

redeemed are not received by the Trustee (or the Purchaser pursuant to Section 404(d) hereof) on or prior to the redemption date, the redemption shall not be made, and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received.

ARTICLE IV

ACCOUNT, SUBACCOUNTS, REVENUES AND FUNDS; OTHER COVENANTS

Section 401. Establishment of Subaccounts. (a) The following subaccounts are hereby established:

- (i) Series 2023 Subaccount of the Interest Account;
- (ii) Series 2023 Subaccount of the Principal Account; and
- (iii) Series 2023 Subaccount of the Redemption Account.

(b) There is hereby established with the Trustee the "Series 2023 Project Account" of the Construction Fund.

The account and subaccounts mentioned above shall be established with and held by the Trustee pursuant to the Trust Agreement and this Supplemental Agreement.

The Series 2023 Bond shall not be secured by the Parity Reserve Account or any Special Reserve Account.

Section 402. Revenues Received by the City. The City shall, subject to the provisions of Section 504 of the Trust Agreement, deposit or cause to be deposited, from Net Receipts held in the Revenue Fund, with the Trustee (or the Purchaser pursuant to Section 404(d) hereof) the following amounts, and such amounts shall be applied to the various accounts and subaccounts specified herein in the following order:

(a) into the Series 2023 Subaccount of the Interest Account, on the second Business Day immediately preceding each Interest Payment Date, the amount required to pay the interest due on the Series 2023 Bond on such Interest Payment Date; and

(b) into the Series 2023 Subaccount of the Principal Account, on the second Business Day immediately preceding each Principal Payment Date, the amount required to pay the principal installment of the Series 2023 Bond coming due on such Principal Payment Date.

In addition, subject to the provisions of Section 404(d) hereof, the Trustee shall deposit to the Series 2023 Subaccount of the Redemption Account all amounts as shall be delivered to the Trustee by the City from time to time with instructions that such amounts be so deposited.

Section 403. Application of Money in the Series 2023 Project Account. Money deposited in the Series 2023 Project Account in accordance with Section 204 shall be applied to pay the Costs of the Series 2023 Project and the costs and expenses incurred in connection with the issuance of the Series 2023 Bond, all in accordance with Article IV of the Trust Agreement.

Section 404. Application of Money in the Series 2023 Subaccounts of the Interest Account, the Principal Account and the Redemption Account. (a) The Trustee shall apply money in the Series 2023 Subaccount of the Interest Account to pay interest on the Series 2023 Bond as provided in Section 505 of the Trust Agreement. The Trustee shall apply money in the Series 2023 Subaccount of the Principal Account to pay the maturing principal installments of the Series 2023 Bond as provided in Section 506 of the Trust Agreement.

(b) The Trustee shall apply money in the Series 2023 Subaccount of the Redemption Account to the redemption of Series 2023 Bond as provided in Article III of this Supplemental Agreement. The Trustee shall pay the accrued interest on the Series 2023 Bond or portions thereof to be redeemed to the date of redemption from the Series 2023 Subaccount of the Interest Account or other available funds of the City and the Redemption Price of the Series 2023 Bond from the Series 2023 Subaccount of the Redemption Account. The expenses incurred by the Trustee in connection with the redemption of the Series 2023 Bond shall be paid by the City from the Revenue Fund or from any other available moneys of the City.

(c) So long as the Purchaser is the registered owner of the Series 2023 Bond, all payments of principal of, premium, if any, and interest on the Bond shall be made to the Purchaser by wire transfer or other delivery of immediately available funds on the due date for such payment to such account in the United States of America as the Purchaser may from time to time designate to the Trustee (or the City pursuant to Section 404(d) hereof).

(d) Notwithstanding any other provision of this Supplemental Agreement or the Trust Agreement to the contrary, any principal, interest or redemption obligations of the City with respect to the Series 2023 Bond may be paid directly by the City to the Purchaser for so long as the Purchaser is the Owner of the Series 2023 Bond and no event of default is occurring. Simultaneous with such payment to the Purchaser, the City shall provide notice to the Trustee so that the Trustee may maintain proper and current records with respect to the Series 2023 Bond. Unless the Trustee has been advised by the Purchaser to the contrary, the Trustee may rely upon any correspondence received from the City to the effect that it has made payment directly to the Purchaser as conclusive evidence that such payment has been made; provided, however, that such reliance shall not relieve the City's obligations to the Purchaser with respect to the Series 2023 Bond.

Section 405. Investment of Money. Money held for the credit of all accounts and subaccounts established hereunder on deposit with the Trustee shall be continuously invested and reinvested by the Trustee in Investment Obligations to the extent practicable in accordance with directions from an Authorized Officer as described below. Any such Investment Obligations shall mature not later than the respective dates when the money held for the credit of such subaccounts will be required for the purposes intended. No Investment Obligations in any such account or subaccount may mature beyond the latest maturity date of any Series 2023 Bond Outstanding at the time such Investment Obligations are deposited.

Investment Obligations acquired with money in or credited to any account or subaccount established hereunder shall be deemed at all times to be part of such account or subaccount. Any loss realized upon the disposition or maturity of such Investment Obligations shall be charged against such account or subaccount. The interest accruing on any such Investment Obligations

and any profit realized upon the disposition or maturity of such Investment Obligations shall be credited to such Accounts or subaccounts as follows:

<u>Fund, Account or subaccount</u>	<u>Credited to</u>
Series 2023 Project Account	Series 2023 Project Account
Series 2023 Subaccount of the Interest Account and the Principal Account	Series 2023 Subaccount of the Interest Account
All other funds, accounts and subaccounts	Revenue Fund

Any such interest accruing and any such profit realized shall be transferred upon the receipt thereof by the City or the Trustee, as the case may be, pursuant to the provisions of the Trust Agreement and this Supplemental Agreement.

An Authorized Officer shall give to the Trustee written directions respecting the investment of any money required to be invested hereunder, subject, however, to the provisions of this Section, and the Trustee shall then invest such money as so directed. The Trustee may request in writing additional direction or authorization from the Authorized Officer with respect to the proposed investment of money. Upon receipt of such directions, the Trustee shall invest, subject to the provisions of this Section, such money in accordance with such directions.

The Trustee shall sell or reduce to cash in a commercially reasonable manner a sufficient amount of such Investment Obligations whenever it is necessary to do so in order to provide money to make any payment from any such subaccount. The Trustee shall not be liable or responsible for any loss resulting from any such investment.

Whenever a transfer of money between two or more of the subaccounts is permitted or required, such transfer may be made as a whole or in part by transfer of one or more Investment Obligations at a value determined at the time of such transfer in accordance with Article VI of the Trust Agreement, provided that the Investment Obligations transferred are those in which money of the receiving subaccount could be invested at the date of such transfer.

Section 406. Payment of Principal, Interest and Premium and Pledge of Net Receipts. The City covenants that it will promptly pay the principal of and the interest on the Series 2023 Bond issued under the provisions of this Supplemental Agreement at the place, on the dates and in the manner provided herein and in said Series 2023 Bond, and any premium required for the retirement of said Series 2023 Bond by purchase or redemption, according to the true intent and meaning thereof. The City further covenants that it will faithfully perform at all times all of its covenants, undertakings and agreements contained in this Supplemental Agreement and the Trust Agreement, or in any Series 2023 Bond executed, authenticated and delivered hereunder or in any proceedings of the City pertaining thereto. The City represents and covenants that it is duly authorized under the Constitution and laws of the State, particularly the Act, to issue the Series 2023 Bond authorized hereby and to pledge the Net Receipts in the manner and to the extent herein and in the Trust Agreement set forth; that all action on its part for the issuance of the

Series 2023 Bond has been duly and effectively taken; and that such Series 2023 Bond in the hands of the Owner thereof is and will be a valid and binding special obligation of the City payable according to its terms. The Series 2023 Bond shall be secured pari passu as to the pledge of Net Receipts and shall be entitled to the same benefit and security under the Trust Agreement as all other Bonds and Parity Debt issued or incurred thereunder.

Section 407. Tax Covenant. The City covenants to do and perform all acts and things permitted by law in order to assure that interest paid on the Series 2023 Bond which was excludable from the gross income of their Owners for federal income taxes on the date of their issuance shall continue to be so excludable.

ARTICLE V
THE TRUSTEE

Section 501. Acceptance of Duties by Trustee. The Trustee by execution hereof accepts and agrees to fulfill the trusts imposed upon it by this Supplemental Agreement.

ARTICLE VI

SUPPLEMENTAL TRUST AGREEMENTS

Section 601. Modification of Supplemental Agreement Without Consent of Owner. The City may, from time to time and at any time, execute and deliver such trust agreements supplemental hereto (which supplemental trust agreements shall thereafter form a part hereof) as shall be substantially consistent with the terms and provisions of this Supplemental Agreement and, in the opinion of the Trustee, who may rely upon a written opinion of legal counsel, shall not materially and adversely affect the interest of the Owner:

(a) to cure any ambiguity or formal defect or omission, to correct or supplement any provision herein that may be inconsistent with any other provision herein, to make any other provisions with respect to matters or questions arising under this Supplemental Agreement or to modify, alter, amend, add to or rescind, in any particular, any of the terms or provisions contained in this Supplemental Agreement;

(b) to grant or to confer upon the Trustee for the benefit of the Owner any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Owner or the Trustee;

(c) to add to the covenants and agreements of the City in this Supplemental Agreement other covenants and agreements thereafter to be observed by the City or to surrender any right or power herein reserved to or conferred upon the City; or

(d) to permit the qualification of this Supplemental Agreement under any federal statute now or hereafter in effect or under any state Blue Sky law, and, in connection therewith, if the City so determines, to add to this Supplemental Agreement or any supplemental trust agreement such other terms, conditions and provisions as may be permitted or required by such federal statute or Blue Sky law.

At least thirty (30) days prior to the execution and delivery of any supplemental trust agreement for any of the purposes of this Section, the Trustee shall cause a notice of the proposed supplemental trust agreement to be mailed first-class, postage prepaid, to the Local Government Commission and to the Owner of the Series 2023 Bond. Such notice shall briefly set forth the nature of the proposed supplemental trust agreement and shall state that copies thereof are on file at the principal corporate trust office of the Trustee for inspection by the Owner of the Series 2023 Bond. A failure on the part of the Trustee to mail the notice required by this Section shall not affect the validity of such supplemental trust agreement.

The Trustee shall not be obligated to enter into any supplemental trust agreement that adversely affects the Trustee's own rights, duties or immunities under this Supplemental Agreement.

Section 602. Modification of Supplemental Agreement With Consent of Owner. Subject to the terms and provisions contained in this Section, and not otherwise, the Owner of the Series 2023 Bond shall have the right, from time to time, anything contained in this Supplemental

Agreement to the contrary notwithstanding, to consent to and approve the execution and delivery by the City and the Trustee of such supplemental trust agreement as shall be deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Supplemental Agreement or in any supplemental trust agreement. Nothing herein contained, however, shall be construed as making necessary the approval by the Owner of the Series 2023 Bond of the execution and delivery of any supplemental trust agreement as authorized in Section 601. Notwithstanding the foregoing, the principal amortization schedule for the Series 2023 Bond shall not be modified, except as a result of a prior redemption of any principal installments of the Series 2023 Bond, without the prior written consent of the Local Government Commission.

The Trustee shall, at the expense of the City, such expense to be paid from the Revenue Fund or from any other available moneys, cause notice of the proposed supplemental trust agreement to be mailed, postage prepaid, to the Local Government Commission and the Owner of the Series 2023 Bond as of the date such notice is mailed. Such notice shall briefly set forth the nature of the proposed supplemental trust agreement and shall state that copies thereof are on file at the principal corporate trust office of the Trustee for inspection by such Owner.

Whenever, at any time after the date of the mailing of such notice, the City shall deliver to the Trustee an instrument in writing purporting to be executed by the Owner of the Series 2023 Bond, which instrument shall refer to the proposed supplemental trust agreement described in such notice and shall specifically consent to and approve the execution and delivery thereof in substantially the form of the copy thereof referred to in such notice, thereupon, but not otherwise, the City and the Trustee may execute and deliver such supplemental trust agreement in substantially such form, without liability or responsibility to such Owner.

If the Owner of the Series 2023 Bond has consented to and approved the execution and delivery thereof as herein provided, to the extent permitted by law, the Owner shall have no right to object to the execution and delivery of such supplemental trust agreement, to object to any of the terms and provisions contained therein or the operation thereof, to question the propriety of the execution and delivery thereof, or enjoin or restrain the City or the Trustee from executing and delivering the same or from taking any action pursuant to the provisions thereof.

Upon the execution and delivery of any supplemental trust agreement pursuant to the provisions of this Section or Section 601, this Supplemental Agreement shall be and be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Supplemental Agreement of the City, the Trustee and the Owner of the Series 2023 Bond shall thereafter be determined, exercised and enforced in all respects pursuant to the provisions of this Supplemental Agreement, as so modified and amended.

Section 603. Responsibilities of Trustee and City Under this Article. Any determination whether or not any proposed supplemental trust agreement or any term or provision therein contained is desirable, shall be made after considering the purposes of such instrument, the needs of the City, the rights and interests of the Owner of the Series 2023 Bond, and the rights, obligations and interests of the Trustee. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of counsel approved by it, who may be bond counsel for the City, as conclusive evidence that any such proposed supplemental trust agreement does or

does not comply with the provisions of this Supplemental Agreement, and that it is or is not proper for it, under the provisions of this Article, to execute and deliver such supplemental trust agreement.

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 701. Manner of Giving Notice. All notices, demands and requests to be given to or made hereunder by the City, the Local Government Commission or the Trustee shall be given or made in writing and shall be deemed to be properly given or made if sent by United States registered or certified mail, return receipt requested postage prepaid, addressed as follows:

- (a) As to the City --

City of New Bern, North Carolina
300 Pollock Street
Post Office Box 1129
New Bern, North Carolina 28563-1129
Attention: Director of Finance

- (b) As to the Trustee --

Truist Bank
2713 Forest Hills Road, Building 2 – Floor 2
Wilson, North Carolina 27893
Attention: Corporate Trust Services

- (c) As to the Local Government Commission --

North Carolina Local Government Commission
3200 Atlantic Avenue
Raleigh, North Carolina 27604
Attention: Secretary

- (d) As to the Purchaser --

Webster Bank

Concord, North Carolina 28027
Attention: Mark A. Cargo, Managing Director

Any such notice, demand or request may also be transmitted to the appropriate above-mentioned party by telegram or telephone and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above.

Any of such addresses may be changed at any time upon written notice of such change sent by United States registered or certified mail, postage prepaid, to the other parties by the party effecting the change.

Section 702. Substitute Mailing. If, because of the temporary or permanent suspension of postal service, the City, the Local Government Commission or the Trustee shall be unable to mail any notice required to be given by the provisions of this Supplemental Agreement, such party shall give notice in such other manner as in the judgment of such party shall most effectively approximate mailing, and the giving of notice in such manner shall for all purposes of this Supplemental Agreement be deemed to be in compliance with the requirement for the mailing thereof.

Section 703. City, Trustee, Purchaser and Owner Alone Have Rights Under Supplemental Agreement. Except as herein otherwise expressly provided, nothing in this Supplemental Agreement, express or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the City, the Trustee, the Trustee, the Purchaser and the Owner, any right, remedy or claim, legal or equitable, under or by reason of this Supplemental Agreement or any provision being intended to be and being for the sole and exclusive benefit of the City, the Trustee, the Trustee, the Purchaser and the Owner.

Section 704. Effect of Partial Invalidity. In case any one or more of the provisions of this Supplemental Agreement or the Series 2023 Bond shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Supplemental Agreement or the Series 2023 Bond, but this Supplemental Agreement and the Series 2023 Bond shall be construed and enforced as if such illegal or invalid provisions had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in this Supplemental Agreement or the Series 2023 Bond shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

Section 705. Effect of Covenants; Governing Law. All covenants, stipulations, obligations and agreements of the City contained in this Supplemental Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the City to the full extent permitted by the Constitution and laws of the State. This Supplemental Agreement is executed and delivered with the intent that the laws of the State shall govern this construction.

Section 706. Headings. Any heading preceding the text of the several articles hereof, any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Supplemental Agreement, nor shall they affect its meaning, construction or effect.

Section 707. Further Authority. The officers of the City, attorneys, engineers and other agents or employees of the City are hereby authorized to do all acts and things required of them by this Supplemental Agreement for the full, punctual and complete performance of all of the terms, covenants and agreements contained in the Series 2023 Bond and this Supplemental Agreement.

Section 708. Payment Due on Holidays. If the date for making any payment or the last day for performance of any act or the exercising of any right as provided in this Supplemental Agreement is not a Business Day, such payment may be made or act performed or right

exercised on the next Business Day with the same force and effect as if done on the date provided in this Supplemental Agreement.

Section 709. Multiple Counterparts. This Trust Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original, and such counterparts shall constitute but one and the same instrument.

Section 710. E-Verify. The Trustee hereby certifies that the Trustee understands that “E-Verify” is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. The Trustee uses E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended. The Trustee will require that any subcontractor that it uses in connection with the transactions contemplated by this Trust Agreement certify to such subcontractor’s compliance with E-Verify.

(signatures to follow)

IN WITNESS WHEREOF, the City and the Trustee have caused this Supplemental Agreement to be executed in their respective names by their respective duly authorized representatives all as of the date first written above.

CITY OF NEW BERN, NORTH CAROLINA

[SEAL]

By: _____
Jeffrey T. Odham, Mayor

Attest:

Brenda E. Blanco, City Clerk

TRUIST BANK

[SEAL]

By: _____
Senior Vice President

Attest:

Vice President

DESCRIPTION OF SERIES 2023 PROJECT

The Series 2023 Project consists of the acquisition, construction and equipping of certain improvements to the City's water, sanitary sewer and electric systems, including, without limitation, the Northwest Interceptor Rehabilitation Phase II Project and the Township 7 Sewer Improvements Phase III Project.

FORM OF SERIES 2023 BOND

R-1

\$ _____

United States of America
State of North Carolina
County of Craven

CITY OF NEW BERN
COMBINED ENTERPRISE SYSTEM REVENUE BOND
SERIES 2023

The CITY OF NEW BERN, NORTH CAROLINA (the “City”), a municipal corporation in Craven County, North Carolina, for value received, hereby promises to pay, but solely from the sources and in the manner hereinafter provided, to WEBSTER BANK, or registered assigns or legal representative, the principal sum of _____ DOLLARS (\$ _____) in semi-annual installments of principal payable on March 1 and September 1 of each year, beginning September 1, 2024, as set forth in Schedule A attached hereto and made a part hereof (each, a “Principal Payment Date”), and to pay, but solely from said sources, interest from the date hereof on the unpaid portion of said principal sum until payment thereof, (computed on the basis of a 360-day year consisting of twelve 30-day months) at the rate of 4.45% per annum, such interest being payable on March 1 and September 1 of each year, beginning September 1, 2024, as set forth in Schedule A attached hereto (each, an “Interest Payment Date”).

The principal and interest so payable and punctually paid or duly provided for on any Principal Payment Date or Interest Payment Date shall be paid to the person in whose name this bond is registered at the close of business on the Regular Record Date for such payment, which shall be the day immediately preceding each Interest Payment Date or Principal Payment Date, whether or not a Business Day. Any such principal or interest not so punctually paid or duly provided for shall forthwith cease to be payable to the registered owner on such Regular Record Date, and may be paid to the person in whose name this bond is registered at the close of business on a Special Record Date for the payment of such defaulted principal or interest to be fixed by the Trustee (hereinafter mentioned), notice whereof being given to the registered owner not less than ten (10) days prior to such Special Record Date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which this bond may be listed and upon such notice as may be required by such exchange, or as more fully provided in the Trust Agreement. Immediately following payment of the final installment of principal of this bond, the registered owner shall present and surrender this bond at the designated corporate trust office of Truist Bank in Wilson, North Carolina, or its successor (the “Trustee”). All such payments shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

This bond is a duly authorized revenue bond of the City designated “City of New Bern, North Carolina Combined Enterprise System Revenue Bond, Series 2023” issued under and pursuant to the Constitution and laws of the State of North Carolina, including the Act, an order

of the City adopted on September 12, 2023, authorizing the issuance of this bond, a Trust Agreement, dated as of June 1, 2013 (the "Trust Agreement"), between the City and Truist Bank (successor to Branch Banking and Trust Company), as trustee (the "Trustee"), and a Fourth Supplemental Trust Agreement, dated as of September 1, 2023 (the "Supplemental Agreement"), between the City and the Trustee. This bond is being issued for the purpose of providing funds, together with any other available funds, to (a) pay the costs of Series 2023 Project (as defined in the Supplemental Agreement) and (b) pay the costs and expenses incurred in connection with the sale and issuance of this bond. Capitalized terms used herein and not otherwise defined have the meanings given such terms in the Trust Agreement and the Supplemental Agreement.

This bond is a special obligation of the City secured by a pledge, charge and lien upon Net Receipts on a pari passu basis with the Outstanding Bonds and Parity Debt hereafter issued or incurred pursuant to the Trust Agreement. The City is not obligated to pay the principal of or the interest on this bond except as provided in the Trust Agreement from Net Receipts or certain other monies made available therefor under the Trust Agreement, and neither the faith and credit nor the taxing power of the State of North Carolina or any political subdivision thereof or the City is pledged to the payment of the principal of and the interest on this bond.

The Trust Agreement provides for the issuance or incurrence from time to time under the conditions, limitations and restrictions set forth therein of additional Bonds and Parity Debt secured pari passu as to the pledge of Net Receipts with the outstanding Bonds and Parity Debt and any additional Bonds or Parity Debt hereafter issued or incurred pursuant to the Trust Agreement.

Reference is made to the Trust Agreement and the Supplemental Agreement for a more complete statement of the provisions thereof and of the rights of the City, the Trustee and the registered owner of this bond. Copies of the Trust Agreement and the Supplemental Agreement are available for inspection by the registered owner of this bond at all reasonable times at the designated corporate trust office of the Trustee. By the purchase and acceptance of this bond, the registered owner hereof signifies assent to all of the provisions of the Trust Agreement and the Supplemental Agreement.

The Trust Agreement provides for the creation of a special fund designated "City of New Bern Combined Enterprise System Bond Fund" (the "Bond Fund"). Pursuant to the Supplemental Agreement, special subaccounts have been created within the various accounts of the Bond Fund with respect to this bond (the "Subaccounts"), which Subaccounts are pledged and charged with the payment of the principal of and the interest on this bond. The Supplemental Agreement provides for the deposit of Net Receipts to the credit of the Subaccounts to the extent and in the manner provided in the Trust Agreement and the Supplemental Agreement.

The Trustee shall keep at its designated corporate trust office books for the registration of transfer of this bond. The transfer of this bond may be registered only upon such books and as otherwise provided in the Trust Agreement upon the surrender hereof to the Trustee, together with an assignment duly executed by the registered owner hereof or his attorney or legal representative in such form as shall be satisfactory to the Trustee. Upon any such registration of transfer, the Trustee shall deliver in exchange for this bond a new bond registered in the name of

the transferee in an aggregate principal amount equal to the principal amount of this bond, containing the same principal installments and bearing interest at the same rate. This bond may not be exchanged for any denomination other than the outstanding principal amount thereof.

Notwithstanding any other provisions of the Trust Agreement or the Supplemental Agreement to the contrary, the Trustee shall not register the transfer of this bond to any person other than a bank, insurance company or similar financial institution unless such transfer has been previously approved by the Local Government Commission.

The principal installments of this bond are subject to redemption prior to their stated Principal Payment Dates, at the option of the City, from any moneys that may be available for such purpose, in whole or in part, on any date on or after September 21, 2027, at the following Redemption Prices (expressed as a percentage of the principal component of the principal installments of the Series 2023 Bond to be redeemed), plus accrued interest to the redemption date:

<u>Redemption Period (Inclusive)</u>	<u>Redemption Price</u>
September 21, 2027 to September __, 2029	101%
September 21, 2029 and thereafter	100

Any redemption in part shall be limited to one time per calendar year, and, in the event of a partial redemption of this bond, such partial redemption shall be applied by inverse order of maturity.

At least thirty (30) days but not more than sixty (60) days prior to the redemption date of this bond, the Trustee shall cause a notice of any such redemption signed by the Trustee to be mailed, first class, postage prepaid, to the registered owner of this bond; provided, however, that for so long as Webster Bank is the registered owner of this bond, such notice of redemption may be made in any manner determined by the Trustee but shall not become effective until the Trustee receives confirmation of receipt of such notice by such registered owner.

Any notice of redemption may state that the redemption to be effected is conditioned upon the receipt by the Trustee on or prior to the redemption date of moneys sufficient to pay the principal of and premium, if any, and interest on this bond to be redeemed and that if such moneys are not so received such notice shall be of no force or effect and this bond shall not be required to be redeemed. In the event that such notice contains such a condition and moneys sufficient to pay the principal of and premium, if any, and interest on this bond to be redeemed are not received by the Trustee on or prior to the redemption date, the redemption shall not be made, and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received.

On the date designated for redemption, notice having been given as aforesaid, this bond shall become due and payable at the Redemption Price provided for redemption of such principal installments on such date plus accrued interest to such date.

The registered owner of this bond shall have no right to enforce the provisions of the Trust Agreement or to institute action to enforce the covenants therein, or to take any action with

respect to any event of default under the Trust Agreement, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Trust Agreement.

Modifications or alterations of the Trust Agreement and the Supplemental Agreement or in any supplement trust agreement thereto may be made only to the extent and in the circumstances permitted by the Trust Agreement and the Supplemental Agreement, as the case may be.

This bond, notwithstanding the provisions for registration of transfer stated herein and contained in the Trust Agreement and the Supplemental Agreement, at all times shall be, and shall be understood to be, an investment security within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code of North Carolina. This bond is issued with the intent that the laws of the State of North Carolina shall govern its construction.

All acts, conditions and things required to happen, exist and be performed precedent to and in the issuance of this bond and the execution and delivery of the Trust Agreement and the Supplemental Agreement have happened, exist and have been performed as so required.

This bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Trust Agreement or the Supplemental Agreement until it shall have been authenticated by the execution by the Trustee of the certificate of authentication endorsed hereon.

IN WITNESS WHEREOF, the City of New Bern, North Carolina, by order duly adopted by its Board of Aldermen, has caused this bond to be manually signed by the Mayor and the City Clerk and its official seal to be impressed hereon, all as of the ___ day of September, 2023.

Jeffrey T. Odham, Mayor

[SEAL]

Brenda E. Blanco, City Clerk

CERTIFICATE OF LOCAL GOVERNMENT COMMISSION

The issuance of the within bond has been approved under the provisions of The State and Local Government Revenue Bond Act.

Secretary, Local Government Commission

CERTIFICATE OF AUTHENTICATION

This bond is a bond of the series designated therein and issued under the provisions of the within mentioned Trust Agreement and Supplemental Agreement.

TRUIST BANK, as Trustee

By: _____
Authorized Signatory

Date of authentication: _____

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____

PLEASE INSERT SOCIAL SECURITY NUMBER
OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF TRANSFEREE

_____ the within bond and all right thereunder, and hereby irrevocably constitutes and appoints _____
_____, attorney, to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

In the presence of:

NOTICE: Signature must be guaranteed by an institution which is a participant in the Securities Transfer Agent Medallion Program (STAMP) or similar program.

The signature to this assignment must correspond with the name as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

SCHEDULE A

DEBT SERVICE SCHEDULE

<u>Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
September 1, 2024			
March 1, 2025			
September 1, 2025			
March 1, 2026			
September 1, 2026			
March 1, 2027			
September 1, 2027			
March 1, 2028			
September 1, 2028			
March 1, 2029			
September 1, 2029			
March 1, 2030			
September 1, 2030			
March 1, 2031			
September 1, 2031			
March 1, 2032			
September 1, 2032			
March 1, 2033			
September 1, 2033			
March 1, 2034			
September 1, 2034			
March 1, 2035			
September 1, 2035			
March 1, 2036			
September 1, 2036			
March 1, 2037			
September 1, 2037			
March 1, 2038			
September 1, 2038			
March 1, 2039			

BOND PURCHASE AGREEMENT

among

City of New Bern, North Carolina,

Local Government Commission

and

Webster Bank

concerning

\$ _____

City of New Bern, North Carolina
Combined Enterprise System Revenue Bond
Series 2023

BOND PURCHASE AGREEMENT

concerning

\$ _____

City of New Bern, North Carolina
Combined Enterprise System Revenue Bond
Series 2023

September 21, 2023

City of New Bern, North Carolina
New Bern, North Carolina

Local Government Commission
Raleigh, North Carolina

Ladies and Gentlemen:

Webster Bank (the "Bank") hereby offers to enter into this Bond Purchase Agreement with the Local Government Commission, a division of the Department of State Treasurer of the State of North Carolina (the "LGC"), and the City of New Bern, North Carolina (the "City"), which, upon acceptance of this offer by the LGC and approval of this offer and of the LGC's acceptance thereof by the City, will be binding upon the LGC, the City and the Bank.

1. Purchase and Sale of the Bond. Upon the terms and conditions hereof and upon the basis of the representations set forth herein, the Bank hereby agrees to purchase, and the LGC and the City hereby agree to sell to the Bank, \$ _____ aggregate principal amount of the City of New Bern, North Carolina Combined Enterprise System Revenue Bond, Series 2023 (the "Bond"). The purchase price for the Bond shall be \$ _____, representing the aggregate par amount of the Bond. The delivery and payment for the Bond and other actions contemplated hereby shall take place at the time thereof being herein sometimes called the "Closing."

The Bond shall consist of one fully registered bond certificate in the principal amount of \$ _____, shall be dated as of September 21, 2023 and shall bear interest from its date, at a rate of 4.45% per annum. The Bond shall be issued and secured under the provisions of a bond order adopted by the Board of Aldermen of the City (the "Board") on September 12, 2023 (the "Order"), a Trust Agreement, dated as of June 1, 2013 (the "Trust Agreement"), between the City and Branch Banking and Trust Company (succeeded by Truist Bank), as trustee (the "Trustee"), and a Fourth Supplemental Trust Agreement, dated as of September 1, 2023 (the "Fourth Supplemental Agreement"), between the City and the Trustee. All capitalized terms used herein and not otherwise defined shall have the meaning given such terms in the Trust Agreement and the Fourth Supplemental Agreement.

The proceeds of the Bond are to be used to provide funds to (a) pay the costs of acquiring, constructing and equipping certain improvements to the City's water, sanitary sewer and electric systems, including, without limitation, the Northwest Sewer Interceptor Rehabilitation Phase II Project and the Township 7 Sewer Improvements Phase III Project (collectively, the "Project") and (b) certain costs and expenses incidental to the sale and issuance of the Bond.

2. Representations of the Bank; Purchase for Own Account. (a) The Bank hereby acknowledges and represents, in respect of the Bond, that:

(i) the Bank is familiar with the City;

(ii) the City has been responsive to the Bank with all the Bank's requests for financial and other information about the City, the Bond and the Combined Enterprise System; and

(iii) the City has made available to the Bank the opportunity to obtain additional information about the City.

(b) The Bank further acknowledges and represents in respect of the Bond that a part of the Bank's business consists of the purchase, holding and sale of obligations of the same general character as the Bond, and the Bank has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks inherent in purchasing the Bond. The Bank has made such investigation of the Bond and of the financial condition and operations of the City and the Combined Enterprise System as it deems necessary to evaluate the merits and risks inherent in purchasing the Bond. The Bank is aware that there may be no secondary market for the Bond and that it may be required to hold the Bond for an indefinite period. The Bank represents that it is purchasing the Bond for its own account with no present intention to resell or distribute the Bond or any interest therein; provided, however, that the Bank reserves the right at all times to control the disposition of its assets, including the Bond, and reserves the right to sell, assign and transfer the Bond or fractional interests in the Bond to other banks, insurance companies or similar financial institutions or any other purchaser if such sale, assignment or transfer is approved in writing by the LGC.

(c) The City and the Bank acknowledge and agree that this transaction is an arm's-length commercial transaction between the City and the Bank. In connection with this transaction, the Bank is acting solely as a principal and not as the City's agent, advisor or fiduciary. The Bank has not assumed a fiduciary responsibility with respect to this transaction, and nothing in this transaction or in any prior relationship between the City and the Bank will be deemed to create and advisory, fiduciary or agency relationship between the City and the Bank in respect of this transaction. The City has consulted its own legal and other advisors to the extent it has deemed appropriate.

3. Representations and Warranties of the City. The City, by its acceptance hereof, represents and warrants to the Bank as follows:

(a) The City is a municipal corporation duly organized and validly existing under the laws of the State of North Carolina, and is authorized and empowered to provide for the acquisition, construction and equipping of the Project by causing the Bond to be issued.

(b) The City has the full legal right, power and authority to adopt the Order, to execute and deliver the Trust Agreement, the Fourth Supplemental Trust Agreement and this Bond Purchase Agreement and to perform its respective obligations hereunder and thereunder.

(c) The Order has been duly adopted by the Board, is in full force and effect and has not been modified or amended in any manner.

(d) The City has duly authorized (i) the execution and delivery of the Trust Agreement, the Fourth Supplemental Agreement and this Bond Purchase Agreement, (ii) the issuance and delivery of the Bond and (iii) such action as may be required on the part of the City to consummate the transactions contemplated by such documents.

(e) This Bond Purchase Agreement, the Trust Agreement and the Fourth Supplemental Agreement constitute legal, valid and binding obligations of the City enforceable in accordance with their respective terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles. The Owner of the Bond will be entitled to the security created by the Trust Agreement and the Fourth Supplemental Agreement as provided therein.

(f) The City is not in violation of any applicable constitutional provision, law or administrative rule or regulation of the State of North Carolina or of the United States of America or in default under any agreement, resolution, indenture or instrument to which the City is a party or by which the City or its property is bound, the effect of which violation or default would materially affect the ability of the City to perform its obligations under this Bond Purchase Agreement, the Trust Agreement or the Fourth Supplemental Agreement, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a violation or default hereunder or thereunder.

(g) The execution and delivery of this Bond Purchase Agreement, the Trust Agreement and the Fourth Supplemental Agreement, the adoption of the Order and performance of the obligations of the City hereunder or thereunder do not and will not conflict with, result in the creation or imposition of any lien, charge or encumbrance upon any of the assets of the City other than Net Receipts pursuant to the terms of, or constitute a default under, any agreement, indenture or instrument to which the City is a party or by which the City or its property is bound, or result in a violation of any applicable constitutional provision, law or administrative regulation or any order, rule or regulation of any court or governmental agency having jurisdiction over the City or its property, except as provided and permitted by such documents.

(h) Except for any action that may be required by applicable federal or state securities laws, no consent, authorization or order of, or filing or registration with, any court or governmental agency not already obtained or made is required for the execution, delivery and performance of this Bond Purchase Agreement or the consummation of the transactions

contemplated hereunder, and any such consent, authorization or order so obtained is in full force and effect.

(i) Any certificate signed by an authorized officer of the City and delivered to the Bank shall be deemed a representation and warranty of the City to the Bank as to the statements made therein.

(j) To the best knowledge of the City, there is no litigation or any other proceeding before or by any court, public board, agency or body, pending or threatened against or affecting the City or any of the members of the Board in their respective capacities as such (nor is there any basis therefor), wherein an unfavorable decision, ruling or finding would in any way materially adversely affect (i) the transactions contemplated by this Bond Purchase Agreement, (ii) the organization, existence or powers of the City or the title to the office of any of the members of the Board, (iii) the properties or assets or the condition, financial or otherwise, of the City or the Combined Enterprise System, (iv) the validity or enforceability of this Bond Purchase Agreement, the Order, the Trust Agreement or the Fourth Supplemental Agreement (or any other agreement or instrument of which the City is a party or used or contemplated for use in the consummation of the transactions contemplated hereby) or (v) the exemption from federal or State of North Carolina income taxation of the interest on the Bond.

(k) There has been no material adverse change in the financial condition of the City or the Combined Enterprise System since June 30, 2022, except as otherwise specified to the Bank by the City prior to the date hereof in writing.

4. Representations and Warranties of the LGC. The LGC, by its acceptance hereof, represents and warrants to the Bank that:

(a) The LGC is duly organized and validly existing as a division of the Department of the State Treasurer of the State of North Carolina, vested with the rights and powers conferred upon it pursuant to Chapter 159 of the General Statutes of North Carolina, as amended.

(b) The LGC has full power and authority to approve the issuance and provide for the sale of the Bond as provided in this Bond Purchase Agreement, and the LGC has taken or will take all action required by the Act or other applicable laws in connection therewith.

(c) The LGC has duly authorized the execution and delivery of this Bond Purchase Agreement and has taken or will take all action necessary or appropriate to carry out the sale and delivery of the Bond to the Bank.

(d) The execution and delivery of this Bond Purchase Agreement and the performance by the LGC of its obligations hereunder are within the powers of the LGC and, to the best of the LGC's knowledge, will not conflict with or constitute a breach or result in a violation of (i) any federal or North Carolina constitutional or statutory provision, (ii) any agreement or other instrument to which the LGC is a party or by which it is bound, or (iii) any order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the LGC.

(e) Except for any action required by applicable federal or state securities laws, no consent, approval, authorization or order of any governmental or regulatory authority, other than the approvals of the City as herein required, is required to be obtained by the LGC as a condition precedent to the issuance or sale of the Bond or the execution and delivery of this Bond Purchase Agreement or the performance by the LGC of its obligations hereunder.

(f) There is no litigation or any other proceeding before any court or governmental body or agency pending or, to the knowledge of the LGC, threatened against or involving the LGC to restrain or enjoin the issuance or delivery of the Bond or the execution or delivery by the LGC of this Bond Purchase Agreement and the performance of its obligations hereunder.

5. Payment and Delivery. At 10:00 a.m., Raleigh, North Carolina time, on September 21, 2023, or at such other time or on such earlier or later date as mutually agreed upon, the City and the LGC will deliver or cause to be delivered the Bond to the Bank. Upon such delivery of the Bond, the Bank shall pay the purchase price for the Bond as specified in Section 1 hereof to the Trustee in immediately available funds, and the Trustee shall deposit the full purchase price thereof in the manner specified in Section 204 of the Fourth Supplemental Agreement. The Closing on the Bond will be held at the offices of Womble Bond Dickinson (US) LLP in Raleigh, North Carolina, or at such other place as the City, the Trustee and the Bank may mutually agree upon.

6. Conditions of Closing. The Bank has entered into this Bond Purchase Agreement in reliance upon the representations and warranties of the City and the LGC contained herein and to be contained in the documents and instruments to be delivered at Closing and upon the performance by the City and the LGC of their respective obligations hereunder, as of the date hereof. Accordingly, the Bank's obligation under this Bond Purchase Agreement to purchase and pay for the Bond shall be subject to the performance by the City and the LGC of their respective obligations to be performed hereunder and under such documents and instruments at or prior to Closing, and shall also be subject to the following conditions:

(a) At the time of Closing (i) the representations and warranties of the City and the LGC, respectively, contained herein shall be true, complete and correct, (ii) the Order, the Trust Agreement, the Fourth Supplemental Agreement and this Bond Purchase Agreement shall be in full force and effect and shall not have been amended, modified or supplemented except as may have been agreed to by the Bank and (iii) the City and the LGC shall have duly adopted and there shall be in full force and effect such resolutions as in the opinion of Womble Bond Dickinson (US) LLP, Raleigh, North Carolina ("Bond Counsel"), shall be necessary in connection with the transactions contemplated hereby, and such resolutions shall not have been amended, modified or supplemented, except as may have been agreed to by the Bank.

(b) On or prior to the date of Closing, the Bank shall have received the following documents in form and substance reasonably satisfactory to the Bank:

(1) opinion of Bond Counsel, dated as of the date of Closing, addressed to the Bank or together with a reliance letter to the Bank, in form and substance satisfactory to the Bank;

(2) opinion of the City Attorney, dated as of the date of Closing, in form and substance satisfactory to the Bank;

(3) executed counterparts or copies of the Trust Agreement, the Fourth Supplemental Agreement and this Bond Purchase Agreement;

(4) certified copies all proceedings of the City relating to approvals or authorizations for the Bond and the execution and delivery of this Bond Purchase Agreement, including the adoption of the Order;

(5) certified copy of approving resolution of the LGC;

(6) tax certificate of the City and Internal Revenue Service Form 8038-G;

(7) certificate of an authorized officer of the City to the effect that the fees of the LGC relating to the Bond have been paid;

(8) such other documents as may be required to be delivered pursuant to Section 208 of the Trust Agreement or Section 204 of the Fourth Supplemental Agreement; and

(9) such additional certificates (including appropriate incumbency and no-litigation certificates), instruments, opinions or other documents as the Bank may reasonably request.

All representations and warranties of the City and the LGC set forth in this Bond Purchase Agreement shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of the Bank or any person controlling the Bank and (ii) acceptance of and payment for the Bond.

7. Limitation of Liability of the Commission. The members, officers and employees of the Commission shall not be personally liable under this Agreement.

8. Counterparts. This Bond Purchase Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

9. Notices. Any notice or other communication to be given under this Bond Purchase Agreement may be given by delivering the same in writing by first-class mail, postage prepaid, to the following addresses:

To the City:

City of New Bern, North Carolina
Post Office Box 1129
300 Pollock Street
New Bern, North Carolina 28563-1129
Attention: Director of Finance

To the LGC:

Local Government Commission
3200 Atlantic Avenue
Raleigh, North Carolina 27604
Attention: Secretary

To the Bank:

Webster Bank

Concord, North Carolina 28027
Attention: Mark A. Cargo, Managing Director

10. Governing Law. This Bond Purchase Agreement shall be governed by, and construed in accordance with, the laws of the State of North Carolina.

11. Severability. In the event any provision of this Bond Purchase Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

12. E-Verify. The Bank understands that "E-Verify" is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. To the extent applicable, in connection with this Agreement, the Bank will comply with the "E-Verify" requirements of Sections 64-25(5) and 64-26(a) of the General Statutes of North Carolina, as amended, including with respect to subcontractors the Bank may use in connection with this Agreement, if any. The Bank hereby represents that, as of the effective date of this Agreement, it has determined that it is not an "employer" within the meaning of Section 64-25(4) of the General Statutes of North Carolina, as amended, as it does not employ 25 or more employees in the State.

This Bond Purchase Agreement shall become effective upon the execution of the acceptance hereof by a duly authorized member of the LGC and the City and shall be valid and enforceable as of the time of such acceptance.

WEBSTER BANK

By: _____
Managing Director

[Counterpart signature page to Bond Purchase Agreement, dated September 21, 2023, among the City of New Bern, North Carolina, the Local Government Commission and Webster Bank]

Accepted:

LOCAL GOVERNMENT COMMISSION

By: _____
Secretary

[Counterpart signature page to Bond Purchase Agreement, dated September 21, 2023, among the City of New Bern, North Carolina, the Local Government Commission and Webster Bank]

Approved:

CITY OF NEW BERN, NORTH CAROLINA

By: _____
Jeffrey T. Odham, Mayor

AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider Adopting a Resolution for the 2023 Installment Purchase Contract for the Vehicle and Equipment Financing

Date of Meeting: 9/12/2023	Ward # if applicable: N/A
Department: Finance	Person Submitting Item: Kim Ostrom, Director of Finance
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing:

Explanation of Item:	Consider adopting a resolution for the 2023 Installment Purchase Contract with TD Equipment Finance, Inc. in an amount not to exceed \$4,900,000 for vehicle and equipment financing.
Actions Needed by Board:	Adopt resolution
Backup Attached:	Memo, Resolution, Installment Financing Agreement; Security Agreement
Is item time sensitive? <input checked="" type="checkbox"/> Yes <input 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:



NEW BERN
CITY OF NEW BERN

300 Pollock Street, P.O. Box 1129
New Bern, NC 28563-1129
(252) 636-4000

Aldermen

Rick Prill
Hazel B. Royal
Robert V. Aster
Johnnie Ray Kinsey
Barbara J. Best
Robert Brinson, Jr.

Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

TO: City Manager, Honorable Mayor, and Members of the Board of Aldermen
FROM: Kim Ostrom - Director of Finance
DATE: August 28, 2023
RE: Adopt a Resolution for the 2023 Installment Purchase Contract for the Vehicle and Equipment Financing

Current

The City is pursuing an installment financing agreement (the "Financing Agreement") in an amount not to exceed \$4,900,000 under Section 160A-20 of the General Statutes of North Carolina for the purpose of financing the acquisition of City vehicles and related equipment. The lender on the Financing Agreement will be TD Equipment Finance, Inc. The attached resolution (a) grants final approval for the financing, (b) approves the forms of the financing documents related to the financing, and (c) authorizes certain officers and officials of the City to take all further action related to the financing including execution of the final forms of the financing documents. The vehicle and equipment financing is scheduled to close on Thursday, September 14th.

Requested Action

It is requested that the Board consider adopting the attached Resolution granting final approval to the financing.

**RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF
AN INSTALLMENT FINANCING AGREEMENT, A SECURITY
AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH
THE FINANCING OF CERTAIN VEHICLES AND EQUIPMENT FOR
THE CITY OF NEW BERN, NORTH CAROLINA**

BE IT RESOLVED by the Board of Aldermen (the "Board") of the City of New Bern, North Carolina (the "City") as follows:

Section 1. The Board does hereby find and determine as follows:

(a) There exists in the City a need to finance the costs of acquiring certain vehicles and equipment (the "Equipment").

(b) The City has determined that the most efficient manner of financing the Equipment will be through the entering of an Installment Financing Agreement, to be dated as of the date of delivery thereof (the "Agreement"), with TD Equipment Finance, Inc. (the "Lender") pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended. Pursuant to the Agreement, the Lender will advance moneys to the City in an amount sufficient to pay the costs of financing the Equipment and paying certain financing costs relating thereto, and the City will repay the advancement in installments, with interest (the "Installment Payments").

(c) In order to secure the City's obligations under the Agreement, the City will execute and deliver a Security Agreement, to be dated as of the date of delivery thereof (the "Security Agreement"), granting to the Lender a security interest in the Equipment.

(d) There has been presented to the Board at this meeting drafts of the Agreement and the Security Agreement.

Section 2. In order to provide for the financing of the Equipment, the City is hereby authorized to enter into the Agreement and receive an advancement pursuant thereto in the principal amount not to exceed \$4,900,000. The City shall repay the advancement in installments due in the amounts and at the times set forth in the Agreement. The payments of the installment payments shall be designated as principal and interest as provided in the Agreement.

Section 3. The Board hereby approves the Agreement and the Security Agreement in substantially the forms presented at this meeting. The Mayor, the City Manager and the Director of Finance of the City are each hereby authorized to execute and deliver on behalf of the City said documents in substantially the forms presented at this meeting, containing such modifications as the person executing such documents shall approve, such execution to be conclusive evidence of approval by the Board of any such changes. The City Clerk or any Deputy or Assistant City Clerk of the City is hereby authorized and directed to affix the official seal of the City to said documents and to attest the same to the extent so required.

Section 4. No deficiency judgment may be rendered against the City in any action for breach of any contractual obligation authorized pursuant to this resolution, and the taxing power of the City is not and may not be pledged directly or indirectly to secure any moneys due under any contract herein authorized.

Section 5. The Mayor, the City Manager, the Director of Finance, the City Attorney and the City Clerk of the City, and any other officers, agents and employees of the City, are hereby authorized and directed to execute and deliver such closing certificates, opinions and other items of evidence as shall be deemed necessary to consummate the transactions described above.

Section 6. This resolution shall take effect immediately upon its adoption.

ADOPTED THIS 12TH DAY OF SEPTEMBER, 2023.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

The Board of Aldermen of the City of New Bern, North Carolina met in a regular meeting in the City Hall Courtroom located at 300 Pollock Street in New Bern, North Carolina, the regular place of meeting, at 6:00 p.m. on September 12, 2023.

Present: Mayor Jeffrey T. Odham, presiding, and Aldermen

Absent: Aldermen

Also present: _____

* * * * *

_____ introduced the following resolution the title of which was read and a copy of which had been distributed to each Alderman:

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT FINANCING AGREEMENT, A SECURITY AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH THE FINANCING OF CERTAIN VEHICLES AND EQUIPMENT FOR THE CITY OF NEW BERN, NORTH CAROLINA

BE IT RESOLVED by the Board of Aldermen (the "Board") of the City of New Bern, North Carolina (the "City") as follows:

Section 1. The Board does hereby find and determine as follows:

(a) There exists in the City a need to finance the costs of acquiring certain vehicles and equipment (the "Equipment").

(b) The City has determined that the most efficient manner of financing the Equipment will be through the entering of an Installment Financing Agreement, to be dated as of the date of delivery thereof (the "Agreement"), with TD Equipment Finance, Inc. (the "Lender") pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended. Pursuant to the Agreement, the Lender will advance moneys to the City in an amount sufficient to pay the costs of financing the Equipment and paying certain financing costs relating thereto, and the City will repay the advancement in installments, with interest (the "Installment Payments").

(c) In order to secure the City's obligations under the Agreement, the City will execute and deliver a Security Agreement, to be dated as of the date of delivery thereof (the "Security Agreement"), granting to the Lender a security interest in the Equipment.

(d) There has been presented to the Board at this meeting drafts of the Agreement and the Security Agreement.

Section 2. In order to provide for the financing of the Equipment, the City is hereby authorized to enter into the Agreement and receive an advancement pursuant thereto in the principal amount not to exceed \$4,900,000. The City shall repay the advancement in installments due in the amounts and at the times set forth in the Agreement. The payments of the installment payments shall be designated as principal and interest as provided in the Agreement.

Section 3. The Board hereby approves the Agreement and the Security Agreement in substantially the forms presented at this meeting. The Mayor, the City Manager and the Director of Finance of the City are each hereby authorized to execute and deliver on behalf of the City said documents in substantially the forms presented at this meeting, containing such modifications as the person executing such documents shall approve, such execution to be conclusive evidence of approval by the Board of any such changes. The City Clerk or any Deputy or Assistant City Clerk of the City is hereby authorized and directed to affix the official seal of the City to said documents and to attest the same to the extent so required.

Section 4. No deficiency judgment may be rendered against the City in any action for breach of any contractual obligation authorized pursuant to this resolution, and the taxing power of the City is not and may not be pledged directly or indirectly to secure any moneys due under any contract herein authorized.

Section 5. The Mayor, the City Manager, the Director of Finance, the City Attorney and the City Clerk of the City, and any other officers, agents and employees of the City, are hereby authorized and directed to execute and deliver such closing certificates, opinions and other items of evidence as shall be deemed necessary to consummate the transactions described above.

Section 6. This resolution shall take effect immediately upon its adoption.

Upon motion of Alderman _____, seconded by Alderman _____, the foregoing resolution entitled "RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT FINANCING AGREEMENT, A SECURITY AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH THE FINANCING OF CERTAIN VEHICLES AND EQUIPMENT FOR THE CITY OF NEW BERN, NORTH CAROLINA" was adopted by the following vote:

Ayes: _____

Noes: _____

* * * * *

I, Brenda E. Blanco, City Clerk of the City of New Bern, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of the Board of Aldermen of said City at a regular meeting held on September 12, 2023, as it relates in any way to the adoption of the foregoing resolution and that said proceedings are to be recorded in the minutes of said Board of Aldermen.

I DO HEREBY FURTHER CERTIFY that proper notice of such regular meeting was given as required by North Carolina law.

WITNESS my hand and official seal of said City this 12th day of September, 2023.

Brenda E. Blanco, City Clerk

[SEAL]

Draft No. 1
August 24, 2023

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

Kimberly Ostrom
Director of Finance

INSTALLMENT FINANCING AGREEMENT

Dated as of September 14, 2023

between

CITY OF NEW BERN, NORTH CAROLINA

and

TD EQUIPMENT FINANCE, INC.

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INSTALLMENT FINANCING AGREEMENT

This INSTALLMENT FINANCING AGREEMENT, dated as of September 14, 2023 (the "Agreement"), between the CITY OF NEW BERN, NORTH CAROLINA, a municipal corporation duly organized and validly existing under the laws of the State of North Carolina (the "City"), and TD EQUIPMENT FINANCE, INC. (the "Lender");

WITNESSETH:

WHEREAS, the City is a municipal corporation duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina;

WHEREAS, pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, the City may finance the acquisition of certain improvements and equipment by contracts that create in such improvements and equipment a security interest to secure repayment of the moneys advanced or made available to acquire or improve such equipment;

WHEREAS, after due consideration, the Board of Aldermen of the City has determined to finance the cost of acquiring certain vehicles and equipment, as more particularly described in Exhibit A to the Security Agreement (hereinafter defined) (the "Equipment");

WHEREAS, in order for the City to obtain the funds to finance the Equipment, the City has determined to enter into this Agreement whereby the Lender will advance funds to the City to be applied, together with any other available funds, to (a) pay the costs of the Equipment and (b) pay certain financing costs relating thereto, and the City will repay such advancement with interest in installments pursuant to the terms of this Agreement;

WHEREAS, as security for the performance of its obligation under this Agreement, including the payment of the installment payments hereunder, the City will execute and deliver a Security Agreement, dated as of September 14, 2023 (the "Security Agreement"), for the benefit of the Lender, pursuant to which the City will grant to the Lender a security interest in the Equipment;

WHEREAS, the Lender is willing to advance moneys to the City for the purpose of financing the costs of the Equipment, and the City is willing to repay the moneys so advanced by the Lender in installments as more fully provided herein; and

WHEREAS, the City and the Lender have each duly authorized the execution and delivery of this Agreement.

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

SECTION 1.1. Definitions and Rules of Construction. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa. The words “hereby”, “herein”, “hereof”, “hereto”, “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subsections hereof. All references herein to “Articles”, “Sections” and other subdivisions are to the corresponding Articles, Sections or subsections of this Agreement unless some other reference is indicated.

“Act” means Section 160A-20 of the General Statutes of North Carolina, as amended.

“Advancement” means the advance being made by the Lender to the City in the amount of \$ _____ pursuant to Section 3.1 to pay the costs of the Equipment and related Closing Costs.

“Agreement” means this Installment Financing Agreement, including any amendment or supplement hereto.

“Board” means the Board of Aldermen of the City.

“Closing” means the date on which the City executes and delivers this Agreement, and the Lender makes the Advancement to the City.

“Closing Costs” means and further includes all items of expense directly or indirectly payable by or reimbursable to the City relating to the financing of the Equipment, including, but not limited to, filing and recording costs, settlement costs, printing costs, word processing costs, reproduction and binding costs, legal fees and charges and financing and other professional consultant fees.

“City” means the City of New Bern, North Carolina, a municipal corporation duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina, and any successors or assigns.

“Determination of Taxability” means and shall be deemed to have occurred on the date when (a) the City shall receive notice from the Lender that the Internal Revenue Service has assessed as includable in gross income the interest component of the Installment Payments relating to the Advancement made by the City under this Agreement due to the occurrence of an Event of Taxability; (b) the City or the Lender shall receive notice from the Commissioner or any District Director of the Internal Revenue Service that the interest component of the Installment Payments relating to the Advancement made by the City under this Agreement is includable in the gross income of the Lender for federal income tax purposes due to the occurrence of an Event of Taxability; or (c) the City and the Lender shall receive a final written opinion of qualified tax counsel (reasonably approved by the City and the Lender) that the interest component of the Installment Payments relating to the Advancement made by the City

under this Agreement is includable in the gross income of the Lender for federal income tax purposes due to the occurrence of an Event of Taxability.

“Enforcement Limitation” means the provisions of the Act that provide that no deficiency judgment may be rendered against the City in any action for breach of a contractual obligation incurred under the Act and that the taxing power of the City is not and may not be pledged directly or indirectly to secure any moneys due under this Agreement.

“Equipment” means all of the equipment and rolling stock acquired by the City and financed by the City from the amounts advanced to the City pursuant to this Agreement, as more particularly described in Exhibit A to the Security Agreement.

“Event of Nonappropriation” means (a) the failure by the Board to budget and appropriate in its budget for the ensuing Fiscal Year adopted on or about June 30 of each year moneys sufficient to pay all Installment Payments and any reasonably estimated additional payments under this Agreement coming due in the next ensuing Fiscal Year or (b) the Board’s deletion from its duly adopted budget of any appropriation for the purposes specified in clause (a) above. In the event that during any Fiscal Year, any additional payments shall become due that were not included in the City’s current budget, and if there are no moneys available to pay such additional payments prior to the date upon which such additional payments are due, an Event of Nonappropriation shall be deemed to have occurred.

“Event of Taxability” means the occurrence or existence of any fact, event or circumstance caused by the failure of the City to comply with any covenants in this Agreement or any document or certificate executed by the City in connection with the transactions contemplated by this Agreement which has the effect of causing the interest component of the Installment Payments made by the City under this Agreement to be includable in the gross income of the Lender for federal income tax purposes.

“Financing Documents” means this Agreement, the Security Agreement and all other agreements, certificates and documents executed and delivered by the City to the Lender in connection with the execution and delivery of this Agreement.

“Fiscal Year” means the period beginning on July 1 of any year and ending on June 30 of the following year.

“Inclusion Date” means the effective date that the interest component of the Installment Payments made by the City under this Agreement is includable in the gross income of the Lender as a result of a Determination of Taxability.

“Installment Payment Date” means each of the dates set forth on the Installment Payment Schedule attached hereto as Exhibit A.

“Installment Payments” means the payments required to be paid by the City pursuant to Section 4.1 in order to repay the Advancement, as specified in Exhibit A attached hereto.

“Investment Obligation” means any security or investment authorized by Section 159-30 of the General Statutes of North Carolina, as may be amended from time to time, or any substitute or successor statute.

“Lender” means TD Equipment Finance, Inc., and any of its successors or assigns.

“Net Proceeds” means any proceeds of insurance or taking by eminent domain or condemnation paid with respect to the Equipment remaining after payment therefrom of any expenses (including attorneys’ fees) incurred in the collection thereof.

“Permitted Encumbrances” means and includes (a) liens for taxes, assessments and other governmental charges due but not yet payable; (b) landlord’s, warehouseman’s, carrier’s, worker’s, vendor’s, mechanic’s and materialmen’s liens and similar liens incurred in the ordinary course of business remaining undischarged for not longer than sixty (60) days from the filing thereof; (c) attachments remaining undischarged for not longer than sixty (60) days from the making thereof; (d) liens in respect of pledges or deposits under workers’ compensation laws, unemployment insurance or similar legislation and in respect of pledges or deposits to secure bids, tenders, contracts (other than contracts for the payment of money), leases or statutory obligations, or in connection with surety, appeal and similar bonds incidental to the conduct of litigation; (e) the lien on the Equipment created by the Security Agreement, (f) any lease of all or any portion of the Equipment permitted by Section 8.2(b); (g) this Agreement; and (h) any other lien, security interest or encumbrance on the Equipment consented to in writing by the Lender.

“Equipment Fund” has the meaning set forth in Section 3.1.

“Security Agreement” means the Security Agreement, dated as of September 14, 2023, from the City for the benefit of the Lender, including any amendment or supplement thereto.

“State” means the State of North Carolina.

SECTION 1.2. Exhibit. The following exhibit is attached to, and by reference made a part of, this Agreement:

- Exhibit A Installment Payment Schedule
- Exhibit B Requisition and Acceptance Certificate

ARTICLE II

REPRESENTATIONS OF THE CITY AND THE LENDER

SECTION 2.1. Representations, Covenants and Warranties of the City. The City represents, covenants and warrants to the Lender as follows:

(a) The City is a municipal corporation duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina.

(b) The Constitution and laws of the State authorize the City to (i) execute and deliver the Financing Documents, (ii) enter into the transactions contemplated hereby and thereby and (iii) carry out its obligations hereunder and thereunder.

(c) The City has duly authorized and executed the Financing Documents in accordance with the Constitution and laws of the State and has duly authorized the performance of the City's obligations under the Financing Documents. The City has complied with all applicable public meeting and bidding requirements, and the transactions contemplated by the Financing Documents constitute a public purpose for which public funds may be expended pursuant to the Constitution and laws of the State.

(d) Neither the execution and delivery of the Financing Documents, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions or any charter provision, restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitutes a default under any of the Financing Documents.

(e) No approval or consent is required from any governmental authority with respect to the entering into or performance by the City of the Financing Documents and the transactions contemplated thereby, or if such approval is required, it has been duly obtained.

(f) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or threatened against or affecting the City challenging the validity or enforceability of Financing Documents or any other documents relating hereto and the performance of the City's obligations thereunder.

(g) Assuming due authorization, execution and delivery of this Agreement by the Lender, this Agreement and the Security Agreement constitute valid, legal and binding obligations of the City, enforceable in accordance with their respective terms, except as enforcement thereof may be limited by general principles of equity or by bankruptcy, insolvency and other laws affecting the enforcement of creditors' rights generally and as those other laws may be further limited by the Enforcement Limitation.

(h) A resolution relating to the performance by the City of this Agreement, the Security Agreement and the transactions contemplated hereby and thereby has been duly adopted, is in full force and effect, and has not been in any respect amended, modified, revoked or rescinded.

(i) The City will obtain or cause to be obtained all licenses, permits and other approvals of any other governmental entity having jurisdiction over the City or the Equipment that are necessary for operation of the Equipment.

(j) The City acknowledges and agrees that this transaction is an arm's-length commercial transaction between the City and the Lender. In connection with this transaction, the Lender is acting solely as a principal and not as the City's agent, advisor or fiduciary. The Lender has not assumed a fiduciary responsibility with respect to this transaction, and nothing in this transaction or in any prior relationship between the City and the Lender shall be deemed to create an advisory, fiduciary or agency relationship between the City and the Lender in respect of this transaction. The City has consulted its own legal and other advisors to the extent it has deemed appropriate.

(k) The City is not in violation of any laws or regulations relating to terrorism or money laundering ("Anti-Terrorism Laws"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order"), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107 56 (signed into law October 26, 2001) (the "Patriot Act"). Specifically, the City (i) is not an entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order; (ii) is not an entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order; (iii) is not an entity with which the Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (iv) is not an entity that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or (v) is not an entity that is named as a "specially designated national and blocked person" on the most current list published by the Office of Foreign Asset Control ("OFAC") or any list of persons or entities issued by OFAC pursuant to the Executive Order at its official website or any replacement website or other replacement official publication of such list. The City does not and will not conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any blocked or prohibited person or entity described in the preceding sentence or deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or engage in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law or the Patriot Act.

SECTION 2.2. Representations, Covenants and Warranties of the Lender. The Lender represents, covenants and warrants to the City as follows:

(a) The Lender is a _____ organized and existing under and by virtue of the laws of the _____ and has the power and authority to enter into this Agreement.

(b) The Lender has duly authorized, executed and delivered this Agreement in accordance with applicable law.

(c) Neither the execution and delivery of this Agreement nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms,

conditions or provisions of the organizational documents of the Lender or any restriction or any agreement or instrument to which the Lender is now a party or by which the Lender is bound.

(d) The Lender (i) is familiar with the City; (ii) has been furnished certain financial information about the City; (iii) acknowledges that the City has made available to it the opportunity to obtain additional information to verify the accuracy of the information supplied and to evaluate the merits and risks of entering into this Agreement; (iv) has had the opportunity to ask questions of and receive answers from the City representatives, including officers, attorneys, advisors and accountants, concerning the terms of this Agreement, the information supplied to it and the City's condition, financial and otherwise; and (v) acknowledges that the City has been responsive to all of its requests for information.

(e) The Lender is capable of evaluating the merits and risks of entering into this Agreement and has agreed to enter into this Agreement although no formal offering material has been provided to it.

(f) The Lender has undertaken to discuss and investigate the form and substance of this Agreement and the transactions related thereto with such counsel and other persons as it has deemed appropriate.

(g) The Lender acknowledges that this Agreement is not registered under the United States Securities Act of 1933, as amended, and that the City is not presently required to register this Agreement under the United States Securities Exchange Act of 1934, as amended. Therefore, if and when the Lender wishes to sell or assign part or all of the Agreement, current financial and other information may not be available. The Lender further realizes that the City may, but is not under any obligation to, provide current financial and other information upon the sale or assignment of all or part of the Agreement at some subsequent time, or to pay any costs associated with any such sale or assignment. Further, the Lender understands that it may need to bear the risks of this Agreement for an indefinite period of time, because any sale or assignment of this Agreement may not be possible or, if possible, may be at a price below that which the Lender is entering into this Agreement.

(h) The Lender represents that it is entering into the Agreement for its own account with the present intent to hold the loan to maturity with no present intention to resell or distribute the Agreement or any interest therein; provided, however, that the Lender reserves the right at all times to control the disposition of its assets, including this Agreement. The Lender or its assignees may assign or reassign all or any part of the Agreement in accordance with the provisions of Section 8.1.

ARTICLE III

ADVANCEMENT; EQUIPMENT FUND

SECTION 3.1. Advancement; Creation of Equipment Fund. In consideration of the covenants, warranties and representations contained herein, and in consideration of the City's agreement to repay the moneys advanced hereunder and interest thereon, the Lender hereby agrees to advance to the City at Closing moneys in the aggregate amount of \$ _____ (the "Advancement"). Such amount shall be deposited at Closing in an account designated by the City in the name of the City designated the "City of New Bern 2023 Equipment Fund" (the "Equipment Fund") and shall be applied in accordance with the provisions of this Article.

SECTION 3.2. Acquisition of Equipment. The City shall enter into one or more contracts or purchase orders providing for the acquisition of the Equipment substantially as described in Exhibit A to the Security Agreement.

SECTION 3.3. Investment. The City shall invest and reinvest moneys deposited in the Equipment Fund solely in Investment Obligations as agreed to between the City and the Lender from time to time, and investment earnings on the Equipment Fund shall be retained in the Equipment Fund pending disbursement in accordance with Section 3.4. The City shall be solely responsible for ascertaining that all proposed investments and reinvestments comply with federal, state and local laws, regulations and ordinances governing investment of funds held pursuant to a loan agreement similar in substance to the arrangement contemplated by this Agreement. Accordingly, the Lender shall not be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to investment or reinvestment of all or a portion of the moneys held in the Equipment Fund, and the City hereby agrees, to the extent permitted by law, to release and indemnify and hold harmless the Lender from any such liability, cost, expense, loss or claim.

SECTION 3.4. Disbursements. Unless the Equipment Fund is earlier terminated in accordance with the provisions of Section 3.5, the moneys held in the Equipment Fund shall be used by the City to pay the Closing Costs and the costs of the Equipment upon the prior written consent of the Lender to a written requisition and acceptance certificate prepared by the City and signed by the City Manager or the Director of Finance of the City, or their respective designees, substantially in the form set forth in Exhibit B attached hereto, together with such invoices, bills of sale, checks or other documents or items of evidence as the Lender may reasonably require to determine the appropriateness of such requisition.. If the moneys held in the Equipment Fund and any other moneys provided by the City are insufficient to pay all of the Closing Costs and the costs of the Equipment, the City shall provide any balance of the funds needed to complete the acquisition of the Equipment. Any moneys remaining in the Equipment Fund after completion of the acquisition of the Equipment, as evidenced by a written certificate of completion executed by any of the City Manager or the Director of Finance of the City and delivered to the Lender stating that the Equipment has been acquired and that there are no liens against the Equipment other than the lien created by this Agreement and the Security Agreement, may be applied to the prepayment of the outstanding principal component of the Installment Payments in accordance with the terms of Section 10.1 hereof or for any lawful purpose that, in

the opinion of nationally recognized bond counsel, will not cause the interest component of the Installment Payments to become taxable for federal income tax purposes.

If the Equipment Fund is terminated early in accordance with the provisions of Section 3.5(b) or (c), any moneys remaining in the Equipment Fund shall be transferred to the Lender to prepay the principal component of the Installment Payments.

SECTION 3.5. Termination. The Equipment Fund shall be terminated at the earliest of (a) the final distribution of moneys from the Equipment Fund, (b) written notice given by the Lender of an event of default by the City under this Agreement and (c) termination of this Agreement.

SECTION 3.6. Reliance of Lender on Documents. The Lender may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Lender shall not be liable in any manner for the sufficiency or correctness as to the form, manner of execution, or validity of any instrument or as to the identity, authority, or right of any person executing the same; and the Lender's duties hereunder shall be limited to the receipts of such moneys, instruments or other documents received by it as the Lender, and for the disposition of the same in accordance herewith.

SECTION 3.7. Disclaimer of Lender. The City acknowledges and agrees that the design of the Equipment has not been made by the Lender, and the Lender has not supplied any plans or specifications with respect thereto and that the Lender (a) is not a manufacturer of, nor a dealer in, any of the component parts of the Equipment or similar projects, (b) has not made any recommendation, given any advance nor taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Equipment or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Equipment or any component part thereof or any property or rights relating thereto at any stage of the construction thereof, (c) has not at any time had physical possession of the Equipment or any component part thereof or made any inspection thereof or any property or rights relating thereto, and (d) has not made any warranty or other representation, express or implied, that the Equipment or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the results which the City intends therefore, or (iii) is safe in any manner of respect.

THE LENDER MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE EQUIPMENT OR ANY COMPONENT PART THEREOF TO THE CITY OR ANY OTHER CIRCUMSTANCE WHATSOEVER WITH RESPECT THERETO, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE; THE DESIGN OR CONDITION THEREOF; THE SAFETY, WORKMANSHIP, QUALITY OR CAPACITY THEREOF; COMPLIANCE THEREOF WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; ANY LATENT DEFECT; THE TITLE TO OR INTEREST OF THE LENDER THEREIN BEYOND THAT TITLE OR INTEREST WHICH THE CITY OBTAINS FROM

THE LENDER PURSUANT HERETO; THE ABILITY THEREOF TO PERFORM ANY FUNCTION; THAT THE PROCEEDS DERIVED FROM THE ADVANCEMENT WILL BE SUFFICIENT, TOGETHER WITH ANY OTHER AVAILABLE FUNDS OF THE CITY, TO PAY THE COST OF ACQUIRING THE EQUIPMENT; OR ANY OTHER CHARACTERISTICS OF THE EQUIPMENT, IT BEING AGREED THAT ALL RISKS RELATING TO THE EQUIPMENT, THE COMPLETION THEREOF OR THE TRANSACTIONS CONTEMPLATED HEREBY ARE TO BE BORNE BY THE CITY, AND THE BENEFITS OF ANY AND ALL IMPLIED WARRANTIES AND REPRESENTATIONS OF THE LENDER ARE HEREBY WAIVED BY THE CITY.

ARTICLE IV

REPAYMENT OF THE ADVANCEMENT; SECURITY FOR REPAYMENT

SECTION 4.1. Repayment of the Advancement. (a) The City shall repay the Advancement, with interest, computed at the rate of 4.08% per annum, in installments due at the times and in the amounts set forth in Exhibit A.

(b) All Installment Payments required to be made to the Lender hereunder shall be made to TD Equipment Finance, Inc. in accordance with wire instructions provided by the Lender or as may otherwise be directed by the Lender.

(c) In the event of a Determination of Taxability, the interest rate relating to the Advancement payable under this Agreement, from and after the Inclusion Date, shall be adjusted to preserve the Lender's after-tax economic yield with respect to the interest components of the Installment Payments relating to the Advancement. In addition, the City shall pay to the Lender (i) an amount necessary to reimburse the Lender for any interest, penalties or other charges assessed by the Internal Revenue Service or the Department of Revenue by reason of the Lender's failure to include the interest portion of the Installment Payments relating to the Advancement in its gross income for income tax purposes, and (ii) upon request of the Lender, additional interest as a result of the increase in the interest rate on all previous payments made by the City after the Inclusion Date. In the event of a Determination of Taxability, the Lender shall provide the City with a new Installment Payment Schedule with respect to the Advancement which reflects the new interest rate which will replace the Installment Payment Schedule set forth in Exhibit A.

(d) The City has not designated any obligations hereunder as being within the \$10 million limitation described within Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

(e) The City agrees to give prompt written notice to the Lender upon the City's receipt of any notice or information from any source whatsoever to the effect that an Event of Taxability or a Determination of Taxability shall have occurred.

SECTION 4.2. Budget and Appropriation. (a) The officer of the City at any time charged with the responsibility for formulating budget proposals shall include in the budget proposals for review and consideration by the Board in any Fiscal Year in which this Agreement shall be in effect, items for all Installment Payments and any additional payments required for such Fiscal Year under this Agreement or the Security Agreement. Any budget item referred to in this Section shall be deleted from the applicable budget by the Board only by the adoption of a resolution to such effect containing a statement of its reasons therefor, which resolution shall be adopted by roll-call vote and shall be included within the minutes of the Board. The City shall furnish the Lender with copies of its annual budget promptly after its adoption and copies of any amended budget affecting appropriations for Installment Payments or additional payments required under this Agreement or the Security Agreement promptly after its adoption. The City shall promptly provide written notice to the Lender of any Event of Nonappropriation.

(b) NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A DELEGATION OF GOVERNMENTAL POWERS NOR AS A DONATION BY OR A LENDING OF THE CREDIT OF THE CITY WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE. THIS AGREEMENT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE CITY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE CITY FOR ANY FISCAL YEAR IN WHICH THIS AGREEMENT IS IN EFFECT; PROVIDED, HOWEVER, THAT ANY FAILURE OR REFUSAL BY THE CITY TO APPROPRIATE FUNDS WHICH RESULTS IN THE FAILURE BY THE CITY TO MAKE ANY PAYMENT COMING DUE HEREUNDER WILL IN NO WAY OBTVIATE THE OCCURRENCE OF THE EVENT OF DEFAULT RESULTING FROM SUCH NONPAYMENT. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE CITY IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION UNDER THIS AGREEMENT AND THE TAXING POWER OF THE CITY IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY MONEYS DUE UNDER THIS AGREEMENT.

No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the City's moneys (other than as provided in this Agreement and the Security Agreement with respect to the sale of the Equipment), nor shall any provision of this Agreement restrict the future issuance of any of the City's bonds or other evidences of indebtedness. To the extent of any conflict between this Section and any other provision of this Agreement, this Section shall take priority.

SECTION 4.3. Security Agreement. In order to secure its obligations under this Agreement, including its obligation to make the Installment Payments hereunder, the City will execute and deliver the Security Agreement simultaneously with the execution and delivery of this Agreement granting to the Lender a security interest in the Equipment.

SECTION 4.4. No Set-Off, Recoupment, Etc. Subject to Section 4.2 and the Enforcement Limitation, the obligation of the City to make the Installment Payments hereunder and to perform and observe the other covenants of this Agreement shall be absolute and unconditional, and the City shall pay without abatement, diminution or deduction all such amounts regardless of any cause or circumstance whatsoever, including, without limitation, any defense, set-off, recoupment or counterclaim that the City may have against the Lender.

ARTICLE V
INSURANCE

SECTION 5.1. Comprehensive General Liability. The City shall maintain or cause to be maintained throughout the term of this Agreement, a comprehensive general liability policy or policies in protection of the City, its officers, agents and employees. Said policy shall cover such losses and for such amounts and shall have such deductible amounts as shall be satisfactory to the Board and, in the judgment of the Board, shall protect the City against losses not protected under the principles of sovereign immunity. The net proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

SECTION 5.2. Workers' Compensation. The City shall maintain workers' compensation insurance issued by a responsible carrier authorized under the laws of the State to insure its employees against liability for compensation under the laws now in force in the State, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof. The proceeds of such workers' compensation insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

SECTION 5.3. Casualty Insurance. The City shall, during the term of this Agreement and at all times before all Installment Payments have been paid, continuously insure the Equipment, or cause the Equipment to be insured, against loss or damage to any portion of the Equipment with a value in excess of \$25,000 by fire and all other risks covered by the standard extended coverage endorsement then in use in the State in an amount equal to 100% of the actual cash value of such Equipment (subject to a deductible clause not to exceed \$50,000 for any one loss), paying as the same become due all premiums in respect thereof. The policy providing for such insurance shall name the Lender as loss payee. The Net Proceeds of such insurance required by this Section shall be applied as provided in Section 6.1 or Section 6.2.

SECTION 5.4 General Insurance Provisions. (a) The City shall pay or cause to be paid when due the premiums for all insurance policies required by this Agreement.

(b) All insurance policies required by this Article shall be issued by a responsible carrier authorized to do business under the laws of the State and having a financial strength rating by A.M. Best Company of "A" or better.

(c) The Lender shall not be responsible for the sufficiency or adequacy of any insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the Lender.

(d) In lieu of obtaining the policies of insurance required by Section 5.1, Section 5.2 and Section 5.3, the City may adopt alternative risk management programs which the City determines to be reasonable, including, without limitation, to self-insure in whole or in part, individually or in connection with other units of local government or other institutions, to participate in programs of captive insurance companies, to participate with other units of local government or other institutions in mutual or other cooperative insurance or other risk management programs, to participate in State or federal insurance programs, to take advantage of

State or federal laws now or hereafter in existence limiting liability, or to establish or participate in other alternative risk management programs, all as may be reasonable and appropriate risk management by the City.

(e) The insurance coverage required under Section 5.3 may be maintained under a blanket policy covering other properties of the City.

(f) The City shall cause to be delivered to the Lender annually on or about July 1 of each year a certificate stating that the insurance policies or alternative risk management programs required or permitted by this Agreement are in full force and effect.

ARTICLE VI

DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

SECTION 6.1. Obligation of the City to Repair and Replace the Equipment. In the event that Net Proceeds received by the City with respect to the Equipment exceed \$200,000, the City shall cause such Net Proceeds to be deposited in a separate fund maintained by the City with the Lender or its designee. Unless applied to the payment in full or in part of the remaining Installment Payments pursuant to Section 6.2, all Net Proceeds shall be applied to the prompt repair, restoration or replacement of the Equipment and, if required to be deposited with the Lender, shall be disbursed upon receipt of requisitions from the City in the same manner specified in Section 3.4 for disbursements from the Equipment Fund. The Lender shall cooperate with the City in the administration of such funds. Any repair, restoration, modification, improvement or replacement of the Equipment paid for in whole or in part out of such Net Proceeds shall be the property of the City, subject to the Security Agreement and Permitted Encumbrances, and shall be included as part of the Equipment financed pursuant to this Agreement.

SECTION 6.2. Insufficiency of Net Proceeds; Discharge of the Obligation of the City to Repair the Equipment. (a) If the Net Proceeds shall be insufficient to pay in full the cost of repair, restoration or replacement of the Equipment, the City may elect to complete the work and pay any cost in excess of the amount of the Net Proceeds, and the City agrees that, if by reason of any such insufficiency of the Net Proceeds, the City shall make any payments pursuant to the provisions of this subsection, the City shall not be entitled to any reimbursement therefor from the Lender, nor shall the City be entitled to any diminution of the Installment Payments payable under Section 4.1.

(b) If the City elects not to apply the Net Proceeds to the repair, restoration or replacement of the Equipment, the City may apply the Net Proceeds of such insurance policies, together with any other available funds of the City, to the prepayment in whole or in part of the principal component of the Installment Payments in accordance with Section 10.1. In the event the amount of such Net Proceeds exceeds the amount necessary to prepay the principal component of all remaining Installment Payments, plus the interest component of the Installment Payments accrued to the date of prepayment, such excess shall be paid to or retained by the City.

Within 60 days following the receipt of Net Proceeds, unless a further extension is approved by the Lender, the City shall commence the repair, restoration or replacement of the Equipment, or shall apply the Net Proceeds and any other available funds of the City to the prepayment in whole or in part of the principal component of the Installment Payments under the provisions of Section 10.1. For purposes of this subsection, "commence" shall include the retention of an engineer in anticipation of the repair, restoration, modification, improvement or replacement of the Equipment. In the event that the City shall, after commencing the repair, restoration, modification, improvement or replacement of the Equipment, determine that the Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) shall be insufficient for the accomplishment thereof, the City may, subject to the provisions set forth

above, elect to apply the Net Proceeds to the prepayment in whole or in part of the principal component of the Installment Payments under the provisions of Section 10.1.

SECTION 6.3. Cooperation of the Parties. The City and the Lender shall cooperate fully with each other in insurance investigations, in filing any proof of loss with respect to any insurance policy covering the events specified in Sections 5.1 and 5.3 of this Agreement, and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Equipment or any portion thereof. In no event shall the Lender or the City voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim or condemnation proceeding with respect to the Equipment without the written consent of the other.

ARTICLE VII

COVENANTS OF THE CITY

SECTION 7.1. Access to the Equipment. The City agrees that the Lender and its agents and employees, shall have the right, at all reasonable times during normal business hours of the City upon the furnishing of reasonable notice to the City under the circumstances, to examine and inspect the Equipment or any portion thereof. The City further agrees that the Lender and the Lender's successors, assigns or designees shall have such rights of access to the Equipment as may be reasonably necessary to cause the proper maintenance of the Equipment in the event of failure by the City to perform its obligations hereunder. No right of inspection shall be deemed to impose on the Lender any duty or obligation whatsoever to undertake any inspection, and no inspection made by the Lender shall be deemed to impose upon the Lender any duty or obligation to identify any defects in the Equipment or to notify any person with respect thereto.

SECTION 7.2. Maintenance, Utilities, Taxes and Assessments. (a) Subject to the Enforcement Limitation, the City shall provide for the repair and replacement of any portion of the Equipment required on account of ordinary wear and tear or want of care.

(b) Subject to the Enforcement Limitation, the City shall also pay, or provide for the payment of, all taxes and assessments, including, but not limited to, utility charges of any type or nature levied, assessed or charged against any portion of the Equipment; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid as and when the same become due.

(c) The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom; provided, however, that prior to such nonpayment, the City shall furnish to the Lender an opinion of counsel acceptable to the Lender to the effect that, by nonpayment of any such items, the interest of the Lender in the Equipment will not be materially endangered and that all or any portion of the Equipment will not be subject to loss or forfeiture. Otherwise, subject to the Enforcement Limitation, the City shall promptly pay such taxes, assessments or charges or make provisions for the payment thereof.

(d) Subject to the Enforcement Limitation, any performance required of the City or any payments required to be made by the City pursuant to this Section may, if not timely performed or paid, be performed or paid by the Lender, and, in such event, the Lender shall be immediately reimbursed by the City for such payments and for any reasonable costs and expenses, legal or otherwise, associated with the payments or other performance by the Lender, with interest thereon at a per annum rate equal to the Lender's "Prime Rate" in effect on the last business day of the calendar month preceding the payment (but not exceeding the maximum rate, if any, permitted by applicable law).

SECTION 7.3. Modification of the Equipment. The City shall, in its sole discretion and at its own expense, have the right to make additions, modifications and improvements to any

portion of the Equipment if such additions, modifications or improvements are necessary or beneficial for the use of the Equipment. Such additions, modifications and improvements shall not in any way damage any of the Equipment (unless such damage is to be repaired as provided in Section 6.1) or cause the Equipment to be used for purposes other than those authorized under the provisions of law, and the Equipment, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is not less than the value of the Equipment immediately prior to the making of such additions, modifications and improvements. All such items, as so modified, shall be free of all liens and encumbrances except for Permitted Encumbrances, shall become part of the Equipment and shall subject to the security interest created by the Security Agreement.

Except for Permitted Encumbrances, the City shall not permit any lien to be established or remain against the Equipment for labor or materials furnished in connection with any additions, modifications or improvements made by the City pursuant to this Section; provided, however, that if any such lien is established, the City may, at its own expense and in its name, in good faith contest any lien filed or established against the Equipment, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, provided that the City shall furnish to the Lender full security against any loss or forfeiture which might arise from the nonpayment of any such item in form satisfactory to the Lender.

SECTION 7.4. Encumbrances. The City shall not, directly or indirectly, create, incur, assume or suffer to exist any pledge, lien, charge, encumbrance or claim, as applicable, on or with respect to the Equipment, except for Permitted Encumbrances. Except as expressly provided in this Article and subject to the Enforcement Limitation, the City shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such pledge, lien, charge, encumbrance or claim for which it is responsible if the same shall arise at any time; provided, however, that the City may contest any such lien, charge, encumbrance or claim if it desires to do so and if it provides the Lender with full security against any loss or forfeiture which might arise from the nonpayment of any such item in form satisfactory to the Lender.

SECTION 7.5. Risk of Loss. Whether or not covered by insurance or self-insurance, the City hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Equipment from any cause whatsoever, and no such loss of or damage to or liability arising from the Equipment shall relieve the City of the obligation to make the Installment Payments or to perform any other obligation under this Agreement. Whether or not covered by insurance or self-insurance, the City hereby agrees to reimburse Lender (to the fullest extent permitted by applicable law, but only from legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lender, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into of this Agreement or any of the transactions contemplated hereby, (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Equipment, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury or death to any person, and/or (d) the breach of any covenant of the City in connection with this Agreement or any material misrepresentation provided by the City in connection with

this Agreement. The provisions of this Section shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of this Agreement for any reason.

SECTION 7.6. Indemnification of the Lender. To the fullest extent permitted by law, the City covenants to defend, indemnify and hold harmless the Lender and its officers, directors, affiliates, employees and agents (collectively, the "Indemnified Party") against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such Indemnified Party may become subject under any statute or at law or in equity or otherwise in connection with the transactions contemplated by this Agreement or the Security Agreement and shall reimburse any such Indemnified Party for any legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the transactions contemplated by this Agreement or the Security Agreement; provided, however, that the right to indemnification set forth in this Section shall not apply in any instances where such loss, claim, damage or liability is due to the willful misconduct or negligence of any Indemnified Party. In particular, without limitation, the City shall and hereby agrees to indemnify and save the Indemnified Party harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of any breach or default on the part of the City in the performance of any of its obligations under the Financing Documents.

SECTION 7.7. Financial and Other Information to the Lender. The City agrees that it will furnish the Lender, when the same become available, but in no event later than 270 days after the end of the Fiscal Year, its annual audited financial statements. Additionally, upon the Lender's request, the City shall furnish to the Lender such other financial or other information regarding the City that the Lender may reasonably request (excluding any privileged or confidential information).

ARTICLE VIII

ASSIGNMENT, LEASING AND AMENDMENT

SECTION 8.1. Assignment by the Lender. The Lender may, at any time and from time to time, assign to any bank, insurance company or similar financial institution all or any part of its interest in the Equipment or this Agreement, including, without limitation, the Lender's rights to receive the Installment Payments and any additional payments due and to become due hereunder. Reassignment by any assignee may also only be to a bank, insurance company or similar financial institution. The City agrees that this Agreement may become part of a pool of obligations at the Lender's or its assignee's option. The Lender or its assignees may assign or reassign either the entire pool or any partial interest herein. Notwithstanding the foregoing, no assignment or reassignment of the Lender's interest in the Equipment or this Agreement shall be effective unless and until the City shall receive a duplicate original counterpart of the document by which such assignment or reassignment is made disclosing the name and address of each assignee. The City covenants and agrees with the Lender and each subsequent assignee of the Lender that it will maintain for the full term of this Agreement a written record of each such assignment or reassignment. The City agrees to execute any document reasonably required by the Lender or any assignee in connection with any such assignment. Notwithstanding any assignment by the Lender of its interest in this Agreement, the City shall not be obligated to provide any financial or other information to any assignee of the Lender except as set forth in Section 7.6.

After the giving of notice described above to the City, the City shall thereafter make all payments in accordance with the notice to the assignee named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgement shall in no way be deemed to make the assignment effective.

The Lender covenants that any disclosure document circulated by it or an assignee in connection with the sale of the Lender's rights in this Agreement will contain a statement to the effect that the City has not reviewed and is not responsible for the disclosure document. The Lender covenants to defend, indemnify and hold harmless the City and its officers, employees and agents against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such indemnified party may become subject on account of any statement included in a disclosure document, or failure to include a statement in a disclosure document, unless the City shall have expressly approved the use of such disclosure document.

SECTION 8.2. Assignment and Leasing by the City. (a) This Agreement may not be assigned by the City.

(b) The City may lease all or any portion of the Equipment, subject to each of the following conditions:

(i) the obligation of the City to make Installment Payments hereunder shall remain obligations of the City;

(ii) the City shall within thirty (30) days prior to the execution and delivery of any such lease, furnish or cause to be furnished to the Lender, a true and complete copy of the form of such lease;

(iii) the Lender shall have received evidence satisfactory to the Lender that such lease is subordinate in all respects to the security interest in the Equipment created by the Security Agreement; and

(iv) the lease by the City shall not cause the Equipment to be used for a purpose other than a governmental or proprietary function of the City authorized under the provisions of the Constitution and laws of the State and shall not cause the interest component in the Installment Payments to be includable in gross income of the Lender for federal income tax purposes.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

SECTION 9.1. Events of Default Defined. The following shall be “events of default” under this Agreement and the terms “events of default” and “default” shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) The failure by the City to pay any Installment Payment required to be paid hereunder when due.

(b) The occurrence of an Event of Nonappropriation.

(c) Failure by the City to observe and perform any warranty, covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto other than as referred to in clause (a) or (b) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Lender; provided, however, that if the failure stated in the notice cannot be corrected within the applicable period and if corrective action is instituted by the City within the applicable period and diligently pursued, the City shall have such additional period of time to correct the failure as shall be necessary to correct such failure so long as such correction is diligently pursued.

(d) The City becomes insolvent or the subject of insolvency proceedings; or is unable, or admits in writing its inability, to pay its debts as they mature; or makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its property; or files a petition or other pleading seeking reorganization, composition, readjustment or liquidation of assets, or requesting similar relief; or applies to a court for the appointment of a receiver for it or for the whole or any part of its property; or has a receiver or liquidator appointed for it or for the whole or any part of its property (with or without the consent of the City) and such receiver is not discharged within ninety (90) consecutive days after his appointment; or becomes the subject of an “order for relief” within the meaning of the United States Bankruptcy Code; or files an answer to a creditor’s petition admitting the material allegations thereof for liquidation, reorganization, readjustment or composition or to effect a plan or other arrangement with creditors or fail to have such petition dismissed within sixty (60) consecutive days after the same is filed against the City.

(e) The occurrence of an “Event of Default” under the Security Agreement as defined therein.

(f) Any warranty, representation or statement made by the City herein or in the Security Agreement or any other document executed and delivered by the City in connection herewith or therewith is found to be incorrect or misleading in any material respect, provided that in the case of any representation or warranty set forth in Section 2.1(f) of this Agreement, such representation or warrant shall have been incorrect or misleading in a material respect as of the date of this Agreement.

SECTION 9.2. Remedies on Default. Upon the occurrence of any event of default under Section 9.1, the Lender may, without any further demand or notice (except as expressly provided below), exercise any one or more of the following remedies:

(a) by written notice to the City, declare the entire amount of the principal component of the Installment Payments and the accrued and unpaid interest component to the date of declaration to be immediately due and payable;

(b) exercise all remedies available at law or in equity or under the Security Agreement, including sale of the Equipment, and apply the proceeds of any such sale or other disposition, after deducting all costs and expenses, including court costs and reasonable attorneys' fees incurred with the recovery, repair, storage and other sale or other disposition costs, toward the principal component and accrued and unpaid interest of the balance of Installment Payments due; and

(c) subject to the Enforcement Limitation, proceed by appropriate court action to enforce performance by the City of the applicable covenants of this Agreement or to recover for the breach thereof.

NOTWITHSTANDING ANY OTHER PROVISIONS HEREIN, IT IS THE INTENT OF THE PARTIES HERETO TO COMPLY WITH SECTION 160A-20 OF THE GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED. NO DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST THE CITY IN FAVOR OF THE LENDER OR ANY OTHER PERSON IN VIOLATION OF SAID SECTION 160A-20, INCLUDING, WITHOUT LIMITATION, ANY DEFICIENCY JUDGMENT FOR AMOUNTS THAT MAY BE OWED HEREUNDER WHEN THE SALE OF ALL OR ANY PORTION OF THE EQUIPMENT IS INSUFFICIENT TO PRODUCE ENOUGH MONEYS TO PAY IN FULL ALL REMAINING OBLIGATIONS HEREUNDER.

SECTION 9.3. No Remedy Exclusive. No remedy conferred herein upon or reserved to the Lender is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. To the extent permitted by law, any delay or omission to exercise any right or power accruing upon any default shall not impair any such right or power nor shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lender to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required in this Article or by law.

SECTION 9.4. Agreement to Pay Attorneys' Fees and Expenses. In the event the City should default under any of the provisions hereof and the Lender should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the City contained herein, the City agrees that it will pay on demand to the Lender, subject to the Enforcement Limitation and the limitations and provisions of Section 6-21.2 of the General Statutes of North Carolina, as amended, the reasonable fees of such attorneys and such other expenses so incurred by the Lender. For purposes of this Section, the reasonable fees of attorneys shall mean attorneys' fees actually incurred at such attorneys' standard hourly rate for such services and shall not be based

on any percentage of the outstanding amount due; provided, however that such attorneys' fees shall not exceed the maximum amount permitted by law.

SECTION 9.5. No Additional Waiver Implied by One Waiver. In the event any provision contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder except as may be provided by law.

ARTICLE X

PREPAYMENT OF INSTALLMENT PAYMENTS

SECTION 10.1. Prepayment of Installment Payments. Upon at least 10 days' prior written notice to the Lender (unless otherwise waived by the Lender), the City may prepay, in whole, but not in part, the outstanding principal component of the Installment Payments on any date at a prepayment price of 101% of the principal component of the Installment Payments to be prepaid, plus accrued interest to the prepayment date.

[Question: Could the City do a partial prepayment (apply insurance proceeds to partially prepay the loan at the 101% premium) in the event of a casualty loss under Article VI?]

ARTICLE XI

MISCELLANEOUS

SECTION 11.1. Notices. Except as otherwise provided herein, all notices, approvals, consents, certificates, requests and other communications hereunder shall be in writing and shall be deemed to have been given when the writing is delivered, if delivered by hand or overnight delivery service, and shall be deemed to have been received upon the earlier of actual receipt or three days after deposit in the United States first-class, registered or certified mail, postage prepaid, and addressed as follows:

If to the City:

City of New Bern, North Carolina
300 Pollock Street
New Bern, North Carolina 28560
Attention: Director of Finance

If to the Lender:

TD Equipment Finance, Inc.
7320 Market Street
Wilmington, North Carolina 28411
Attention: Margaret Morris, Vice President – Regional Manager

Any such notice, demand or request may also be transmitted to the appropriate party by telegram, telecopy, electronic mail or telephone and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above.

The City and the Lender, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

SECTION 11.2. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the City and the Lender and their respective successors and permitted assigns. Whenever in this Agreement either the City or the Lender is named or referred to, such reference shall be deemed to include the successors or permitted assigns thereof and all the covenants and agreements in this Agreement contained by or on behalf of the City or the Lender shall bind and inure to the benefit of the respective successors and permitted assigns thereof whether so expressed or not.

SECTION 11.3. Severability. If any provision in this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction, such ruling shall not affect any other term or provision herein, except that the invalid or unenforceable provision and the other provisions in this Agreement automatically shall be modified as minimally as possible so as to be valid and enforceable and to effectuate the intent of the parties, provided that such modification can be made while still preserving the intent of the parties, and the remaining terms and provisions, as modified, if modified, shall remain binding on the parties. In the event that no

such modification can be made while still preserving the intent of the parties hereto, then the invalid or unenforceable provision shall be stricken from this Agreement, and the remaining terms shall remain in full force and effect.

SECTION 11.4. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 11.5. Commitment Letter. The terms of this Agreement shall supersede the terms of any commitment letter, proposal or other term sheet provided by the Lender. To the extent of any conflict between this Agreement and such other documents, this Agreement shall take priority.

SECTION 11.6. Applicable Law. This Agreement shall be construed and governed in accordance with the laws of the State of North Carolina.

SECTION 11.7. No Advisory Services. The City acknowledges and agrees that (i) this Agreement is an arm's length commercial transaction between the City and the Lender in which the Lender is acting solely as a principal to make a loan to the City, and not as a municipal advisor, financial advisor or fiduciary to the City or any other person or entity regardless of whether the Lender or an affiliate has or is currently acting as such on a separate transaction; (ii) the Lender has not assumed any advisory or fiduciary responsibility to the City with respect to the transaction contemplated by this Agreement, and the discussions, undertakings and procedures leading to this Agreement (irrespective of whether the Lender or its affiliates have provided other services or are currently providing other services to the City on other matters); (iii) the only obligations the Lender has to the City with respect to the transaction contemplated by this Agreement are expressly set forth herein or the relating financing documents; and (iv) the City has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

SECTION 11.8. E-Verify. The Lender hereby certifies that the Lender understands that "E-Verify" is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. The Lender uses E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended. The Lender shall require that any subcontractor that it uses in connection with the transactions contemplated by this Agreement certify to such subcontractor's compliance with E-Verify.

SECTION 11.9. Patriot Act Notice. The Lender is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56) (signed into law October 26, 2001) (the "Act") and hereby notifies the City that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the City, which information includes the name and address of the City and other information that will allow the Lender to identify the City in accordance with the Act.

IN WITNESS WHEREOF, the City and the Lender have caused this Agreement to be executed in their respective names by their respective duly authorized officers as of the date first above written.

CITY OF NEW BERN, NORTH CAROLINA

[SEAL]

By: _____
Mayor

Attest:

City Clerk

TD EQUIPMENT FINANCE, INC.

By: _____
Vice President

EXHIBIT A

INSTALLMENT PAYMENT SCHEDULE

Installment
Payment Date

Principal

Interest

Total

REQUISITION AND ACCEPTANCE CERTIFICATE

TD Equipment Finance, Inc.
7320 Market Street
Wilmington, North Carolina 28411
Attention: Margaret Morris, Vice President – Regional Manager

Re: Disbursement from the Equipment Fund pursuant to Section 3.4 of the Installment Financing Agreement, dated as of September 14, 2023 (the “Agreement”), between the City of New Bern, North Carolina (the “City”) and TD Equipment Finance, Inc.

REQUISITION NO. _____

1. The City intends to reimburse itself or to pay to _____
_____ for _____
\$ _____ as a [Equipment Cost/Closing Cost] from the Equipment Fund as provided in Section 3.4 of the Agreement [by wire transfer] [by check].

2. In connection with such requisition request, the City hereby certifies as follows:

(a) Such cost has been properly incurred, is a proper charge against the Equipment Fund and has not been the basis of any previous disbursements.

(b) The City has received no notice of any vendor’s, mechanic’s or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.

(c) This requisition contains no item representing payment on account, or any retained percentages which the City is, at the date hereof, entitled to retain.

(d) The City is currently maintaining the insurance coverage required by Article V of the Agreement.

(e) No Event of Default, and no event which with notice or lapse of time, or both, would become an Event of Default, under the Agreement has occurred and is continuing at the date hereof.

(f) The portion of the Equipment purchased by the City and described in this requisition has been delivered, installed (if applicable) and accepted by the City on or prior the date hereof, and the City has conducted such inspection and/or testing of such portion of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts such portion of the Equipment for all purposes.

In connection with this requisition, the City is delivering to the Lender a copy of such invoices, bills of sale, checks or other documents or other items of evidence necessary to determine the appropriateness of such requisition.

Capitalized terms used herein and not otherwise defined have the meanings set forth in the Agreement.

Very truly yours,

Title: _____

The Lender hereby agrees to payment of the foregoing amounts from the Equipment Fund.

TD EQUIPMENT FINANCE, INC.

By: _____

Title: _____

Date: _____

SECURITY AGREEMENT

THIS SECURITY AGREEMENT, dated as of September 14, 2023 (the "Security Agreement"), is made by the CITY OF NEW BERN, NORTH CAROLINA, a municipal corporation duly organized and existing under the Constitution and laws of the State of North Carolina (the "City"), for the benefit of TD EQUIPMENT FINANCE, INC. (the "Lender"), or any successors or assigns, being hereinafter sometimes referred to as the "Secured Party";

WITNESSETH:

WHEREAS, the City has entered into an Installment Financing Agreement, of even date herewith (the "Agreement"), with the Lender, whereby the Lender has agreed to advance funds to the City in the principal amount of \$ _____ to (a) pay the costs of the Equipment (as defined in the Agreement and as more particularly described in Exhibit A and Exhibit B attached hereto and made a part hereof) and (b) pay certain related financing costs, and the City has agreed to repay the funds advanced to the City with interest in installments due at the times and in the amounts set forth in the Agreement (the "Installment Payments"), the final Installment Payment being due on September __, 2028;

WHEREAS, the City desires to secure (a) the payment of the Installment Payments due under the Agreement, (b) the performance by the City of all of its other obligations under the Agreement, (c) the payment of any and all other indebtedness which this Security Agreement by its terms secures and (d) the performance by the City of the covenants and agreements contained in this Security Agreement by granting to the Secured Party a security interest in the Collateral (hereinafter defined);

NOW, THEREFORE, in order to induce the Lender to make the advancement under the Agreement, and in consideration of the benefits to accrue to the City by reason thereof, and for other good and valuable consideration, receipt of which is hereby mutually acknowledged, the parties hereby agree as follows:

Section 1. Uniform Commercial Code Security Agreement. The City hereby grants to the Secured Party, as security for the payment of all Installment Payments under the Agreement and the performance by the City of all of its other obligations under the Agreement and this Security Agreement, a security interest in the Equipment, including substitutions and replacements thereof or thereto as permitted by the Agreement, and all proceeds (cash and non-cash), including the proceeds of insurance (collectively, the "Collateral"). Except as otherwise provided in the next succeeding paragraph, the City shall execute, deliver and file, or cause to be filed, in the North Carolina Secretary of State's office, Uniform Commercial Code financing statements (including any continuation statements) to perfect and continue the perfection of the security interest hereby granted in the Equipment.

With respect to such pieces of Equipment constituting a vehicle required to be titled under North Carolina law, for so long as no Event of Default has occurred and is continuing, the City shall have no obligation to provide for a notation of lien on the certificates of title for such

vehicles. The City shall be responsible for the correct titling of all Equipment so purchased after the date hereof and, for so long as no Event of Default has occurred and is continuing, retain all original Certificates of Title for retention with the City.

Upon the occurrence of an Event of Default, upon the written request of the Secured Party, the City shall (a) cause the notation of the Secured Party as the lienholder on the certificates of title for any vehicles constituting Equipment and (b) cause the original certificates of title to be delivered to the Secured Party for retention in the Secured Party's files, at all times until such Event of Default has been cured.

Attached as Exhibit B hereto is a list of the Equipment constituting vehicles and other equipment that have previously been purchased by the City and which the City is financing with the amounts made available to the City under the Agreement. Except with respect to the Equipment set forth in Exhibit B, prior to or at the same time the City disburses proceeds of the Advancement (as defined in the Agreement) to pay, or reimburse the City for payment of, the costs of the Equipment as provided in Section 3.4 of the Agreement, the City hereby agrees to execute and deliver to the Secured Party an addendum to this Security Agreement, in substantially the form set forth in Exhibit A attached hereto and made a part hereof, specifically describing the item or items of Equipment so acquired. In preparing such addendum, the City may attach a spreadsheet, financial system report or summary of the Equipment acquired or to be acquired prepared by the City.

To the extent permitted by law, the Equipment is and shall at all times remain personal property, whether or not affixed to or installed upon real property, and none of the Equipment shall constitute fixtures within the meaning of the Uniform Commercial Code, as adopted by the State of North Carolina (the "UCC").

Section 2. Grant of Licenses; Collateral Assignment. The City is the owner of certain real property easements, rights of way and other interests and rights in real property where all or a portion of the Equipment may be located. To the fullest extent permitted by law, the City hereby grants to the Secured Party such licenses or other rights or privileges as may be necessary or desirable for the Secured Party, or its agents, to enter in or upon such property where the Equipment is located for the purpose of exercising its rights hereunder. The City grants these licenses in connection with the other property interests granted hereunder to the Secured Party, with the intent that such licenses qualify as licenses coupled with an interest so as to be irrevocable.

Section 3. Representations, Warranties and Covenants. The City hereby represents, warrants and covenants as follows:

(a) The City is and shall continue to be the absolute owner of the Collateral, free and clear of all encumbrances and security interests, other than Permitted Encumbrances (as defined in the Agreement).

(b) The City shall not sell, transfer, exchange, lease, mortgage, encumber, pledge or otherwise dispose of all or any part of the Collateral, except as provided in the Agreement and this Security Agreement.

(c) Except as otherwise provided in Section 1 hereof, the City shall execute and deliver to the Secured Party concurrently with the execution and delivery of this Security Agreement, and upon the request of the Secured Party from time to time thereafter, all financing statements and other documents reasonably required to perfect and maintain the security interest created hereby.

Section 4. Events of Default and Remedies of Secured Party. (a) If any of the following events shall occur:

(i) the occurrence of an "event of default" under the Agreement; or

(ii) failure by the City to observe and perform any warranty, covenant, condition or agreement on the part of the City under this Security Agreement for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to the City by the Secured Party unless the Secured Party shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in the notice cannot be corrected within the applicable period and if corrective action is instituted by the City within the applicable period and diligently pursued, the City shall have such additional period of time to correct the failure as shall be necessary to correct such failure so long as such correction is diligently pursued; or

(iii) any lien, charge or encumbrance prior to or affecting the validity of this Security Agreement is found to exist, other than Permitted Encumbrances, or proceedings are instituted to enforce any lien, charge or encumbrance against the Collateral and such lien, charge or encumbrance would be prior to the lien of this Security Agreement;

then and in any of such events (hereinafter referred to as an "Event of Default"), all payments under the Agreement may become at once due and payable, regardless of the maturity date or other due date thereof.

(b) Upon the occurrence of an Event of Default, the Secured Party may proceed against the Collateral as provided in and in accordance with the applicable provisions of the UCC. Subject to any limitations imposed by the applicable provisions of the UCC, the Secured Party may sell, lease, or otherwise dispose of all or any part of the Collateral, at public or private sale, for cash or on credit, as a whole or in part, and the Secured Party may at such sale or sales purchase the Collateral or any part thereof. The proceeds of such sale, lease, collection or other disposition shall be applied first to the costs and expenses of the Secured Party incurred in connection with such sale, lease, collection or other disposition, and then to such outstanding balance due on any and all indebtedness owed to the Secured Party in the manner provided in the Agreement. Further, the Secured Party may require the City to assemble the Collateral and make the Collateral reasonably available to the Secured Party at one or more places to be designated by the Secured Party which are reasonably convenient to the City and the Secured Party, and the Secured Party may take possession of the Collateral and hold, prepare for sale, lease or otherwise dispose of the Collateral. Any required notice by the Secured Party of the sale or other disposition or default, when mailed to the City at its address set forth herein, shall constitute reasonable notice to the City. In addition to, but not in limitation of, any of the foregoing, the Secured Party may exercise any or all of the rights and remedies afforded to the Secured Party by the provisions of the UCC or otherwise afforded to the Secured Party under this Security

Agreement, with all such rights and remedies being cumulative and not alternative, and the City agrees, to the extent permitted by law, to pay the reasonable fees, expenses and other costs of collection, including the fees, expenses and costs provided by statute. No failure or delay in exercising any option, right or remedy shall be deemed a waiver thereon or a waiver of any Event of Default.

NOTWITHSTANDING ANY OTHER PROVISIONS HEREIN, IT IS THE INTENT OF THE PARTIES HERETO TO COMPLY WITH SECTION 160A-20 OF THE GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED. NO DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST THE CITY IN FAVOR OF THE SECURED PARTY OR ANY OTHER PERSON IN VIOLATION OF SAID SECTION 160A-20, INCLUDING, WITHOUT LIMITATION, ANY DEFICIENCY JUDGMENT FOR AMOUNTS THAT MAY BE OWED HEREUNDER OR UNDER THE AGREEMENT WHEN THE SALE OF ALL OR ANY PORTION OF THE COLLATERAL IS INSUFFICIENT TO PRODUCE ENOUGH MONEYS TO PAY IN FULL ALL REMAINING OBLIGATIONS HEREUNDER OR UNDER THE AGREEMENT.

Section 5. Miscellaneous.

(a) Notices. Except as otherwise provided herein, all notices, approvals, consents, certificates, requests and other communications hereunder shall be in writing and shall be deemed to have been given when the writing is delivered, if delivered by hand or overnight delivery service, and shall be deemed to have been received upon the earlier of actual receipt or three days after deposit in the United States first-class, registered or certified mail, postage prepaid, and addressed as follows:

If to the City:

City of New Bern, North Carolina
300 Pollock Street
New Bern, North Carolina 27834
Attention: Director of Finance

If to the Lender:

TD Equipment Finance, Inc.
7320 Market Street
Wilmington, North Carolina 28411
Attention: Margaret Morris, Vice President – Regional Manager

Any such notice, demand or request may also be transmitted to the appropriate party by telegram, telecopy, electronic mail or telephone and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above.

The City and the Lender, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

(b) Successors and Assigns. This Security Agreement shall bind the City and its successors and assigns and shall inure to the benefit of and be enforceable by the Secured Party and its successors and assigns.

(c) Applicable Law. This Security Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

(d) Severability. In the event any term, provision or covenant herein contained or the application thereof to any circumstances or situation shall be invalid or unenforceable in whole or in part, the remainder hereof and the application of said term or provision or covenant to any other circumstances or situation shall not be affected thereby, and every other term, provision or covenant herein shall be valid and enforceable to the full extent permitted by law.

IN WITNESS WHEREOF, the City has caused this Security Agreement to be executed, sealed and attested in its name by its duly authorized officers, all as of the day and year first above written.

CITY OF NEW BERN, NORTH CAROLINA

[SEAL]

By: _____
Jeffrey T. Odham, Mayor

Attest:

Brenda E. Blanco, City Clerk

ADDENDUM TO SECURITY AGREEMENT

Attached and made a part of the Security Agreement, dated as of September 14, 2023, between the City of New Bern, North Carolina and TD Equipment Finance, Inc.

DESCRIPTION OF EQUIPMENT

[Fill in all information to the extent applicable]

<u>Quantity</u>	<u>Description</u>	<u>Manufacturer</u>	<u>Model No.</u>	<u>Purchase Price</u>
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Date: _____

CITY OF NEW BERN, NORTH CAROLINA

By: _____
City Representative

[List of previously acquired Equipment to be attached.]

AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider adopting an amendment to the FY 2023-24 annual adopted budget

Date of Meeting: 9/12/2023	Ward # if applicable:
Department: Finance	Person Submitting Item: Kim Ostrom, Director of Finance
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing:

Explanation of Item:	The ordinance amends various funds for vehicle and equipment financing
Actions Needed by Board:	Adopt Ordinance Amendment
Backup Attached:	Memo; Ordinance Amendment
Is item time sensitive? <input checked="" type="checkbox"/> Yes <input 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:

Aldermen

Rick Prill
Hazel B. Royal
Robert V. Aster
Johnnie Ray Kinsey
Barbara J. Best
Robert Brinson, Jr.



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New Bern, NC 28563-1129
(252) 636-4000

Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

TO: City Manager, Honorable Mayor and Members of the Board of Aldermen
FROM: Kim Ostrom - Director of Finance
DATE: August 29, 2023
RE: Amendment to the FY 2023-24 Operating Budget

Current

The City is financing various vehicles and equipment to be purchased in FY24. Vehicles and equipment in the General and Solid Waste Funds were budgeted for financing in the FY23-24 Budget Ordinance. Vehicles and equipment in the Water, Sewer and Electric Fund budgets, and three vehicles budgeted, but not purchased in FY23, have been added to the financing installment agreement. This ordinance amends the General, Water, Sewer, Electric and Solid Waste Funds for the additional vehicles and equipment to be financed by installment purchase proceeds and the financing issuance costs.

Requested Action

It is requested that the Board considers adopting the enclosed budget amendment at its meeting on September 12, 2023.

CITY OF NEW BERN, NORTH CAROLINA
 REQUESTED AMENDMENT TO
 Fiscal Year 2023-2024

FROM: Kim Ostrom, Director of Finance

Meeting Date: September 12, 2023

EXPLANATION:

The City is financing various vehicles and equipment to be purchased in FY24. Vehicles and equipment in the General and Solid Waste Funds were budgeted for financing in the FY23-24 Budget Ordinance. Vehicles and equipment in the Water, Sewer and Electric Fund budgets, and three vehicles budgeted, but not purchased in FY23, have been added to the financing installment agreement. This ordinance amends the General, Water, Sewer, Electric and Solid Waste Funds for the additional vehicles and equipment to be financed by installment purchase proceeds and the financing issuance costs.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN
 THAT THE 2023-2024 ANNUAL BUDGET ORDINANCE IS AMENDED AS FOLLOWS:

Section 1 - Appropriations

Schedule A - GENERAL FUND

Increase:	Police	44,550
	Debt Issuance	25,375
		<u>\$ 69,925</u>

Schedule C - WATER FUND

Increase:	Water Treatment	48,000
	Water Distribution Maintenance	277,860
	Debt Issuance	2,690
		<u>\$ 328,550</u>

Schedule D - SEWER FUND

Increase:	Sewer Collection System Maintenance	245,000
	Debt Issuance	2,020
		<u>\$ 247,020</u>

Schedule E - ELECTRIC FUND

Increase:	Electrid Administration	\$ 40,000
	Electric Distribution	\$ 746,730
	Electric Power Production	\$ 60,000
	Utility Business Office	\$ 80,000
	Debt Issuance	\$ 7,645
		<u>\$ 934,375</u>

Schedule T - SOLID WASTE FUND

Increase:	Debt Issuance	\$ 2,270
		<u>\$ 2,270</u>

Section 2 - Estimated Revenues

Schedule A - GENERAL FUND

Increase: Proceeds from Installment Purchase \$ 69,925

Schedule C - WATER FUND

Increase: Proceeds from Installment Purchase \$ 328,550

Schedule D - SEWER FUND

Increase: Proceeds from Installment Purchase \$ 247,020

Schedule E - ELECTRIC FUND

Increase: Proceeds from Installment Purchase \$ 934,375

Schedule T - SOLID WASTE FUND

Increase: Proceeds from Installment Purchase \$ 2,270

NATURE OF TRANSACTION:

ADDITIONAL REVENUE AVAILABLE FOR APPROPRIATION

TRANSFER WITHIN ACCOUNTS OF SAME FUND

OTHER: _____

APPROVED BY THE BOARD OF ALDERMEN AND
ENTERED ON MINUTES DATED SEPTEMBER 12, 2023
AGENDA ITEM NUMBER _____

BRENDA E. BLANCO, CITY CLERK

AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider adopting an amendment to the Township 7 Sewer Improvements Project Fund

Date of Meeting: 9/12/2023	Ward # if applicable:
Department: Finance	Person Submitting Item: Kim Ostrom, Director of Finance
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing:

Explanation of Item:	The ordinance amends the Township Sewer Improvements Project Fund for Revenue Bond proceeds
Actions Needed by Board:	Adopt Ordinance Amendment
Backup Attached:	Memo; Ordinance Amendment
Is item time sensitive? <input checked="" type="checkbox"/> Yes <input 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:

Aldermen
Rick Prill
Hazel B. Royal
Robert V. Aster
Johnnie Ray Kinsey
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Robert Brinson, Jr.



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Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

TO: City Manager, Honorable Mayor and Members of the Board of Aldermen
FROM: Kim Ostrom - Director of Finance
DATE: August 29, 2023
RE: Amendment to the Township 7 Sewer Improvements Project Fund

Current

This ordinance amends the Township 7 Sewer Improvements Project Fund by \$1,052,000 with proceeds from the issuance of its Combined Enterprise System Revenue Bonds, Series 2023 to fund the costs of the project.

Requested Action

It is requested that the Board considers adopting the enclosed budget amendment at its meeting on September 12, 2023.

**AN ORDINANCE TO AMEND THE CAPITAL PROJECT ORDINANCE
TOWNSHIP 7 SEWER IMPROVEMENTS PROJECT FUND**

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

Section 1. That Section 3 of the Township 7 Sewer Improvements Project Fund Ordinance adopted on December 10, 2015 is hereby amended to recognize additional appropriation:

Increase: Sewer System Improvements Project Fund \$1,052,000

Section 2. That Section 4 of the Township 7 Sewer Improvements Project Fund Ordinance adopted on December 10, 2015 is hereby amended to recognize revenue:

Increase: Proceeds from Revenue Bonds \$1,052,000

Section 3. This amendment shall become effective upon adoption.

ADOPTED THIS 12TH DAY OF SEPTEMBER 2023.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider adopting an amendment to the Northwest Interceptor Rehabilitation Phase II Project Fund

Date of Meeting: 9/12/2023	Ward # if applicable:
Department: Finance	Person Submitting Item: Kim Ostrom, Director of Finance
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing:

Explanation of Item:	The ordinance amends the Northwest Interceptor Rehabilitation Phase II Project Fund for Revenue Bond proceeds
Actions Needed by Board:	Adopt Ordinance Amendment
Backup Attached:	Memo; Ordinance Amendment
Is item time sensitive? <input checked="" type="checkbox"/> Yes <input 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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Jeffrey T. Odham
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City Clerk
Kimberly A. Ostrom
Director of Finance

TO: City Manager, Honorable Mayor and Members of the Board of Aldermen
FROM: Kim Ostrom - Director of Finance
DATE: August 29, 2023
RE: Amendment to the Northwest Interceptor Rehabilitation Phase II Project Fund

Current

This ordinance amends the Northwest Interceptor Rehabilitation Phase II Project Fund by \$5,048,000 with proceeds from the issuance of its Combined Enterprise System Revenue Bonds, Series 2023 to fund the costs of the project.

Requested Action

It is requested that the Board considers adopting the enclosed budget amendment at its meeting on September 12, 2023.

**AN ORDINANCE TO AMEND THE CAPITAL PROJECT ORDINANCE
NORTHWEST INTERCEPTOR REHABILITATION PHASE II PROJECT FUND**

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

Section 1. That Section 2 of the Northwest Interceptor Rehabilitation Phase II Project Fund Ordinance adopted on April 26, 2022 is hereby amended to recognize additional appropriation:

Increase: Northwest Interceptor Rehabilitation \$5,048,000

Section 2. That Section 2 of the Northwest Interceptor Rehabilitation Phase II Project Fund Ordinance adopted on April 26, 2022 is hereby amended to recognize revenue:

Increase: Proceeds from Revenue Bonds \$5,048,000

Section 3. This amendment shall become effective upon adoption.

ADOPTED THIS 12TH DAY OF SEPTEMBER 2023.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK



NEW BERN
CITY OF NEW BERN
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City Manager
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City Clerk
Kimberly A. Ostrom
Director of Finance

Memorandum

TO: Alderman Johnnie Ray Kinsey
FROM: Brenda Blanco, City Clerk
DATE: June 16, 2023
SUBJECT: Appointment to Planning and Zoning Board

Raymond Layton's term on the Planning and Zoning Board will expire June 30, 2023. He is ineligible for reappointment. You are asked to make a new appointment to fill Seat 4 for a three-year term that will expire on June 30, 2026.



NEW BERN

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City Clerk
Kimberly A. Ostrom
Director of Finance

Memorandum

TO: Mayor and Board of Aldermen
FROM: Brenda Blanco, City Clerk
DATE: August 24, 2023
SUBJECT: Appointment to Police Civil Service Board

On June 27, 2023, the Board appointed Ken Daub to the Police Civil Service Board ("PCSB"). Mr. Daub subsequently disclosed that he has served as a volunteer in the Police Department within the last three years. This makes him ineligible to serve on the PCSB. A new appointment is needed to fill this seat.



NEW BERN

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Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

Memorandum

TO: Mayor and Board of Aldermen

FROM: Brenda Blanco, City Clerk

DATE: August 24, 2023

SUBJECT: Appointment to Friends of the Firemen's Museum Board

George Halyak has resigned from the Friends of the Firemen's Museum Board, and a new appointment is needed to fill the remainder of his term through April 22, 2025. The Chairman of the museum board has requested Bobby Boyd be appointed to this seat.