

**CITY OF NEW BERN
BOARD OF ALDERMEN MEETING
MAY 28, 2024 – 6:00 P.M.
CITY HALL COURTROOM
300 POLLOCK STREET**

1. Meeting opened by Mayor Odham. Prayer Coordinated by Mayor Odham. Pledge of Allegiance.
2. Roll Call.
3. Approve Agenda.

Consent Agenda

4. Consider Adopting a Resolution Closing a Portion of South Front Street by Palace Point Commons for the Annual July 4th Fireworks.
5. Consider Adopting a Resolution Closing Specific Streets for the Tryon Palace Glorious Fourth of July Celebration.
6. Consider Adopting a Resolution Closing Specific Streets for Tryon Palace's Revolutionary War Day.
7. Consider Adopting a Resolution Calling for a Public Hearing to Amend Article XXVI. "Stormwater Quality Management and Discharge Control" of Appendix A "Land Use" of the Code of Ordinances.
8. Approve Minutes.

9. Introduction of Swiss Bear's New Executive Director.
10. Conduct a Public Hearing on the Proposed Budget for FY 2024-2025.
11. Update on NC43 Connector Project and Consider Adopting a Resolution in Support of Naming the Highway 43 Connector for Marvin L. Raines, Jr.
12. Consider Adopting a Resolution Authorizing the Execution of an Installment Financing Agreement, Deed of Trust, and Related Documents Related to Financing the Acquisition of 212 Kale Road.
13. Consider Adopting a Resolution Authorizing the Execution of All Agreement Documents Related to the NC Railroad and Norfolk Southern Railroad Supplemental Line Agreement for Installation of Stormwater Force Main and Drainage Structures for the Duffyfield Community Stormwater Enhancements Project Phase I.

14. Consider Adopting a Budget Ordinance Amendment for FY24.
15. Appointment(s).
16. Attorney's Report.
17. City Manager's Report.
18. New Business.
19. Closed Session.
20. 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: May 23, 2024

Re: May 28, 2024 Agenda Explanations

1. **Meeting opened by Mayor Jeffrey T. Odham. Prayer Coordinated by Mayor Odham. Pledge of Allegiance.**
2. **Roll Call.**
3. **Approve Agenda.**

Consent Agenda

4. **Consider Adopting a Resolution Closing a Portion of South Front Street by Palace Point Commons for the Annual July 4th Fireworks.**

(Ward 1) The Department of Parks and Recreation seeks to close to vehicular traffic the portion of South Front Street by Palace Point Commons from 8:30 p.m. until 10:00 p.m. on July 4, 2024. This will accommodate spectators in that area who are viewing the July 4th fireworks. A memo from Kari Warren, Director of Parks and Recreation, is attached.

5. **Consider Adopting a Resolution Closing Specific Streets for the Tryon Palace Glorious Fourth of July Celebration.**

(Ward 1) Tryon Palace has requested to close the portion of South Front Street by Palace Point Commons on July 4, 2024 from 8 a.m. until 1 p.m. for their annual Glorious Fourth of July Celebration. A memo from Mrs. Warren is attached.

6. **Consider Adopting a Resolution Closing Specific Streets for Tryon Palace's Revolutionary War Day.**

(Ward 1) Tryon Palace has requested to close the 600 block of Pollock Street and 300 block of George Street to vehicular traffic on July 13, 2024 from 8 a.m. until 11

a.m. for its Revolutionary War Day Celebration. The palace has also requested to close the portion of South Front Street by Palace Point Commons on the same date from 8 a.m. until 11 a.m. for the firing of a cannon off the south lawn. A memo from Mrs. Warren is attached.

7. Consider Adopting a Resolution Calling for a Public Hearing to Amend Article XXVI. “Stormwater Quality Management and Discharge Control” of Appendix A “Land Use” of the Code of Ordinances.

North Carolina has mandated that all local governments within the Neuse watershed modify their local stormwater ordinances to implement the Neuse Stormwater Rules. The ordinance modification will be consistent with the model developed by the NC Department of Environmental Quality. It has been reviewed and approved by the Environmental Management Commission and the Division of Water Resources as required by state regulations. The Planning and Zoning Board voted unanimously on May 16, 2024 to recommend adoption of the changes. A public hearing is requested for June 11, 2024 to receive public comments on the proposed ordinance. A memo from George Chiles, Director of Public Works, is attached.

8. Approve Minutes.

Minutes from the May 14, 2024 meeting are provided for review and approval.

9. Introduction of Swiss Bear’s New Executive Director.

John Haroldson, Chair of the Swiss Bear Board of Directors, will introduce Karen Sullivan, Swiss Bear’s new Executive Director.

10. Conduct a Public Hearing on the Proposed Budget for FY 2024-2025.

The proposed budget for Fiscal Year 2024-2025 was previously presented to the Governing Board, and the Board adopted a resolution on May 14, 2024 calling for a public hearing to receive comments. This hearing was also advertised as required by statute.

11. Update on NC43 Connector Project and Consider Adopting a Resolution in Support of Naming the Highway 43 Connector for Marvin L. Raines, Jr.

(Ward 6) This resolution was tabled from the May 14, 2024 meeting. The Board received a request to support an effort to name the Highway 43 Connector for Marvin L. Raines, Jr. NCDOT’s application process requires a resolution of support from the local government. The organizers of the request stated the \$2,000 administrative application fee will be paid by them and will not require funding from the city.

Prior to considering the resolution, an update on the NC43 Connector Project will be provided by Deanna Trebil, MPO Administrator.

12. Consider Adopting a Resolution Authorizing the Execution of an Installment Financing Agreement, Deed of Trust, and Related Documents Related to Financing the Acquisition of 212 Kale Road.

On February 13, 2024, the Board approved the execution of an agreement for the purchase of real property located at 212 Kale Road. A Request for Proposal was issued soliciting bids to pay for the property acquisition through installment financing or a revenue bond not to exceed \$2,200,000. After receiving and reviewing six proposals, a recommendation was made to accept the proposal from JP Morgan Chase. A public hearing was held on May 14, 2024, at which time the terms of the proposal were shared with the Board. This resolution authorizes the execution of an installment financing agreement with JP Morgan at an interest rate of 4.21% for a term of 15 years. A memo from Kim Ostrom, Director of Finance, is attached.

13. Consider Adopting a Resolution Authorizing the Execution of All Agreement Documents Related to the NC Railroad and Norfolk Southern Railroad Supplemental Line Agreement for Installation of Stormwater Force Main and Drainage Structures for the Duffyfield Community Stormwater Enhancements Project Phase I.

(Ward 5) Phase I of the Duffyfield Community Stormwater Enhancements project includes the installation of a stormwater force main and drainage structures adjacent to East Rose Street. The force main is located on the southern 200' right-of-way of NC Railroad. A pipeline agreement calls for a lump sum payment of \$435,934, or the city can choose an annual fee election with a one-time initial fee of \$270,000 and an annual fee of \$5,000 that shall increase by 5% each year. The city is opting for the annual fee election. The initial fee of \$270,000 is reimbursable through the NC Department of Emergency Management. A memo from George Chile, Director of Public Works, is attached.

14. Consider Adopting a Budget Ordinance Amendment for FY24.

In 2011, a project fund was established for the AMI/DSM system for the water and electric departments. During the lifetime of the fund, electric overspent on equipment by \$245,237.38. This expenditure was offset by the equipment line for water; thus, electric owes water for the equipment water was unable to purchase through the project fund as a result of the overage. The cost of that equipment totals \$227,220, and this amendment transfers that amount from the Electric Fund to the Water Fund. A memo from Mrs. Ostrom is attached.

15. Appointment(s).

George “Eric” Jones has resigned from the Board of Adjustment due to scheduling conflicts. Alderman Kinsey is asked to make a new appointment to fill the remainder of this term which expires on June 30, 2025.

16. Attorney’s Report.

17. City Manager’s Report.

18. New Business.

19. Closed Session.

20. Adjourn.

AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider Adopting a Resolution to close a specific street for Tryon Palace Glorious Fourth of July Celebration.

Date of Meeting: 5/28/2024	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 requested a blockage of South Front Street at Palace Point Commons at the intersection of Eden and Metcalf Streets be closed to vehicular traffic from 8:00 a.m. until 1:00 p.m. on Thursday, July 4, 2024, for their annual Glorious Fourth of July Celebration. This event will not be rescheduled.
Actions Needed by Board:	Adopt the Resolution
Backup Attached:	Resolution – Memo – Map - 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 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



Date: May 10, 2024
Memo To: Mayor and Board of Aldermen
From: Kari Warren, CPRP *KW*
Director of Parks and Recreation
Re: Street Closure for Tryon Palace Glorious Fourth of July Celebration.

Background Information:

Tryon Palace requested a blockage of South Front Street at Palace Point Commons at the intersection of Eden and Metcalf Streets be closed to vehicular traffic from 8:00 a.m. until 1:00 p.m. on July 4, 2024, for their annual Glorious Fourth of July Celebration. This event will not be rescheduled.

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

RESOLUTION

THAT WHEREAS, Tryon Palace has scheduled its annual July 4th Celebration and requested South Front Street at Palace Point Commons be closed to vehicular traffic at the intersection of Eden and Metcalf Streets from 8:00 a.m. until 1:00 p.m. on Thursday, July 4, 2024, for their annual Glorious Fourth of July Celebration; 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 South Front Street at Palace Point Commons be closed to vehicular traffic at the intersection of Eden and Metcalf Streets from 8:00 a.m. until 1:00 p.m. on July 4, 2024 for the Glorious Fourth of July Celebration.

ADOPTED THIS 28TH DAY OF MAY 2024.

JEFFREY T. ODHAM, MAYOR

BRENDA BLANCO, CITY CLERK

RECEIVED
 MAY 09 P.M.
 BY: CA

*Street Closing
 July 4,
 8am-1pm*

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: Glorious Fourth
 Organization Name: Tryon Palace
 Responsible Contact: Susan 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
 Date of Event: July 4, 2024 Proposed Rain Date: n/a
 Event Set up time: 8 am Event Tear Down Completed Time: 1 pm
 Event Start Time: 9 am Event End Time: 12 noon

What is the specific location and/or route of the proposed event? (Attach additional information if needed)
 On the grounds of Tryon Palace, within the fencing. Not on city property.

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 July 4th celebration. There will be readings of the Declaration of Independence along with Fife & Drum performances and the firing of a cannon. This will be a firing of the Continental First's Verbruggen 3-pounder cannon mounted on period-correct field carriage.

Estimated attendance: 900; Attendance not to exceed: 999
 *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 # 0 Sizes _____ Provide additional info as needed (Note: Tents 700 sq. ft. or bigger must be inspected by Fire Marshall.)

How will you handle trash generated from the event?
 We are requesting # 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.

We would like to close the "horseshoe" bend road behind the Palace from the intersection of Metcalf St. and S. Front St. all the way to the intersection of Eden St. and Wall Bellamy Drive. No one lives along this section of road and Tryon Palace is the only business.

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. Burley
Authorized Signature

5/9/24
Date

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

Administrative Support Supervisor Date

[Signature]
Director of Parks & Recreation

5-9-2024
Date

Total Anticipated Charges	
Barricades:	# <u>0</u> \$ <u>0</u>
Trash Collection:	\$ <u>0</u>
City Staff:	# <u>0</u> \$ <u>0</u>
Vendor Fees	# <u>0</u> \$ <u>0</u>
Park/Facility Rental:	\$ <u>0</u>
Total Due:	\$ <u>0</u>

- Have HOA's been notified? Yes No Spoke with: _____
- Approved by Department Date: 5-9-24 Staff Initials: [Signature]
- Submitted for Board Approval Date: _____ Staff Initials: _____
- All Paperwork collected Date: _____ Staff Initials: _____
- All fees collected \$ _____ Date: _____ Staff Initials: _____

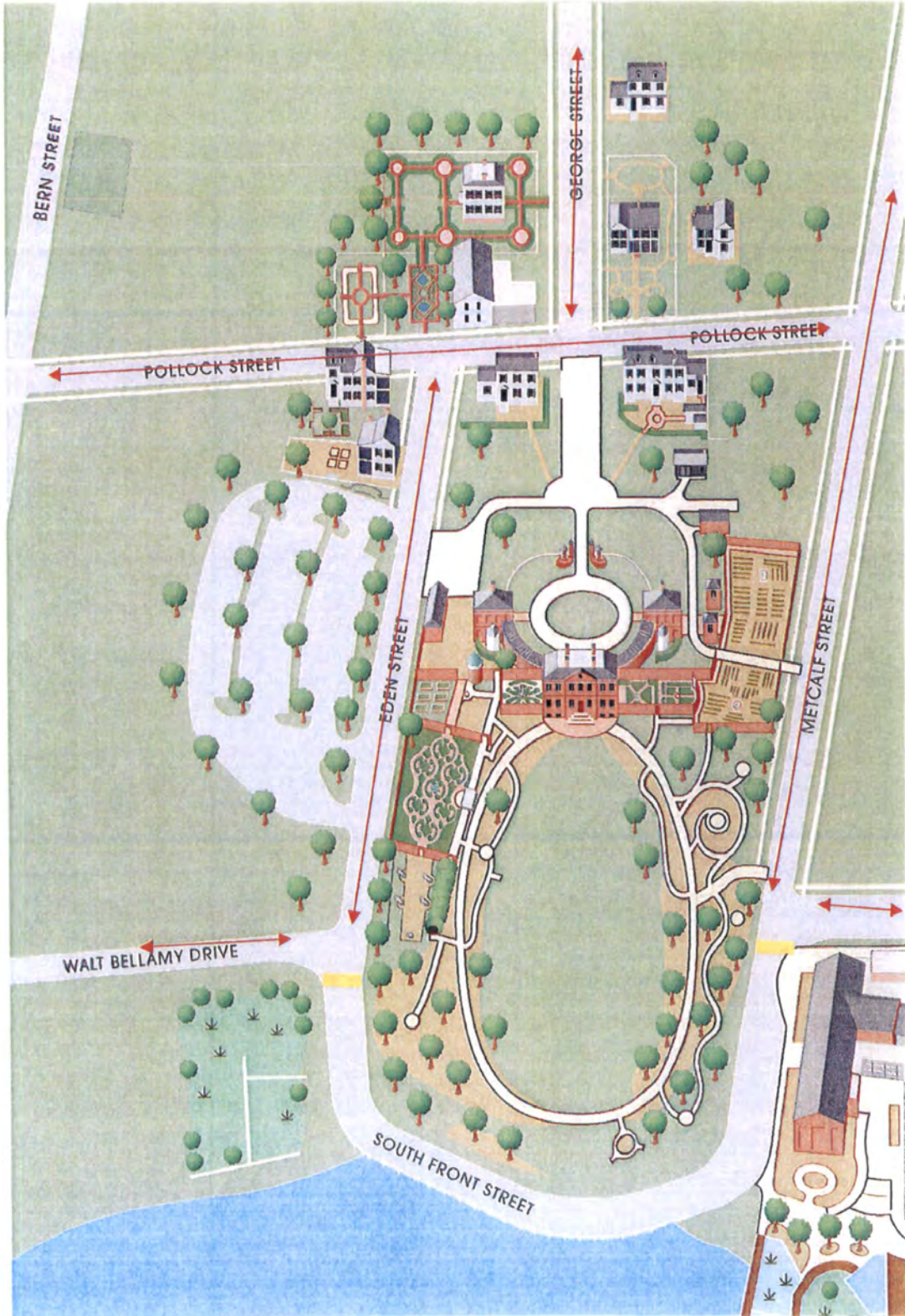
City Sponsored Event
 Yes No
Updated 6-3-2019

Road Closures:

Security Personnel will assist in directing traffic

 Road Closure Barricades

 Traffic Patterns



AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider Adopting a Resolution requesting, a blockage of South Front Street at Palace Point Commons for the viewing of fireworks.

Date of Meeting: 5/28/2024	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:	The City of New Bern Parks and Recreation Department has requested, a blockage of South Front Street at Palace Point Commons at the intersection of Eden and Metcalf Streets and the portion of South Front Street behind Tryon Palace South Lawn be closed to vehicular traffic from 8:30 p.m. until 10:00 p.m. on Thursday, July 4, 2024, for the viewing of fireworks.
Actions Needed by Board:	Adopt the Resolution
Backup Attached:	Resolution – Memo – Map - Application

Is item time sensitive? Yes No

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

Additional Notes: N/A

RESOLUTION

THAT WHEREAS, the City of New Bern Parks and Recreation Department has scheduled its annual 4th of July Celebration and request, a blockage of South Front Street at Palace Point Commons at the intersection of Eden and Metcalf Streets and the portion of South Front Street behind Tryon Palace South Lawn be closed to vehicular traffic from 8:30 p.m. until 10:00 p.m. on Thursday, July 4, 2024, for the viewing of fireworks.

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 a blockage of South Front Street at Palace Point Commons at the intersection of Eden and Metcalf Streets and the portion of South Front Street behind Tryon Palace South Lawn be closed to vehicular traffic from 8:30 p.m. until 10:00 p.m. on July 4, 2024, for the viewing of fireworks.

ADOPTED THIS 28TH DAY OF MAY 2024.

JEFFREY T. ODHAM, MAYOR

BRENDA BLANCO, CITY CLERK



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



Date: May 10, 2024
Memo To: Mayor and Board of Aldermen
From: Kari Warren, CPRP *hw*
Director of Parks and Recreation
Re: Street Closure for July 4th Celebration.

Background Information:

The City of New Bern Parks and Recreation Department has requested, a blockage of South Front Street at Palace Point Commons at the intersection of Eden and Metcalf Streets and the portion of South Front Street behind Tryon Palace South Lawn be closed to vehicular traffic from 8:30 p.m. until 10:00 p.m. on Thursday, July 4, 2024, for the viewing of fireworks.

Recommendation:

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

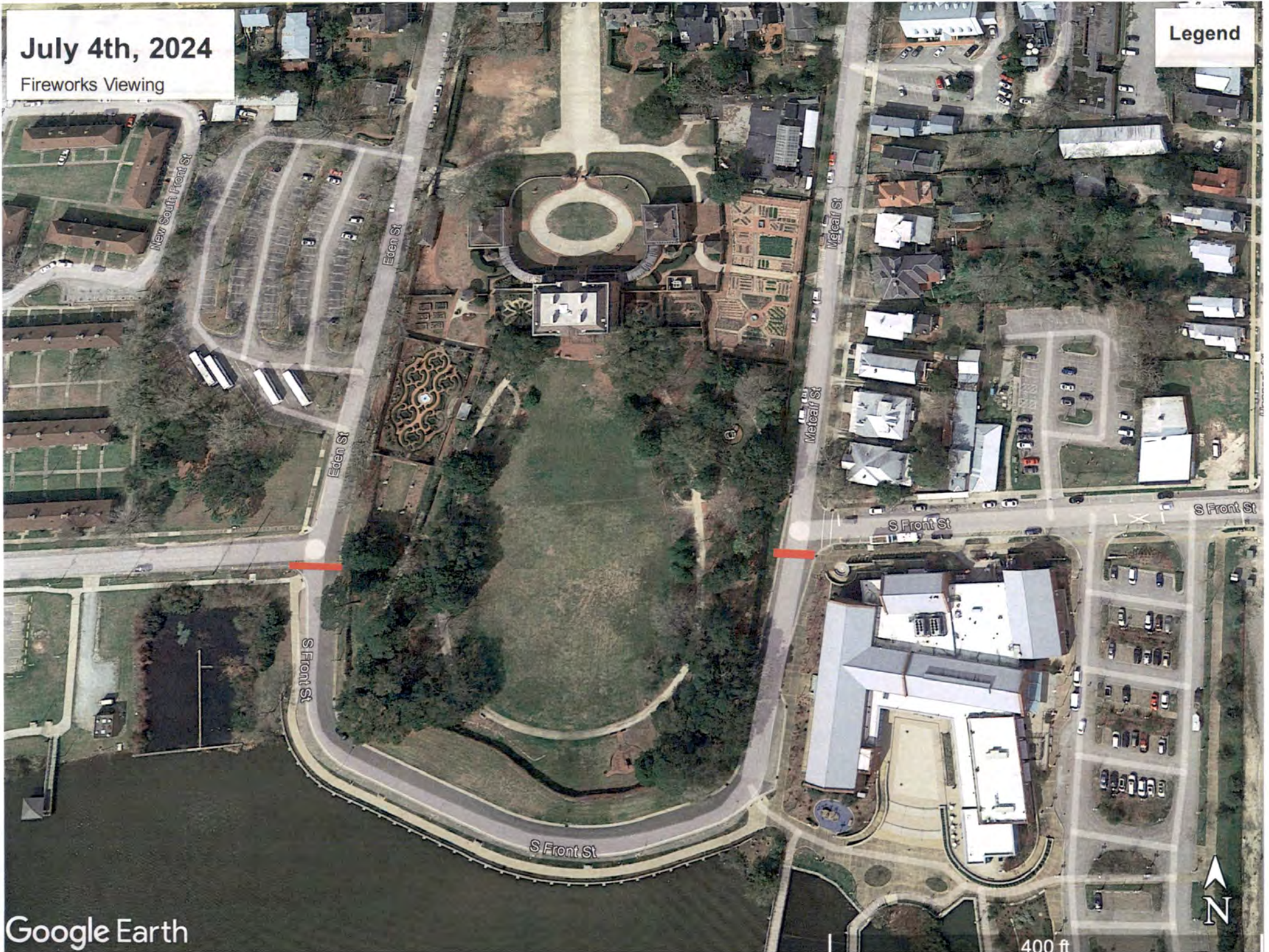
If you have any questions concerning this matter, please let me know.

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

July 4th, 2024

Fireworks Viewing

Legend



Google Earth

400 ft



AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider Adopting a Resolution to close streets for Tryon Palace Revolutionary's War Day Celebration.

Date of Meeting: May 28, 2024	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 Revolutionary's War Day Celebration to be held 9:00 a.m. until 11:00 a.m., and a blockage of South Front Street at Palace Point Commons at the intersection of Eden and Metcalf Streets behind Tryon Palace South Lawn be closed to vehicular traffic from 9:00 a.m. until 11:00 a.m. for firing a cannon off the South Lawn Saturday, July 13, 2024.
Actions Needed by Board:	Adopt the Resolution
Backup Attached:	Resolution – Memo – Map – 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



Date: May 10, 2024

Memo To: Mayor and Board of Aldermen

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

Re: Street Closure for Tryon Palace Revolutionary's War Day 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 Revolutionary's War Day Celebration to be held 9:00 a.m. until 11:00 a.m., and a blockage of South Front Street at Palace Point Commons at the intersection of Eden and Metcalf Streets behind Tryon Palace South Lawn be closed to vehicular traffic from 9:00 a.m. until 11:00 a.m. for firing a cannon on Saturday, July 13, 2024.

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

RESOLUTION

THAT WHEREAS, Tryon Palace has scheduled a Revolutionary War Day Celebration and requested the 600 block of Pollock Street and 300 block of George Street be closed to vehicular traffic from 9:00 a.m. until 11:00 a.m. on Saturday, July 13, 2024; and

WHEREAS, South Front Street at Palace Point Commons is also requested to be closed to vehicular traffic at the intersection of Eden and Metcalf Streets from 9:00 a.m. until 11:00 a.m. to accommodate the firing of a cannon off the south lawn; 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:

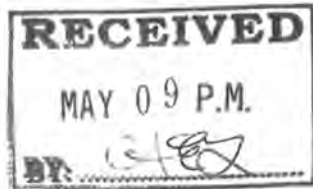
That the 600 block of Pollock Street and the 300 block of George Street be closed to vehicular traffic from 9:00 a.m. until 11:00 a.m. on July 13, 2024, for Tryon Palace's Revolutionary War Day Celebration; and

FURTHER, South Front Street at Palace Point Commons shall be closed to vehicular traffic from 9:00 a.m. until 11:00 a.m. on the aforesaid date for firing a cannon off the south lawn.

ADOPTED THIS 28TH DAY OF MAY 2024.

JEFFREY T. ODHAM, MAYOR

BRENDA BLANCO, CITY CLERK



July 13, Sat.
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: Revolutionary War Day

Organization Name: Tryon Palace

Responsible Contact: Susan 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

Date of Event: July 13, 2024 Proposed Rain Date: n/a

Event Set up time: 9 am Event Tear Down Completed Time: 11 am

Event Start Time: 9:45 am Event End Time: 11 am

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. We are also firing a cannon off the South Lawn 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)
We see this as a precursor and introduction to our future 250th events.
Revolutionary War activities, home-front arts, tours, lectures. Cannon firing. Parade of Fife & Drum, 1st Continental reenact
SAR & DAR chapter members marching down George St.

Estimated attendance: 500; Attendance not to exceed: 600

**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 # 0 Sizes _____ Provide additional info as needed (Note: Tents 700 sq. ft. or bigger must be inspected by Fire Marshall.)

How will you handle trash generated from the event?
We are requesting # 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.

Road closure would only be from 9 am to 11 am.

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. Briley
Authorized Signature

5/9/24
Date

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

Administrative Support Supervisor

Date

This application has been approved.

Mari Warren
Director of Parks & Recreation

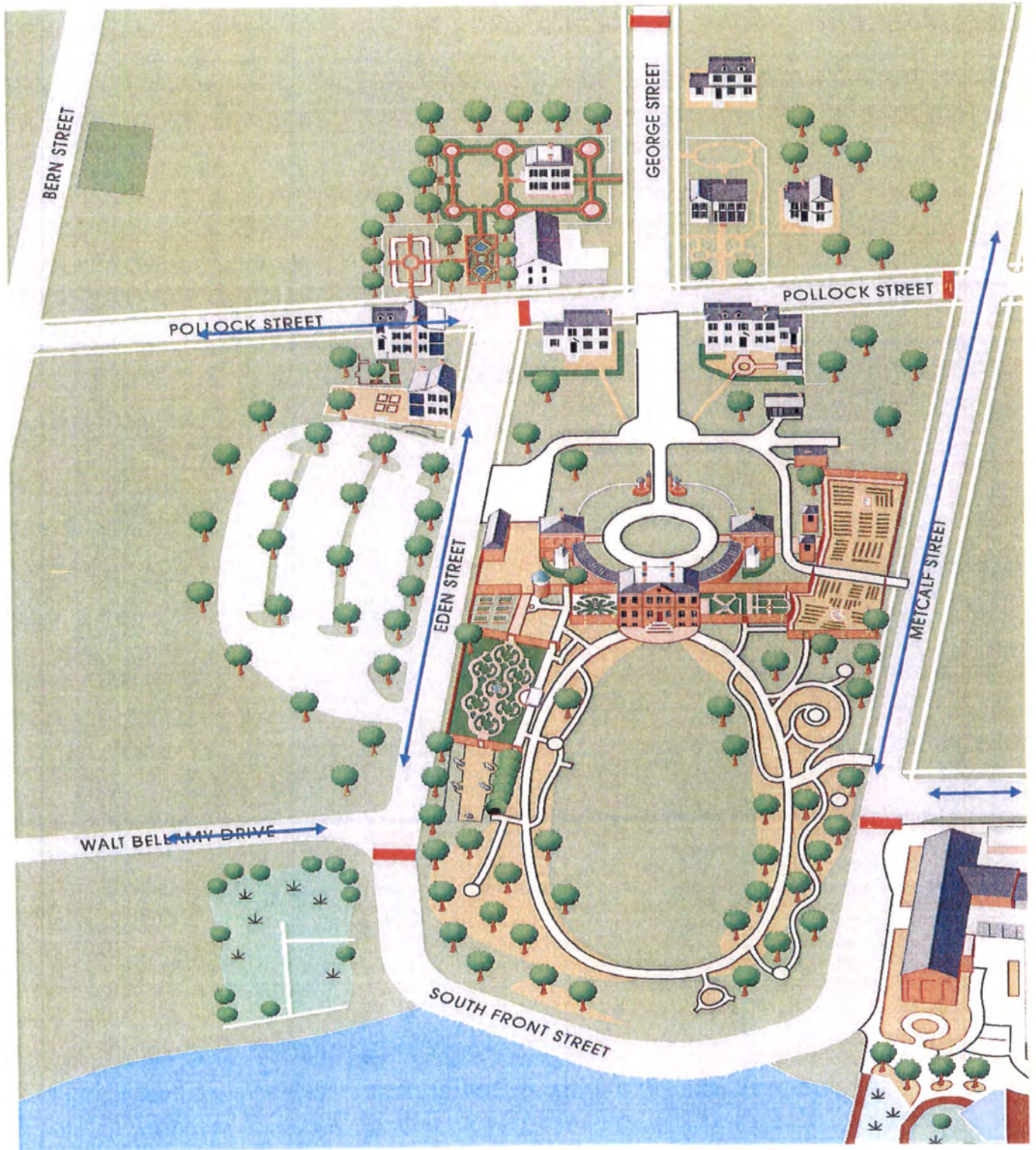
5-9-2024
Date

Total Anticipated Charges	
Barricades:	# <u>0</u>
	\$ <u>0</u>
Trash Collection:	\$ <u>0</u>
City Staff:	# <u>0</u>
	\$ <u>0</u>
Vendor Fees	# <u>0</u>
	\$ <u>0</u>
Park/Facility Rental:	\$ <u>0</u>
Total Due:	\$ <u>0</u>

- Have HOA's been notified? Yes No Spoke with: _____
- Approved by Department Date: 5-9-24 Staff Initials: BW
- Submitted for Board Approval Date: _____ Staff Initials: _____
- All Paperwork collected Date: _____ Staff Initials: _____
- All fees collected \$ _____ Date: _____ Staff Initials: _____

City Sponsored Event
 Yes No
Updated 6-3-2019

Event Layout and Road Closure Map



AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider Adopting a Resolution Calling for a Public Hearing to Receive Public Comments on Amending Article XXVI. "Stormwater Quality Management and Discharge Control" of Appendix A "Land Use" of the Code of Ordinances of the City of New Bern.

Date of Meeting: 5/28/2024	Ward # if applicable: All
Department: Public Works	Person Submitting Item: George Chiles, Director of Public Works
Call for Public Hearing: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Date of Public Hearing: 6/11/2024

Explanation of Item:	The State has mandated that all local governments within the Neuse watershed modify their local stormwater ordinances to implement the Neuse Stormwater Rules. The updated stormwater ordinance is consistent with the model developed by the North Carolina Department of Environmental Quality (DEQ) and has been reviewed and approved by the Environmental Management Commission, and the Division of Water Resources (as required by state regulations).
Actions Needed by Board:	Adopt a resolution calling for a public hearing.
Backup Attached:	Memo, Resolution, a Copy of the Proposed Ordinance

Cost of Agenda Item:

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

Additional Notes:



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

May 28, 2024

Memo To: Mayor and Board of Aldermen

From: George Chiles, Director of Public Works

RE: Consider Adopting a Resolution Calling for a Public Hearing to Receive Public Comments on the City of New Bern's Stormwater Text Amendment.

Background Information:

The State has mandated that all local governments within the Neuse watershed modify their local stormwater ordinances to implement the Neuse Stormwater Rules. The updated stormwater ordinance is consistent with the model developed by the North Carolina Department of Environmental Quality (DEQ) and has been reviewed and approved by the Environmental Management Commission, and the Division of Water Resources (as required by state regulations). On May 16, 2024, the Planning and Zoning Board reviewed the proposed ordinance and voted unanimously to recommend its adoption. Staff requests a public hearing be held on June 11, 2024, at 6:00 p.m. for the purpose of receiving public comments on the proposed stormwater ordinance.

A copy of the proposed Stormwater Quality Management and Discharge Control Ordinance is attached for your reference.

Recommendation:

Consider Adopting a Resolution Calling for a Public Hearing to Receive Public Comments on the City of New Bern's Stormwater Text Amendment.

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

RESOLUTION

THAT WHEREAS, the Board of Aldermen of the City of New Bern desires to conduct a public hearing to receive public comments on amending Article XXVI. "Stormwater Quality Management and Discharge Control" of Appendix A "Land Use" of the Code of Ordinances, of the City of New Bern.

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

That a public hearing will be conducted by the Board of Aldermen of the City of New Bern on Tuesday, June 11, 2024, in the City Hall Courtroom at 6:00 p.m., or as soon thereafter as the matter may be reached, on amending Article XXVI. "Stormwater Quality Management and Discharge Control" of Appendix A "Land Use" of the Code of Ordinances, of the City of New Bern. All interested parties will be given an opportunity to be heard.

ADOPTED THIS THE 28th DAY OF MAY, 2024.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

AN ORDINANCE TO AMEND ARTICLE XXVI. STORMWATER QUALITY MANAGEMENT AND DISCHARGE CONTROL OF APPENDIX A "LAND USE" OF THE CODE OF ORDINANCES OF THE CITY OF NEW BERN

THAT WHEREAS, the Planning and Zoning Board of the City of New Bern recommends that certain amendments be made to Article XXVI. Stormwater Quality Management and Discharge Control of Appendix A - "Land Use" of the Code of Ordinances of the City of New Bern; and

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

WHEREAS, the Board of Alderman of the City of New Bern deems it advisable and in the public interest to effect said revisions to Article XXVI. Stormwater Quality Management and Discharge Control of Appendix A - "Land Use" of the Code of Ordinances of the City of New Bern.

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

SECTION 1. That Article XXVI. Stormwater Quality Management and Discharge Control of Appendix A - "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Article XXVI in its entirety and inserting in its stead the following:

"ARTICLE XXVI. STORMWATER MANAGEMENT

Section 15-501. Short title.

This ordinance shall be known as the "City of New Bern Stormwater Ordinance for New Development," and may be so cited.

Note: Minor clarification. Formerly Section 15-501

Section 15-502. Authority and findings.

(a) Authority. The board of aldermen is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; North Carolina General Statutes §143-214.7 and §143-215.6A, and rules promulgated by the Environmental Management *Commission* thereunder; North Carolina General Statutes Chapter 160A; and North Carolina General Statutes Chapter 160D Articles 2, 3, 4, 7 and 8; 15A NCAC 02B .0711 Neuse Nutrient Strategy: Stormwater; and 15A NCAC 02B .0233 Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers. Under this authority, the city has the responsibility

and authority to regulate land use and development, enforce ordinances within its jurisdiction, and to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

(b) Findings. It is hereby determined that:

Development alters the hydrologic response of local watersheds and increases *stormwater* runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge; and

These changes in *stormwater* runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment; and

These effects can be managed and minimized by applying proper design and well-planned controls to manage *stormwater* runoff from *development* sites.

Further, the *Commission* has identified the Neuse River Estuary, as *nutrient* sensitive waters; has identified all or a portion of the estuary as impaired waters under the federal Clean Water Act due to exceedances of the chlorophyll a standard; and has promulgated rules (the "Neuse River Rules") to reduce the average annual loads of nitrogen delivered to the estuary from all point and nonpoint sources of these nutrients located within its watershed, including *stormwater* from new *development* in this jurisdiction;

Therefore, the Board of Alderman of the City of New Bern establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of *stormwater* runoff and discharge for *development*.

Notes: Added findings. Formerly Section 15-202

Section 15-503. Purpose and intent.

The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of *nitrogen* in *stormwater* runoff and nonpoint and point source pollution associated with new *development* in the watershed of the Neuse River estuary. It has been determined that proper management of construction-related and post-*development* *stormwater* runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.

This ordinance seeks to meet its general purpose through the following specific objectives and means:

(1) Ensure that the city remains in full compliance with 15A NCAC 02B .0711 Neuse Nutrient Strategy: Stormwater, 15A NCAC 02B .0233 Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers, and

that the city has a stormwater management program consistent with the Federal Clean Water Act (33 U.S.C. § 1251 et seq.)

(2) Establish decision-making processes for *development* that protects the integrity of watersheds and preserve the health of water resources.

(3) Require that new *development* not exceed export targets for *nitrogen* in *stormwater* runoff for the watershed through site layout, *engineered stormwater controls*, or *permanent nutrient offset credits*.

(4) Establish minimum *post-development stormwater* management standards and design criteria for the regulation and control of *stormwater* runoff quantity and quality.

(5) Establish design and review criteria for the construction, function, and use of *engineered stormwater controls* that may be used to meet the minimum *post-development stormwater* management standards.

(6) Encourage the use of better management and site design practices, such as the use of vegetated conveyances for *stormwater* and the preservation of greenspace, riparian buffers, and other conservation areas to the maximum extent practicable.

(7) Establish provisions for the long-term responsibility for and maintenance of *engineered stormwater controls* to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety.

(8) Establish administrative procedures for the submission, review, approval, and disapproval of *stormwater management plans*, for the inspection of approved projects, and to assure appropriate long-term maintenance.

(9) Control illicit discharges into the city's *stormwater system* and waters of the State.

(10) Provide education and outreach to the public regarding methods to prevent and minimize pollutant contributions to the city's *stormwater system* and waters of the State.

Notes: Enhance specific objectives. Formerly Sections 15-513 and 15-514

Section 15-504. Applicability.

(a) General. Beginning with and subsequent to its effective date, this ordinance shall be applicable to all *development* and expansion of *development* throughout the city and its extraterritorial jurisdiction within the Neuse River Watershed, including, but not limited to, *site plan* applications, subdivision applications, and grading applications, unless exempt pursuant to this ordinance.

(b) Exemptions.

(1) Single family and duplex residential and related recreational *development* and expansion of *development* that disturbs less than one acre is exempt from the provisions of this ordinance.

(2) Commercial, industrial, institutional, multifamily residential or local government *development* that disturbs less than one half acre and does not expand existing structures on a parcel is exempt from the provisions of this ordinance.

(3) Commercial, industrial, institutional, multifamily residential or local government *development* that disturbs less than one half acre and expands existing structures on a *parcel* but does not result in a cumulative built-upon area for the *parcel* exceeding twenty-four (24) percent is exempt from the provisions of this ordinance.

(4) *Development* that disturbs less than the above thresholds are not exempt if such activities are part of a *larger common plan of development or sale* and the larger common plan exceeds the relevant threshold, even though multiple, separate, or distinct activities take place at different times on different schedules.

(5) *Development* of an individual single-family or duplex residential lot that is not part of a larger common plan of development or sale and does not result in greater than five (5) percent built-upon area on the lot is exempt from the provisions of this ordinance.

(6) *Existing development or redevelopment* is exempt from the provisions of this ordinance.

(7) Activities on a bona fide farm unless the activity is for non-farm purpose. Activities subject to requirements of the Neuse Agriculture Rule, 15A NCAC 02B .0712 is exempt from the provisions of this ordinance.

(8) *Development* or expansion of *development* with a vested right per the standards of N.C.G.S. 160D-108 is exempt from the provisions of this ordinance.

(9) *Development* or expansion of *development* for which the permit application was submitted prior to adoption of this ordinance is optionally exempt from the provisions of this ordinance per the requirements of N.C.G.S. 143-755.

(c) No development or expansion until compliance and permit. No *development* or expansion of *development* shall occur except in compliance with the provisions of this ordinance or unless exempted. No *development* or expansion of *development* for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

Notes: Section enhanced. Formerly Sections 15-504 and 15-505

Section 15-505. Interpretation.

(a) **Meaning and intent.** In interpreting and applying this ordinance, the requirements are intended to be minimum requirements that are imposed and are to be conformed to, and are in addition to, and not in lieu of, any and all other legal requirements. All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the purpose and intent set forth in Section 15-503. If a different or more specific meaning is given for a term defined elsewhere in this code of ordinances, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance. This ordinance shall not be deemed to interfere with or annul or otherwise affect in any manner whatsoever an ordinance, rules, regulations, permits, or easements, covenants, or other agreements between parties, provided, however, that where this ordinance imposes greater restrictions and controls with respect to stormwater management for the purposes of managing water quality and controlling discharges, the provisions of this ordinance shall prevail.

(b) **Text controls in event of conflict.** In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.

(c) **Authority for interpretation.** The *stormwater administrator* has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the *stormwater administrator*, who shall respond in writing within 30 days. The *stormwater administrator* shall keep on file a record of all written interpretations of this ordinance.

(d) **References to statutes, regulations, and documents.** Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the *design manual*), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

(e) **Computation of time.** The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the city, the deadline or required date of action shall be the next day that is not a Saturday, Sunday, or holiday observed by the city. References to days are calendar days unless otherwise stated.

(f) **Delegation of authority.** Any act authorized by this ordinance to be carried out by the *stormwater administrator* may be carried out by his or her designee.

(g) **Usage.**

1. **Mandatory and discretionary terms.** The words "shall," "must," and "will" are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words "may" and "should" are permissive in nature.

2. Conjunctions. Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: The word “and” indicates that all connected items, conditions, provisions, and events apply. The word “or” indicates that one or more of the connected items, conditions, provisions, or events apply.

3. Tense, plural, and gender. Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

(j) Measurement and computation. Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

Notes: Former Sections 15-507 and 15-515

Section 15-506. Definitions.

When used in this ordinance, the following words and terms shall have the meaning set forth in this section unless other provisions of this ordinance specifically indicate otherwise.

(a) *Approved accounting tool.* The most recent version of the accounting tool for calculating *nutrient* loading and reduction approved by the *Division* for the relevant geography and development type under review.

(b) *Built-upon area (BUA).* Built-upon area shall have the meaning as set for thin N.C.G.S. 143-214.7(b2).

(c) *City.* City of New Bern, North Carolina.

(d) *Commission.* The North Carolina Environmental Management Commission, in the Department.

(e) *Department.* The North Carolina Department of Environmental Quality.

(f) *Design manual.* The State Stormwater Design Manual approved by the Department for the proper implementation of the State Minimum Design Criteria for engineered stormwater controls. All references herein to the *design manual* are to the latest published edition or revision.

(g) *Developer.* Developer shall have the same meaning as provided in N.C.G.S. 160D-102(11).

(h) *Development.* Development shall have the same meaning as provided in N.C.G.S. 143-214.7(a1)(1).

(i) *Development approval.* *Development approval shall have the same meaning as provided in N.C.G.S. 160D-102(13).*

- (j) *Division.* The Division of Water Resources in the *Department*.
- (k) *Engineered stormwater control.* A physical device designed to trap, settle out, filter, or otherwise remove pollutants from *stormwater* runoff; to alter or reduce *stormwater* runoff velocity, amount, timing, or other characteristics; to approximate the *pre-development* hydrology on a developed site; or to achieve any combination of these goals. *Engineered stormwater control* includes physical practices such as constructed wetlands, vegetative practices, vegetated conveyances, filter strips, grassed swales, and other methods installed or created on real property. "Engineered stormwater control" is synonymous with "structural practice," "Primary SCM", "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater control measures," "structural stormwater treatment systems," and similar terms used in this ordinance. It is a broad term that may include practices that do not require design by a professional licensed engineer.
- (l) *Existing development.* Existing development shall have the same meaning as provided in 15A NCAC 02H .1002(18).
- (m) *Impervious surface.* A surface composed of any material that impedes natural infiltration of water into the soil. Gravel areas shall be considered impervious.
- (n) *Land disturbing activity.* Land disturbing activity shall have the same meaning as provided in 15A NCAC 02B .0202(33).
- (o) *Larger common plan of development or sale.* Larger common plan of development or sale shall have the same meaning as provided in 15A NCAC 02H .1002(8).
- (p) *Load.* The mass quantity of a nutrient or pollutant released into surface waters over a given time period. Load in this ordinance refers to pounds of *nitrogen* or *phosphorus* per year.
- (q) *Loading rate.* The mass quantity of a nutrient or pollutant released from a given area into surface waters over a given time period. Loading rate in this ordinance refers to pounds of *nitrogen* or *phosphorus* per acre per year.
- (r) *Minimum design criteria.* Minimum design criteria shall have the same meaning as provided in 15A NCAC 02H .1002(24).
- (s) *Minor variance.* A variance from the minimum Neuse Stormwater rules that results in the relaxation of up to 10 percent of any vegetated setback, density, or minimum lot size requirement applicable to low density development, or the relaxation of up to 5 percent of any vegetated setback, density, or minimum lot size requirement applicable to high density development. For variances to a vegetated setback requirement, the percent variation shall be calculated using the footprint of built-upon area proposed to encroach within the vegetated setback divided by the total area of vegetated setback within the project.

(t) *Nitrogen*. The total nitrogen unless specified otherwise.

(u) *Nutrient(s)*. The combination of total nitrogen and total phosphorus.

(v) *1-year, 24-hour storm*. 1-year, 24-hour storm shall have the same meaning as provided in 15A NCAC 02H .1002(3).

(w) *Outfall*. A point at which stormwater (1) enters surface water, or (2) exits the property of a particular owner.

(x) *Owner*. The legal or beneficial owner of land, including but not limited to a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other *person* or entity holding proprietary rights in the property or having legal power of management and control of the property. "Owner" shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every *person* or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner, unless the secured lender is included within the meaning of "owner" under another description in this definition, such as a management entity.

(y) *Parcel*. Parcel shall have the same meaning as Project.

(z) *Permanent nutrient offset credits*. Permanent nutrient offset credits, shall have the same meaning as provided in 15A NCAC 02B .0701(38).

(aa) *Person*. Person shall have the same meaning as provided in N.C.G.S. 143-212(4).

(bb) *Primary SCM*. Primary SCM shall have the same meaning as provided in 15A NCAC 02H .1002(37).

(cc) *Project*. Project shall have the same meaning as provided in 15A NCAC 02H .1002(38).

(dd) *Redevelopment*. Redevelopment shall have the same meaning as provided in N.C.G.S. 143-214.7(a1)(2).

(ee) *Runoff treatment*. Runoff treatment shall have the same meaning as provided in 15A NCAC 02H .1002(43).

(ff) *Runoff volume match*. Runoff volume match shall have the same meaning as provided in 15A NCAC 02H .1002(44).

(gg) *Site plan*. A scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. The *site plan* may include site-specific details such as building areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities that are depicted to show compliance with all legally required development regulations that are applicable to the *project* and the *site plan*

review. A *site plan* approval based solely upon application of objective standards is an administrative decision and a *site plan* approval based in whole or in part upon the application of standards involving judgment and discretion is a quasi-judicial decision. A *site plan* may also be approved as part of a conditional zoning decision.

(hh) *Stormwater*. Stormwater shall have the same meaning as provided in N.C.G.S. 143-213(16a).

(ii) *Stormwater system*. All *engineered stormwater controls* and conveyances owned or controlled by a *person* that drain to the same outfall. A system may be made up of one or more *engineered stormwater controls*.

(jj) *Stormwater administrator*. The person designated by the city manager to have authority to review and approve *stormwater* permits and stormwater management plans. The stormwater administrator shall also be responsible for inspecting development and making sure the provisions of this ordinance are being followed and for reporting from time to time to the city manager and to the board of aldermen on the progress, plans, and expectations of the city's stormwater program. Whenever this ordinance refers to the *stormwater administrator*, it includes his or her designee.

(kk) *Subdivision*. The division of land for the purpose of sale or development as specified in G.S. 160D-802.

(ll) *Substantial progress*. For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of a *site plan* or *subdivision* plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than thirty (30) days; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation. "Substantial progress" for purposes of determining whether an approved plan is null and void is not necessarily the same as "substantial expenditures" used for determining vested rights pursuant to applicable law.

(mm) *Total nitrogen*. The sum of the organic, nitrate, nitrite, and ammonia forms of nitrogen in water.

Notes: Formerly Section 15-506

Section 15-507. Design manual.

(a) Reference to design manual. The *stormwater administrator* shall use the policy, criteria, and information, including technical specifications and standards, in the *design manual* as the basis for decisions about *stormwater* permits and about the design, implementation and performance of *engineered stormwater controls* and other practices for compliance with this ordinance.

The *design manual* includes a list of acceptable *stormwater* treatment practices, including specific design criteria for each *stormwater* practice. *Stormwater* treatment practices that are

designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Neuse River Rules.

(b) Relationship of design manual to other laws and regulations. If the specifications or guidelines of the *design manual* are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the *design manual*.

(c) Changes to Standards and Specifications. If the standards, specifications, guidelines, policies, criteria, or other information in the *design manual* are amended subsequent to the submittal of an application for approval pursuant to this ordinance but prior to approval, the applicant shall have the choice of using the new *design manual* in reviewing the application and in implementing this ordinance with regard to the application, or using the old *design manual*.

Notes: Enhances definition. Formerly Section 15-516

Section 15-508. Relationship to other laws, regulations and private agreements.

(a) Conflict of laws. This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.

(b) Private agreements. This ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this ordinance are more restrictive or impose higher standards or requirements than such an easement, covenant, or other private agreement, the requirements of this ordinance shall govern. Nothing in this ordinance shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this ordinance. In no case shall the city be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

Notes: New section to clarify that the ordinance is in addition to other related standards.

Section 15-509. Severability.

If the provisions of any section, subsection, paragraph, subdivision, or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this ordinance.

Notes: Formerly Section 15-513

Section 15-510. Effective date and transitional provisions.

(a) Effective date. This ordinance shall take effect on July 1, 2024.

(b) Final approvals; complete applications. All *development* and expansion of *development* projects for which complete and full applications were submitted to the city prior to the effective date of this ordinance may be exempted from complying with all provisions of this ordinance dealing with the control and/or management of stormwater by the choice of the developer.

A phased development plan shall be deemed complete prior to the effective date of this ordinance and it shows:

(1) For the initial or first phase of *development* or expansion of *development*, the type and intensity of use for a specific *parcel* or *parcels*, including at a minimum, the boundaries of the project and a *subdivision* plan that has been approved.

(2) For any subsequent phase of *development* or expansion of *development*, sufficient detail so that implementation of the requirements of this ordinance to that phase of *development* would require a material change in that phase of the plan.

(c) Violations continue. Any violation of provisions existing on the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance unless the use, *development*, construction, or other activity complies with the provisions of this ordinance.

Notes: New section to create a clear effective date for the updated ordinance

Section 15-511. Responsibility for administration.

(a) Stormwater administrator. A *stormwater administrator* shall be designated by the city manager to administer and enforce this ordinance.

(b) Powers and duties. In addition to the powers and duties that may be conferred by other provisions of the city code and other laws, the *stormwater administrator* shall have the following powers and duties under this ordinance:

(1) To review and approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.

(2) To make determinations and render interpretations of this ordinance.

(3) To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the board of aldermen on applications for *development* or expansion of *development*.

(4) To enforce the provisions of this ordinance in accordance with its

enforcement provisions.

(5) To maintain records, maps, forms and other official materials as related to the adoption, amendment, enforcement, and administration of this ordinance.

(6) To provide expertise and technical assistance to the board of aldermen.

(7) To designate appropriate other persons who shall carry out the powers and duties of the *stormwater administrator*.

(8) To take any other action necessary to administer the provisions of this ordinance.

Notes: Formerly Section 15-511

Section 15-512. Review procedures.

(a) Permit required. A *stormwater* permit is required for all *development* and expansion of *development* unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.

(b) Effect of permit. A *stormwater* permit shall govern the design, installation, and construction of *stormwater* management and control practices on the site, including *engineered stormwater controls* and elements of site design for *stormwater* management other than *engineered stormwater controls*.

The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of *stormwater* for the *development* site consistent with the requirements of this ordinance, whether the approach consists of *engineered stormwater controls* or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the *project*; rather, compliance after *project* construction is assured.

(c) Authority to file applications. All applications required pursuant to this ordinance shall be submitted to the *stormwater administrator* by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement.

(d) Establishment of application requirements, schedule, and fees.

(1) Application content and form. The *stormwater administrator* shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the *stormwater* permit application shall describe in detail how post-*development stormwater* runoff will be controlled and managed, the design of all *engineered stormwater controls*, and how the proposed *project* will meet the

requirements of this ordinance.

(2) Submission schedule. The *stormwater administrator* shall establish a submission schedule for applications. The schedule shall establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications, and that the various stages in the review process are accommodated.

(3) Permit review fees. Permit application review fees shall be established by the board of aldermen from time to time as set forth in the schedule of fees on file in the office of the city clerk.

(4) Administrative manual. For applications required under this ordinance, the *stormwater administrator* shall compile the application requirements, submission schedule, fee schedule, a copy of this ordinance, and information on how and where to obtain the *design manual* in an administrative manual, which shall be made available to the public.

(e) Submittal of complete application. Applications shall be submitted to the *stormwater administrator* pursuant to the application submittal schedule in the form established by the *stormwater administrator*, along with the appropriate fee establish pursuant to this section.

An application shall be considered as timely submitted only when it contains all the elements of a complete application pursuant to this ordinance, along with the appropriate fee. If the *stormwater administrator* finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.

(f) Review. Within sixty (60) calendar days after a complete application is submitted, the *stormwater administrator* shall review the application and determine whether the application complies with the standards of this ordinance.

(1) Approval. If the *stormwater administrator* finds that the application complies with the standards of this ordinance, the *stormwater administrator* shall approve the application. The *stormwater administrator* may impose conditions of approval as needed to ensure compliance with this ordinance. The conditions shall be included as part of the approval.

(2) Fails to comply. If the *stormwater administrator* finds that the application fails to comply with the standards of this ordinance, the *stormwater administrator* shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

(3) Revision and subsequent review. A complete revised application shall be reviewed by the *stormwater administrator* within sixty (60) calendar days after its re-submittal and shall be approved, approved with conditions, or disapproved. If a revised application is not re-submitted within thirty (30) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the

same project shall be required along with the appropriate fee for a new submittal. One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal shall be accomplished by a permit review fee additional fee, as established pursuant to this ordinance.

Notes: Formerly Section 15-508

Section 15-513. Applications for approval.

(a) Concept plan and consultation meeting. Before a *stormwater* permit application is deemed complete, the *stormwater administrator* or *developer* may request a consultation on a concept plan for the post-construction *stormwater* management system to be utilized in the proposed *development project*. This consultation meeting should take place at the time of the preliminary plan of *subdivision* or other early step in the *development* process. The purpose of this meeting is to discuss the *stormwater* management measures necessary for the proposed *project*, as well as to discuss and assess constraints, opportunities and potential approaches to *stormwater* management designs before formal site design engineering is commenced. Local watershed plans, and other relevant resource protection plans should be consulted in the discussion of the concept plan. To accomplish this goal, the following information should be included in the concept plan, which should be submitted in advance of the meeting:

(1) Existing conditions; proposed site plans. Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (if available); stream and other buffers and features used in designing buffers and meeting any applicable buffer requirements; boundaries of existing predominant vegetation; proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

(2) Natural resources inventory. A written or graphic inventory of natural resources at the site and surrounding area as it exists prior to the commencement of the *project*. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for *development* and *stormwater* management.

(3) Stormwater management system concept plan. A written or graphic concept plan of the proposed post-*development stormwater* management system including: preliminary selection and location of proposed *engineered stormwater controls*; low-impact; design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge or culvert crossings.

(b) Stormwater management permit application. The *stormwater* management permit application shall detail how post-development *stormwater* runoff will be controlled and managed and how the proposed project will meet the requirements of this ordinance, including Section 15-516, General standards. All such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence, and shall verify that the design of all *stormwater* management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the *design manual*, and that the designs and plans ensure compliance with this ordinance. The submittal shall include all of the information required in the submittal checklist established by the *stormwater administrator*. Incomplete submittals shall be treated pursuant to section 15-512(d).

(c) As-built plans and final approval. Upon completion of a *project*, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed *project* is in accordance with the approved *stormwater* management plans and designs and shall submit actual "as built" plans for all *stormwater* management facilities or practices after final construction is completed. The plans shall show the final design specifications for all *stormwater* management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the *stormwater* management measures and plans shall certify, under seal, that the as-built *stormwater* measures, controls, and devices are in compliance with the approved *stormwater* management plans and designs and with the requirements of this ordinance. A final inspection and approval by the *stormwater administrator* shall occur before the release of any performance securities.

(d) Other permits. No certificate of compliance or occupancy shall be issued by the city's inspection department without final as-built plans and a final inspection and approval by the *stormwater administrator*, except where multiple units are served by the *stormwater* practice or facilities, in which case the city's inspection department may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

Section 15-514. Approvals.

(a) Effect of approval. Approval authorizes the applicant to go forward with only the specific plans and activities authorized in the permit. No deviations from the terms of the application or the approval shall be made until written approval of proposed changes or deviations has been obtained through permit revision and review. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.

(b) Time limit; expiration. An approved plan shall become null and void if the applicant fails to make *substantial progress* on the site within one year after the date of approval. The *stormwater administrator* may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan. In granting an extension, the *stormwater administrator* may require compliance with standards adopted since the original application was submitted unless there has been

substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.

Notes: Former Section 15-508

Section 15-515. Appeals.

(a) Right of appeal. Except as provided in N.C.G.S. 160D-1403.I, any aggrieved *person* affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance made by the *stormwater administrator*, may file an appeal to the board of adjustment within thirty (30) days from receipt of the notice of a determination.

(b) Filing of appeal and procedures. Appeals shall be taken within the specified time period by filing a notice of appeal and specifying the grounds for appeal on forms provided by the city. The *stormwater administrator* shall transmit to the board of adjustment all documents constituting the record on which the decision appealed from was taken. The *stormwater administrator* shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner. The hearing conducted by the board of adjustment shall be conducted in the nature of a quasi-judicial proceeding as provided in N.C.G.S. 160D-406 with all findings of fact supported by competent, material evidence.

(c) Review by superior court. Every decision of the board of adjustment shall be subject to Superior Court review by proceedings in the nature of certiorari. Petition for review by the Superior Court shall be filed with the Clerk of Superior Court within thirty (30) days after the latter of the following:

(1) The decision of the board of adjustment is filed; or

(2) A written copy of the decision is delivered to every aggrieved party who has filed a written request for such copy with the chair of the board of adjustment at the time of its hearing of the case.

Notes: Formerly Section 15-512

Section 15-516. General standards.

(a) All *projects* to which this ordinance applies shall comply with the standards of this section. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future *development* and expansion of development maintains the site consistent with the approved *project* plans.

(b) Riparian buffers.

(1) Delineation. Property owners undertaking any development activity shall demonstrate that the development activity does not affect riparian buffer zones as defined in 15A NCAC 2B.0610 - Managing Activities Within Riparian Buffers: Definitions and 15A NCAC 2B.0700 - Nutrient Management Strategy Rules for Surface Water, sections 2B.0701 Nutrient Strategies Definitions through 2B.0711 Neuse Nutrient Strategy: Stormwater. The riparian buffer shall be delineated on the subdivision plat, property boundary, or site plan for the development activity along with any limits imposed on the proposed development activity.

(2) Riparian buffers; generally. The city will not approve any development activity within the riparian buffer as defined in 15A NCAC 2B.0714 - Neuse Nutrient Strategy: Maintenance of Existing Riparian Buffer unless one of the following is obtained from the *Division*:

(i) Approval of the development activity from the *Division*. This may include a permit or authorization certificates for an allowable use within the riparian buffer;

(ii) An opinion from the *Division* that vested rights have been established for the development activity;

(iii) An on-site determination from the *Division* that surface waters or coastal wetlands are not present; or

(iv) A letter from the *Division* documenting that a variance has been approved for the development activity.

(c) Nitrogen loading rate targets.

(1) The *project* shall meet a *nitrogen stormwater loading rate* target of 3.6 pounds per acre per year (lb/ac/yr), or meet "runoff volume match" as defined in 15A NCAC 02H .1002.

(2) The *project* area used for nutrient calculation and *stormwater* requirements includes the site area less any existing *built-upon area*. The *project* density used for determining *stormwater* requirements is the amount of *built-upon area* subject to this ordinance at *project* completion divided by the *project* area.

(3) The *developer* shall determine the *nitrogen* load and loading rate generated from the *project* area without *engineered stormwater controls* and determine the needed *nitrogen* load reduction to meet nutrient targets by using the *approved accounting tool*.

(d) Nitrogen standard is supplemental. The *nitrogen* loading standards in this ordinance are supplemental to, not replacements for, *stormwater* standards otherwise required by federal, state or local law, including without limitation any riparian buffer requirements applicable to the location of the development. This includes, without limitation, the riparian buffer protection requirements of 15A NCAC 02B .0714 - 0734 and .0295.

(e) Built upon area standards.

(1) Project density is used for determining stormwater requirements. The project area used for nutrient calculation and stormwater requirements includes the site area less any *built-upon area*. The project density is the amount of *built-upon* area subject to this ordinance at project completion divided by the project area. Project density shall be calculated according to 15A NCAC 2H. 1003(1) and as indicated in the *design manual*.

(2) A project is categorized as either high density or low density based on the percent *built-upon area*, and the density treatment threshold varies depending upon the project's location and proximity to SA waters, which are classified as tidal, salt waters with designated use of shellfishing (15A NCAC 02B. 0221). SA waters are more sensitive and are subject to higher standards.

Receiving Water Classification	Low Density Projects	High Density Projects	Design Storm	Special Provisions
SA – Tidal Salt Waters*	< 12% BUA	> 12% BUA	1-year, 24-hr storm	Max 25% BUA within 575 ft of SA-ORW waters
SA - HWQ				
SA – ORW				
Other Coastal County Waters	< 24% BUA	> 24% BUA	1.5 inch storm	None

*Per State of North Carolina Surface Water Classifications, all SA tidal salt waters are also high Quality waters (HQW) by definition. A subset of SA waters are classified as outstanding resource waters (ORW)

(3) The city is subject to the Coastal Counties Rule, as set forth in 15A NCAC 02H. 1019. The Coastal Rule applies to projects that meet one of the following criteria:

(i) Nonresidential projects that propose to cumulatively add 10,000 square feet or more of *built-upon area*; or

(ii) Residential projects that are within ½ mile of and draining to SA waters, and propose to cumulatively add more than 10,000 square feet of *built-upon area*, and result in a percentage *built-upon area* greater than 12% (high-density).

(4) All other projects not meeting the criteria in subsection (3) above will meet the minimum standards described in 15A NCAC 02H. 1003.

(f) Control and treatment of runoff volume.

(1) The requirement for runoff volume match serves to control and treat the runoff volume generated from the *built-upon area*, and helps to maintain the predevelopment hydrology of the project site. Within the Coastal Counties, the definition of runoff volume match depends upon the project location:

(i) For projects that drain to SA waters, runoff volume match means the annual runoff volume after *development* shall not be more than 5% higher than the annual runoff before *development*.

(ii) For projects that drain to other Coastal County waters, runoff volume match means the annual runoff volume after *development* shall not be more than 10% higher than the annual runoff before *development*.

(2) Within the Coastal Counties, the design storm used to determine the runoff volume also depends upon the project location:

(i) For projects that drain to SA waters, the design storm is the one-year, 24-hour storm.

(ii) For projects that drain to other Coastal County waters, the design storm depth is 1.5 inches.

(3) Projects meeting the definition of runoff volume match do not need to further address nutrient export or treatment.

(4) All projects shall meet the *stormwater system* minimum design requirements set forth in 15A NCAC 02H.1003. All *engineered stormwater controls* will meet the standards set in the *design manual* and the State's Minimum Design Criteria, 15A NCAC 02H.1050 through .1062.

(5) All project designs shall incorporate vegetated setbacks, dispersed flow, vegetated conveyances and curb outlet systems.

(6) High-density projects shall be designed to control and treat the volume of runoff generated from all *built-upon area* in one or more *primary SCMs*, using the appropriate design storm based on the project location and receiving water. High-density projects that drain to SA waters are subject to more stringent standards as indicated in the design manual.

(7) Low-density projects are not required to be equipped with *engineered stormwater controls* in exchange for limiting the *built-upon area*, maximizing dispersed flow and ensuring that stormwater conveyances are vegetated.

(g) Methods to meet nutrient control requirements. *Projects* subject to this ordinance shall meet *nitrogen* loading targets through a combination of the following methods:

(1) *Projects* may reduce export of *nitrogen* through any combination of *engineered stormwater controls* treating runoff on the site, in an approved offsite regional *engineered stormwater control*, or through the acquisition of *permanent nutrient offset credits*. The *developer* shall calculate the *nitrogen* reduction provided by these controls using the approved *accounting tool*.

(2) Proposed *development* undertaken by a local government solely as a public road expansion or public sidewalk project, or proposed *development* subject to the jurisdiction of the Surface Transportation Board (federal agency), may meet *nitrogen* reduction

needs for the *project* entirely through the use of *permanent nutrient offset credits* pursuant to the Nutrient Offset Credit Trading Rule, 15A NCAC 02B .0703.

(h) Use of permanent nutrient offset credits.

(1) Sufficient *permanent nutrient offset credits* to meet *project* nutrient reduction needs not provided by *engineered stormwater controls* serving the *project* shall be acquired prior to approval of the development plan. The *stormwater administrator* shall issue an approval letter for the *development* that documents the needed *nitrogen* credits and where the development is located relative to the Neuse Watershed Rules' geographic requirements. All *permanent nutrient offset credits* permitted by this ordinance shall meet the requirements of 15A NCAC 02B .0703.

(2) Permanent nutrient offset credits shall be acquired pursuant to N.C.G.S. 143-214.26 and 15A NCAC 02B .0703 prior to the start of construction of the *project*.

(3) A *developer* subject to this ordinance may acquire *permanent nutrient offset credits* through one of the following methods:

- i. Through a private nutrient bank;
- ii. Through offsite offset provided by the *developer* and approved by the city;
- iii. Through payment into the Riparian Buffer Restoration Fund established in N.C.G.S. 143-214.21.
- iv. Excess *permanent nutrient offset credits* acquired beyond what is required for the *development* may not be applied to any other *development*.

Notes: New section.

(i) Evaluation of standards for stormwater control measures.

(1) Evaluation according to contents of design manual. All *engineered stormwater controls* and *stormwater systems* required under this ordinance shall be evaluated by the *stormwater administrator* according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice in the *design manual*. The *stormwater administrator* shall determine whether proposed *engineered stormwater controls* will be adequate to meet the requirements of this ordinance.

(2) Determination of adequacy; Presumptions and alternatives. *Engineered stormwater controls* that are designed, constructed, and maintained in accordance with the criteria and specifications in the *design manual* will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the *design manual*, the applicant shall have the burden of demonstrating that the

practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The *stormwater administrator* may require the applicant to provide the documentation, calculations, and examples necessary for the *stormwater administrator* to determine whether such an affirmative showing is made.

Notes: Formerly Section 15-516. Subsection (f) is new.

Section 15-517. Minor variances.

(a) In the case of a request for a *minor variance*, the *stormwater administrator* may vary or modify any of the regulations or provisions of the ordinance so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

(b) The *stormwater administrator* may attach conditions to the *minor variance* approval that support the purpose of the local watershed protection ordinance.

(c) Appeals from the *stormwater administrator* decision on a *minor variance* request are made on certiorari to the local Superior Court.

Notes: Formerly Section 15-512

Section 15-518. General standards for maintenance.

(a) Function of engineered stormwater controls as intended. The *owner* of each *engineered stormwater control* installed pursuant to this ordinance shall ensure adequate maintenance and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the *engineered stormwater control* was designed.

(b) Annual maintenance inspection and report. The *person* responsible for maintenance of any *engineered stormwater control* installed pursuant to this ordinance shall submit to the *stormwater administrator* an inspection report from a qualified professional certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:

- (1) The name and address of the land *owner*;
- (2) The recorded book and page number of the lot of each *engineered stormwater control*;
- (3) A statement that an inspection was made of all *engineered stormwater controls*;
- (4) The date the inspection was made;

(5) A statement that all inspected *engineered stormwater controls* are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and

(6) The original signature and seal of the engineer, surveyor, or landscape architect.

All inspection reports shall be on forms supplied by the *stormwater administrator*. An original inspection report shall be provided to the *stormwater administrator* beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

Notes: Formerly Section 15-516

Section 15-519. Operation and maintenance of engineered stormwater controls.

(a) Operation and maintenance plan. There shall be an operation and maintenance plan (“O&M plan”) for every *engineered stormwater control*. The O&M plan shall specify all operation and maintenance work necessary for the function of all *engineered stormwater control* components, including the stormwater conveyance system, perimeter of the device, inlet(s), pretreatment measures, main treatment area, outlet, vegetation, and discharge point.

The O&M plan shall require the *owner* to maintain, repair and, if necessary, reconstruct the *engineered stormwater controls*, and shall state the terms, conditions, and schedule of maintenance for the *engineered stormwater controls*. The O&M plan shall specify methods to be used to maintain or restore the *engineered stormwater controls* to design specifications in the event of failure.

The O&M plan shall be signed by the *owner* and notarized. The *owner* shall keep maintenance records and these shall be available upon request by the *stormwater administrator*.

(b) Operation and maintenance agreement. Prior to the conveyance or transfer of any lot or building site to be served by *engineered stormwater controls* pursuant to this ordinance, and prior to issuance of any permit for *development* requiring *engineered stormwater controls* pursuant to this ordinance, the applicant or *owner* of the site must enter into an operation and maintenance agreement (“O&M agreement”) with the *stormwater administrator*. The O&M agreement shall require the applicant or *owner* to maintain, repair, or reconstruct the *engineered stormwater controls* in accordance with the approved design plans and the O&M plan. The O&M agreement shall be binding on all subsequent *owners* of the site, portions of the site, and lots, or *parcels* served by the *engineered stormwater control*. Until the transference of all property, sites, or lots served by the *engineered stormwater control*, the original *owner* or applicant shall have primary responsibility for carrying out the provisions of the O&M agreement.

The O&M agreement shall grant to the city a right of entry in the event that the *stormwater administrator* has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the *engineered stormwater control*; however, in no case shall the right of entry, of

itself, confer an obligation on the city to assume responsibility for the *engineered stormwater controls*.

The O&M agreement must be approved by the *stormwater administrator* prior to development plan approval, and it shall be referenced on the final plat and shall be recorded with the county register of deeds upon final plat approval. A copy of the recorded O&M agreement shall be given to the stormwater administrator within fourteen (14) days following its recordation.

(c) Special requirement for homeowners' and other associations. For all *engineered stormwater controls* required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required O&M agreement shall include all of the following provisions:

(1) Acknowledgment that the association shall continuously operate and maintain the *engineered stormwater controls* according to the specifications laid out in the O&M plan.

(2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the *engineered stormwater controls*. If *engineered stormwater controls* are not performing adequately or as intended or are not properly maintained, the city, in its sole discretion, may remedy the situation, and in such instances the city shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the *engineered stormwater controls*, provided that the city shall first consent to the expenditure.

(3) Both *developer* contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the *developer* shall pay into the escrow account an amount equal to fifteen (15) per cent of the initial construction cost of the *engineered stormwater controls*. Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the *engineered stormwater controls*. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

(4) The percent of *developer* contribution and lengths of time to fund the escrow account may be varied by the city depending on the design and materials of the *engineered stormwater controls*.

(5) Granting to the city a right of entry to inspect, monitor, maintain, repair, and reconstruct *engineered stormwater controls*.

(6) Allowing the city to recover from the association and its members any and all costs the city expends to maintain or repair the *engineered stormwater controls* or to correct any operational deficiencies. Failure to pay the city all of its expended costs, after forty-five days

written notice, shall constitute a breach of the agreement. In case of a deficiency, the city shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.

(7) A statement that this agreement shall not obligate the city to maintain or repair any *engineered stormwater controls*, and the city shall not be liable to any *person* for the condition or operation of *engineered stormwater controls*.

(8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the city to enforce any of its ordinances as authorized by law.

(9) A provision indemnifying and holding harmless the city for any costs and injuries arising from or related to the *engineered stormwater controls*, unless the city has agreed in writing to assume the maintenance responsibility for the *engineered stormwater controls* and has accepted dedication of any and all rights necessary to carry out that maintenance.

Notes: New section

Section 15-520. Inspection program.

(a) The city shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance.

(b) Inspections and inspection programs by the city may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in the *engineered stormwater controls*; and evaluating the condition of *engineered stormwater controls*.

(c) If the owner or occupant of any property refuses to permit such inspection, the *stormwater administrator* shall proceed to obtain an administrative search warrant pursuant to N.C.G.S. §15-27.2 or its successor. No *person* shall obstruct, hamper or interfere with the *stormwater administrator* while carrying out his or her official duties.

Notes: Formerly Sections 15-516, 15-551, and 15-552

Section 15-521. Performance security for installation and maintenance.

(a) Required. A performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement shall be required prior to issuance of a permit in order to ensure that the *engineered stormwater controls* are:

(1) Installed by the permit holder as required by the approved stormwater management plan, and/or

(2) Maintained by the *owner* as required by the operation and maintenance agreement.

(b) Amount.

(1) Installation. The amount of an installation performance security shall be the total estimated construction cost of the *engineered stormwater controls* approved under the permit, plus twenty five percent (25%).

(2) Maintenance. The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the *engineered stormwater controls* approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long-term inflation.

(c) Uses of performance security.

(1) Forfeiture provisions. The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or *owner* in accordance with this ordinance, approvals issued pursuant to this ordinance, or an O&M agreement established pursuant to this ordinance.

(2) Default. Upon default of the *owner* to construct, maintain, repair and, if necessary, reconstruct any *engineered stormwater control* in accordance with the applicable permit or O&M agreement, the *stormwater administrator* shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or O&M agreement. In the event of a default triggering the use of installation performance security, the city shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

(3) Costs in excess of performance security. If the city takes action upon such failure by the applicant or *owner*, the city may collect from the applicant or *owner* the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.

(4) Refund. Within sixty (60) days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the *engineered stormwater controls* covered by the security. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

Notes: Formerly in subdivision ordinance

Section 15-522. Deed recordation and indications on plat.

The applicable O&M agreement or dedication and acceptance into public maintenance (whichever is applicable) pertaining to every *engineered stormwater control* shall be referenced on the final plat and shall be recorded with the county register of deeds upon final plat approval. If no subdivision plat is recorded for the site, then the O&M agreement or dedication and acceptance into public maintenance (whichever is applicable) shall be recorded with the county register of deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

Section 15-523. Records of installation and maintenance activities.

The *owner* of each *engineered stormwater control* shall keep records of inspections, maintenance, and repairs for at least five (5) years from the date of creation of the record and shall submit the same upon reasonable request to the *stormwater administrator*.

Section 15-524. Nuisance.

The *owner* of each *engineered stormwater control*, whether *engineered stormwater control* or *non-engineered stormwater control*, shall maintain it so as not to create or result in a nuisance condition.

Section 15-525. Maintenance easement.

Every *engineered stormwater control* and its associated maintenance accesses on privately owned land, except for those located on single family residential lots, installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair by a permanent maintenance easement from a public right-of-way. The easement shall be recorded at the expense of the applicant, and its terms shall specify who may make use of the easement and for what purposes. The *engineered stormwater control* will be shown and labeled within the easement.

Section 15-526. Enforcement and violations.

(a) Authority to enforce. The provisions of this ordinance shall be enforced by the *stormwater administrator*, his or her designee, or any authorized agent of the city.

(b) Violation unlawful. Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this ordinance, or the terms or conditions of any permit or other *development approval* or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance.

(c) Each day a separate offense. Each day that a violation continues shall constitute a separate and distinct violation or offense.

(d) Responsible persons/entities. Any *person* who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, SCM, *engineered stormwater control*, practice, or condition in violation

of this ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. *Persons* subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, *developer*, agency, or any other *person* who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an *owner*, any tenant or occupant, or any other *person*, who has control over, or responsibility for, the use or *development* of the property on which the violation occurs. For purposes of this division, responsible *person(s)* shall include but not be limited to:

(1) Person maintaining condition resulting in or constituting violation. An architect, engineer, builder, contractor, *developer*, agency, or any other *person* who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.

(2) Responsibility for land or use of land. The *owner* of the land on which the violation occurs, any tenant or occupant of the property, any *person* who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any *person*, who has control over, or responsibility for, the use or *development* of the property.

Notes: Formerly Section 15-556

Section 15-527. Remedies and penalties.

The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

(a) Remedies

(1) Injunction, abatement, etc. The *stormwater administrator*, with the written authorization of the city manager, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this ordinance. Any *person* violating this ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.

(2) Correction as public health nuisance, costs as lien, etc. If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by N.C.G.S. §160A-193, the *stormwater administrator*, with the written authorization of the city manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

(3) Stop work order. The *stormwater administrator* may issue a stop work order to the *person(s)* violating this ordinance. A copy of the order shall be delivered to the holder of the *development* permit and to the *owner* of the property involved (if that person is not the holder of the *development* permit) by personal delivery, electronic delivery, or first-class

mail. The stop work order shall remain in effect until the *person* has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the *person* to take the necessary remedial measures to cure such violation or violations.

(b) Civil penalties. The stormwater administrator may assess a civil penalty against any *person* who violates any provision of this ordinance or of a permit or other requirement pursuant to this ordinance. Civil penalties may be assessed up to the full amount of penalty authorized by N.C.G.S. §143-215.6A.

Notes: Formerly Section 15-556

Section 15-528. Procedures

(a) Initiation; Complaint. Whenever a violation of this ordinance occurs, or is alleged to have occurred, any *person* may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the *stormwater administrator*, who shall record the complaint. The complaint shall be investigated promptly by the *stormwater administrator*.

(b) Inspection. The *stormwater administrator* shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance.

(c) Notice of violation and order to correct. When the *stormwater administrator* finds that any building, structure, or land is in violation of this ordinance, the *stormwater administrator* shall notify, in writing, the property *owner* and the holder of the development permit or other *person* violating this ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt. The *stormwater administrator* may deliver the notice of violation and correction order by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure. If a violation is not corrected within a reasonable period of time, as provided in the notification, the stormwater administrator may take appropriate action under this ordinance to correct and abate the violation and to ensure compliance with this ordinance.

(d) Extension of time. A *person* who receives a notice of violation and correction order, or the *owner* of the land on which the violation occurs, may submit to the *stormwater administrator* a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the *person* requesting the extension, the *stormwater administrator* may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding fourteen (14) days. The *stormwater administrator* may grant a seven-day extensions in addition to the foregoing

extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the *person* violating this ordinance. The *stormwater administrator* may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

(e) Enforcement after time to correct. After the time has expired to correct a violation, including any extension(s) if authorized by the *stormwater administrator*, the *stormwater administrator* shall determine if the violation is corrected. The *stormwater administrator* may act to impose one or more of the remedies and penalties authorized by this ordinance whether or not the violation has been corrected.

(f) Emergency enforcement. If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare, then the *stormwater administrator* may order the immediate cessation of a violation. Any *person* so ordered shall cease any violation immediately. The *stormwater administrator* may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this ordinance.

Notes: Formerly Section 15-556, 15-557, 15-559

SECTION 2. This ordinance shall be effective as of July 1, 2024.

ADOPTED THIS ____ DAY OF JUNE, 2024.

MAYOR

CITY CLERK

AGENDA ITEM COVER SHEET



Agenda Item Title:

Conduct a Public Hearing on the Fiscal Year 2024-25 Proposed Budget

Date of Meeting: 5/28/2024	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:	At the 5/14/24 BOA meeting, a resolution calling for a public hearing to be held 5/28/24 was adopted. A public hearing must be held for the City Manager's FY25 proposed budget.
Actions Needed by Board:	
Backup Attached:	Memo
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: May 15, 2024
RE: Conduct a Public Hearing for the City Manager's FY2024-25 Proposed Budget

Background

At its meeting on May 14, 2024, the Board of Aldermen adopted a resolution calling for a public hearing to be held May 28, 2024 on the City Manager's FY 2024-25 Proposed Budget.

The proposed budget has been made available for public inspection at the City Clerk's office, the New Bern Craven County Library, and on the City's website.

Requested Action

It is recommended that the Board conduct a public hearing on the City Manager's FY 2024-25 Proposed Budget at its meeting on May 28, 2024.

AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider Adopting a Resolution in Support of Naming the Highway 43 Connector for Marvin L. Raines, Jr.

Date of Meeting: 5/28/2024	Ward # if applicable: 6
Department: City Clerk	Person Submitting Item: Brenda Blanco
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing:

Explanation of Item:	The Board was approached about a resolution supporting the naming of the Highway 43 Connector for Marvin L. Raines, Jr. At the April 9, 2024 meeting, a motion was passed to formally put a resolution before the Board to consider this request. This item was tabled from the May 14, 2024 meeting.
Actions Needed by Board:	Consider the resolution
Backup Attached:	Memo and resolution
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:

Aldermen

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



NEW BERN
CITY OF NEW BERN

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(252) 636-4000

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: Brenda Blanco, City Clerk
DATE: May 17, 2024
SUBJECT: Resolution Supporting the Naming of the Hwy. 43 Connector for Marvin L. Raines, Jr.

This item was presented at the May 14, 2024 meeting, at which time it was tabled until May 28, 2024.

At the April 09, 2024 meeting, three individuals spoke under Request and Petition of Citizens regarding a request to name the Highway 43 Connector for Marvin L. Raines, Jr. NCDOT requires a resolution of support from the local government describing the honoree's credentials. The resolution must pass unanimously before an application can progress. The \$2,000 administrative application fee will be paid by others and will not require funding from the city per the individuals making the request.

**RESOLUTION IN SUPPORT OF NAMING THE HIGHWAY 43 CONNECTOR
FOR MARVIN L. RAINES, JR.**

WHEREAS, Marvin L. Raines, Jr. was an exemplary citizen of New Bern and Craven County for his entire life up until his passing on May 31, 2013; and

WHEREAS, in addition to his successful business pursuits and his dedication to family, Marvin Raines was also a tireless civic leader and volunteer; and

WHEREAS, Marvin Raines was appointed by Craven County to serve and lead the following organizations: the Craven Community College Board of Trustees, the CarolinaEast Medical Authority Board of Commissioners, the Economic Development Commission, the Global Transpark Development Commission, and the Military Growth Task Force; and

WHEREAS, Mr. Raines also served and led the New Bern Area Chamber of Commerce, Swiss Bear, the Committee of 100, Mount Olive College, the local First Citizens Bank Board of Directors, the North Carolina Association of Realtors, and the City of New Bern Municipal Service District Advisory Committee; and

WHEREAS, Marvin Raines provided his time, efforts, and wisdom to these organizations and committees to improve his community and the lives of its citizens through advancing the education, transportation, and economic progress of the region; and

WHEREAS, thanks to his selfless dedication and commitment, the legacy of Marvin L. Raines, Jr. is one of intelligent growth and development in New Bern and Craven County; and

WHEREAS, the construction and completion of the NC 43 Connector from US 17 Business (Dr. Martin Luther King Jr. Boulevard) to South of US 70/US17 represents the next step in our region's growth and mobility; and

WHEREAS, this final phase of NC Department of Transportation Project No. R-4463 is entirely within Craven County and partially within the City of New Bern, but in no other municipalities.

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

That by a vote of _____ to _____ the Board of Aldermen of the City of New Bern supports and endorses the naming of the NC 43 Connector in honor of Marvin L. Raines, Jr. for his tremendous and lasting impact on the community.

ADOPTED THIS 28TH DAY OF MAY, 2024.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

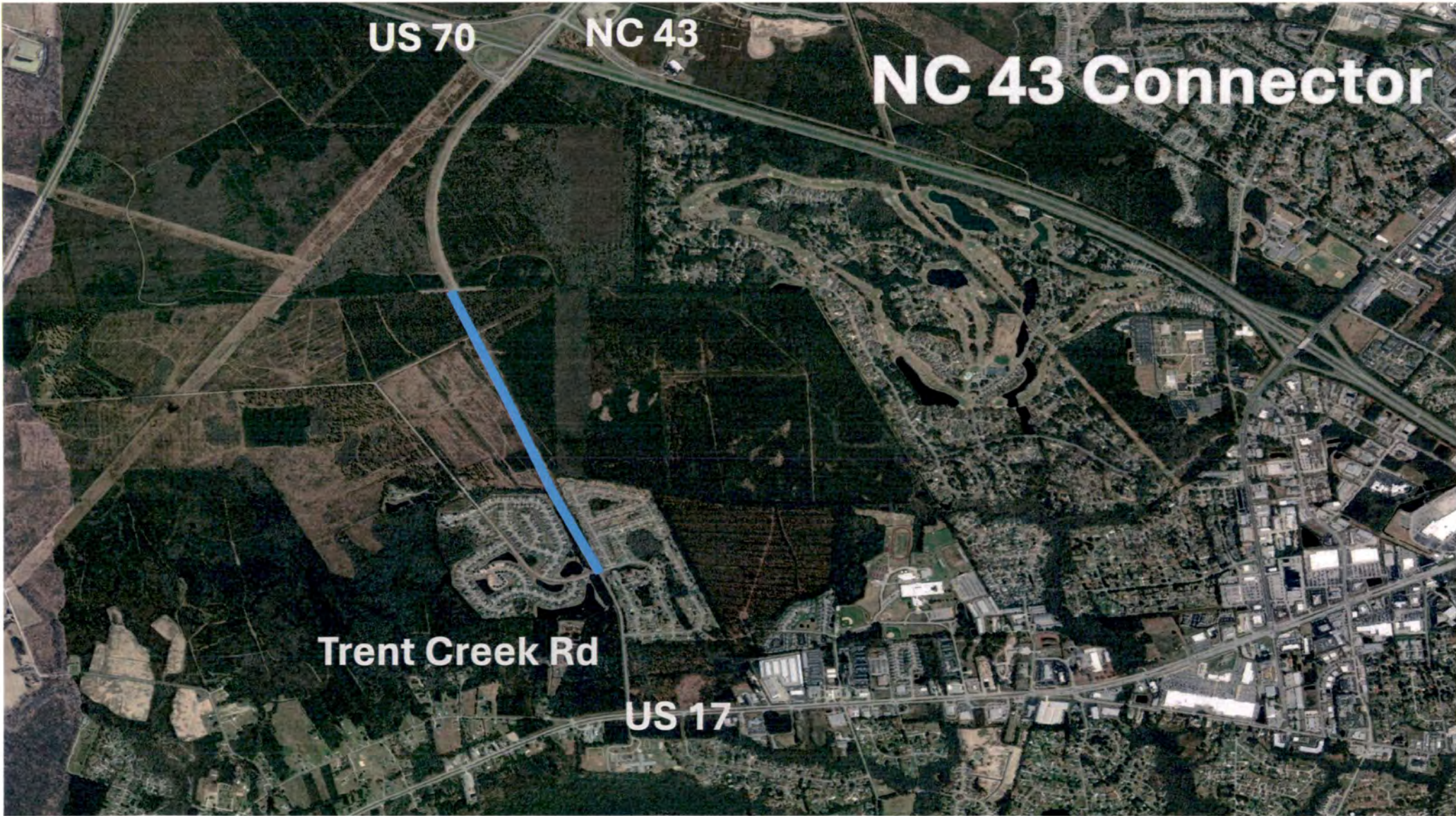
US 70

NC 43

NC 43 Connector

Trent Creek Rd

US 17



NC 43 Connector

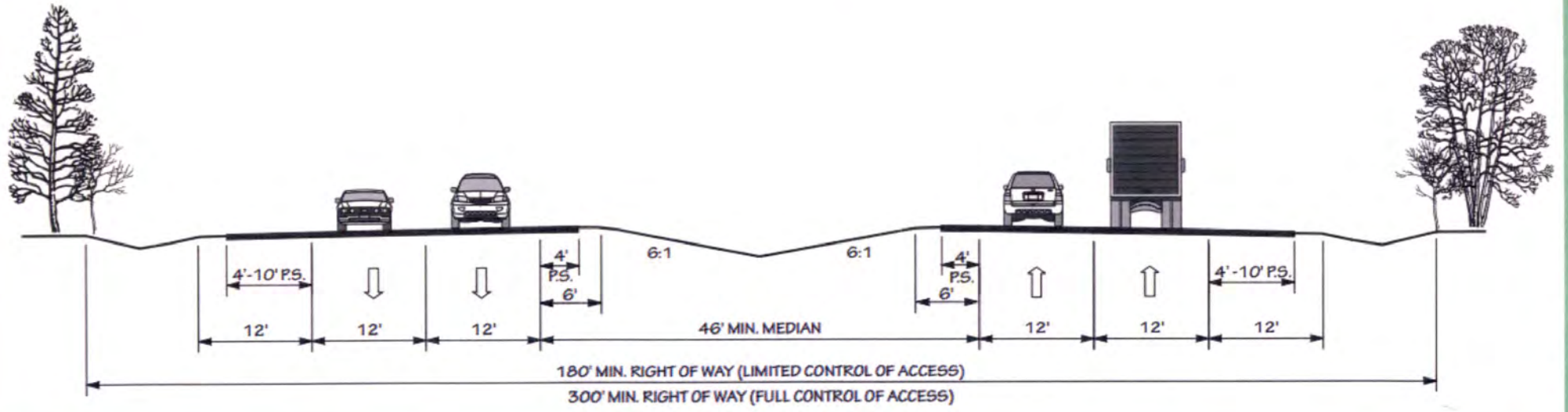


US 70

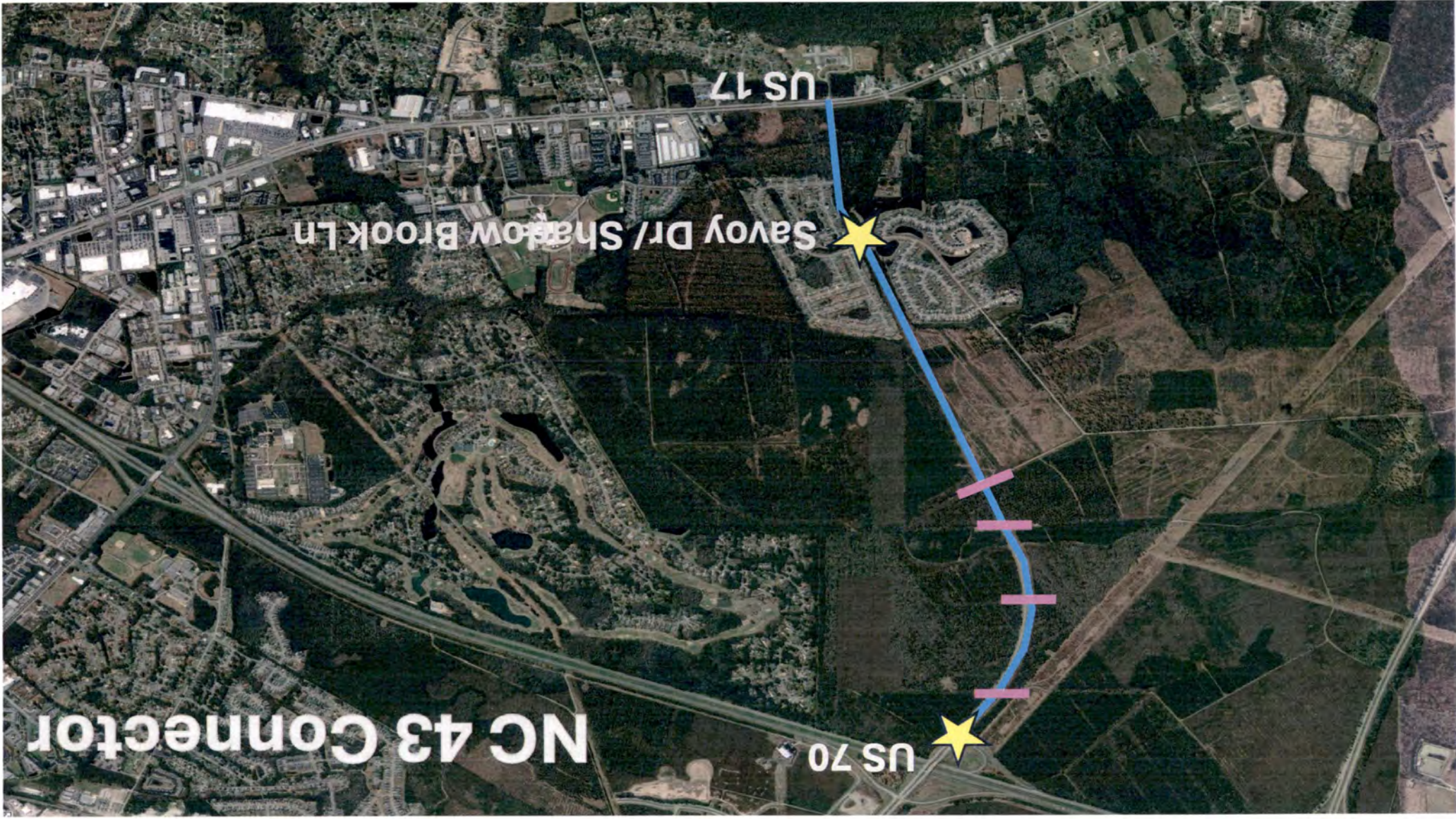
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US 70

NC 43 Connector



US 17



US 17

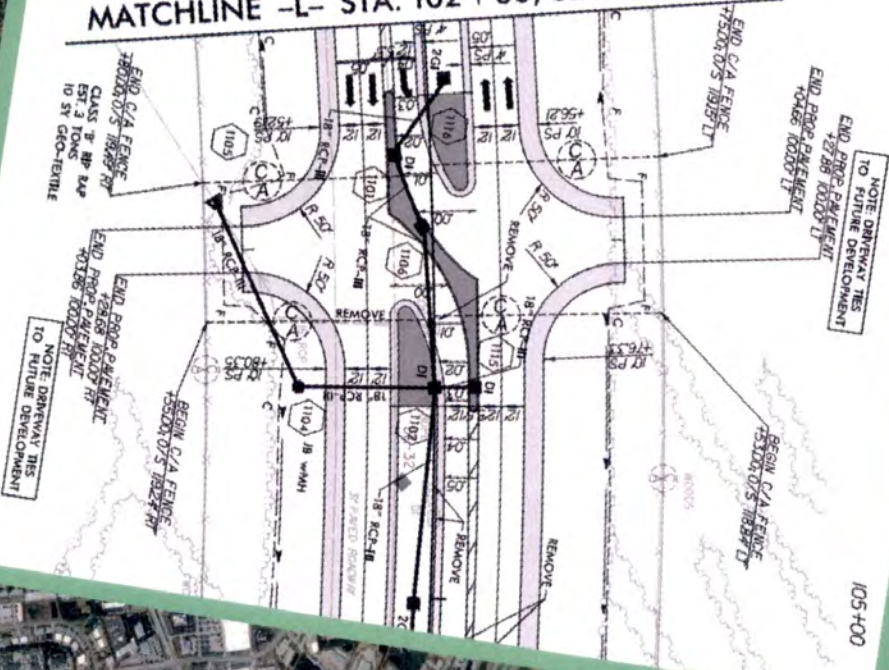
Savoy Dr / Shadow Brook Ln

US 70

NC 43 Connector

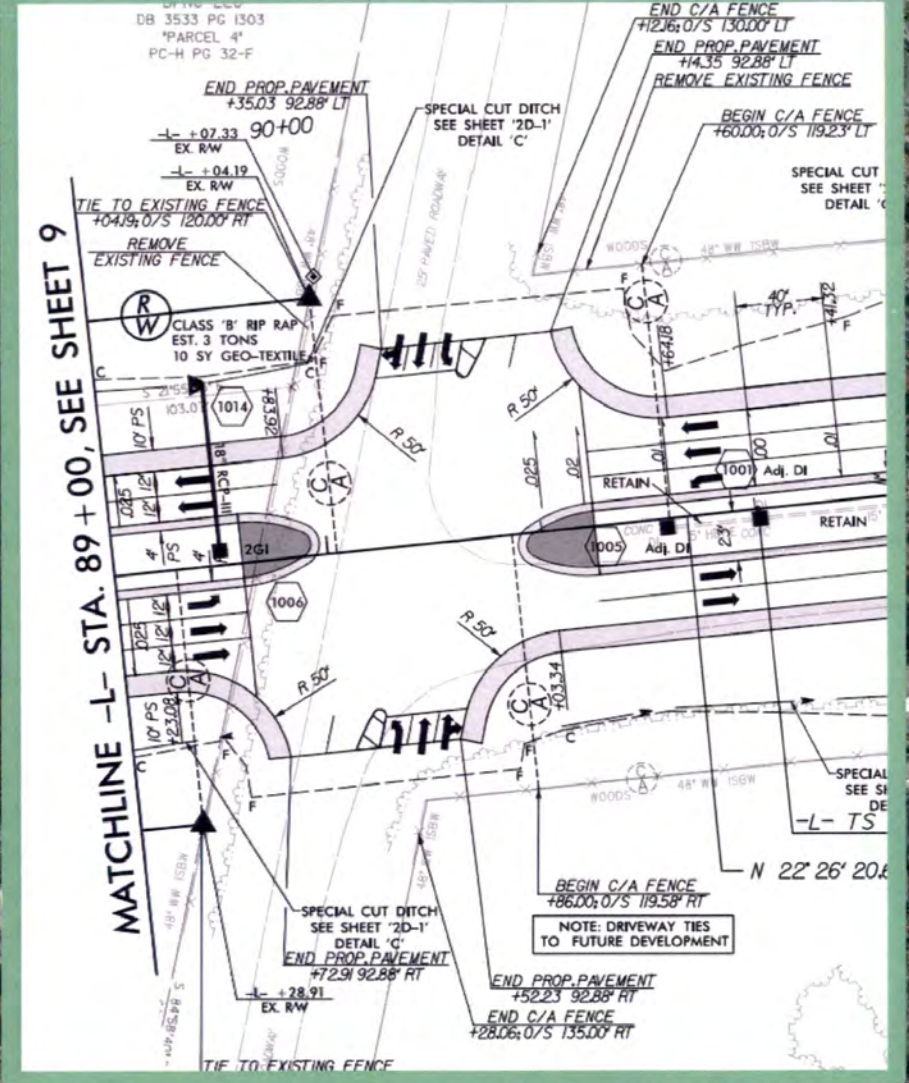
Savoy Dr/Shadow Brook Ln

MATCHLINE -L- STA. 102 + 00, SEE SHEET 10

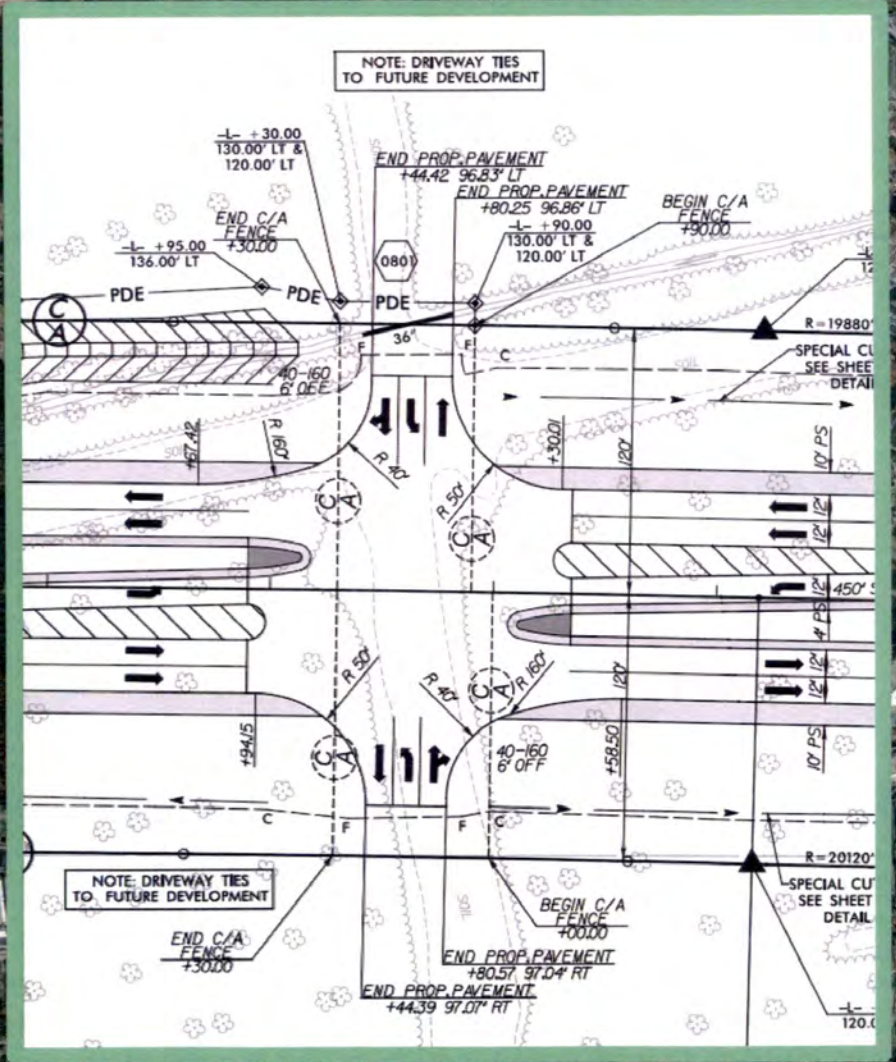


105-100

Savoy Dr/ Shadow Brook Ln



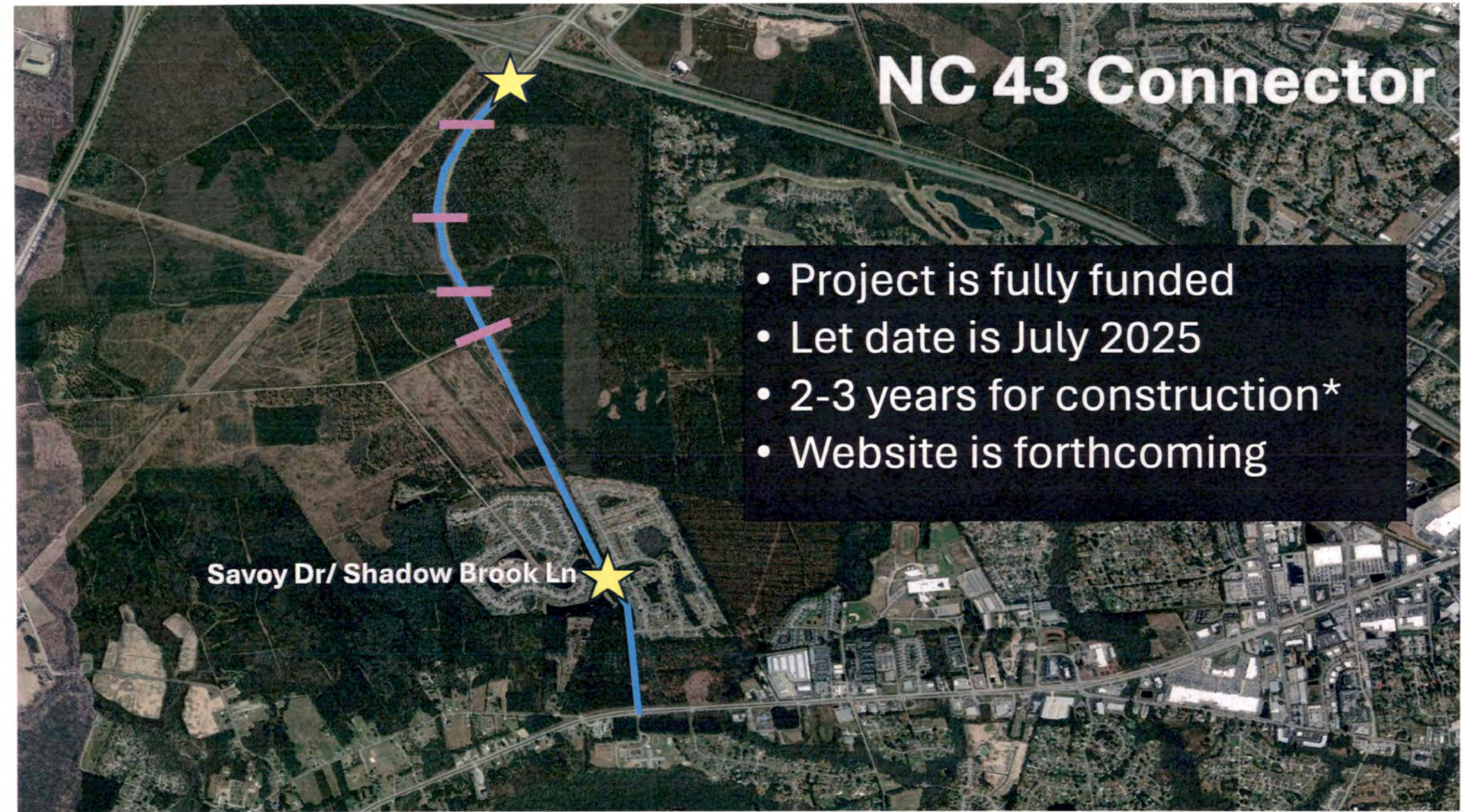
Savoy Dr/ Shadow Brook Ln



NC 43 Connector

Savoy Dr/ Shadow Brook Ln

- Project is fully funded
- Let date is July 2025
- 2-3 years for construction*
- Website is forthcoming



AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider Adopting a Resolution Authorizing the Execution of an Installment Financing Agreement with JP Morgan Chase for the Acquisition of property at 212 Kale Road

Date of Meeting: 5/28/2024	Ward # if applicable:
Department: Finance	Person Submitting Item: Kimberly Ostrom, Director of Finance
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing:

Explanation of Item:	To consider adopting a resolution authorizing execution of the Installment Financing Agreement with JP Morgan Chase for the acquisition of property and renovations of the existing buildings located at 212 Kale Road for the electric utility operations.
Actions Needed by Board:	Adopt resolution.
Backup Attached:	Memo; Resolution; Installment Financing 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

Aldermen
Rick Prill
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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: City Manager, Honorable Mayor, and Members of the Board of Aldermen
FROM: Kimberly Ostrom - Director of Finance
DATE: May 15, 2024
RE: Consider Adopting a Resolution Authorizing the Execution of an Installment Financing Agreement with JP Morgan Chase for the Acquisition of property at 212 Kale Road

Background

On February 13, 2024, the Board approved the execution of an agreement for purchase of real property located at 212 Kale Road.

A Request for Proposal (RFP) was issued to solicit bids for financing not to exceed \$2,200,000 for the acquisition of property and renovations of the existing buildings for electric utility operations. Upon careful review of proposals submitted by various financial institutions, a recommendation to accept the proposal of JP Morgan Chase was submitted to the Board.

The Board of Aldermen adopted a resolution on April 23, 2024 calling for a public hearing, which was held on May 14, 2024 on the proposed financing. Also at its May 14th meeting, the Board adopted a resolution approving JP Morgan Chase as the winning bidder with an interest rate of 4.21% with a Bank Qualified Installment Financing Agreement, for the term of 15 years, prepayable at par on or after March 1, 2034.

The final approval of the financing and the attached financing documents will be presented to the Board at the May 28th meeting. The financing is tentatively scheduled to close on Tuesday, June 11, 2024.

Requested Action

It is recommended that the Board adopt a resolution authorizing the execution of the Installment Financing Agreement with JP Morgan Chase.

**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 ACQUISITION OF AN EXISTING BUILDING FOR
USE AS THE ELECTRIC OPERATIONS BUILDING AND
IMPROVEMENTS THERETO 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 cost of acquiring, constructing, renovating and equipping an existing building for use by the City as the Electric Operations Building to provide administrative, office, operational and warehouse space for the City's Electric Utility (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 JPMorgan Chase 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 \$2,200,000 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").

(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"), to the deed of trust trustee named therein for the benefit of the Lender, 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 an advancement pursuant thereto in an aggregate principal amount not to exceed \$2,200,000. 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. The interest rate payable under the Agreement shall be 4.21% per annum (subject to adjustment as provided in the Agreement) and the final maturity shall not exceed December 31, 2039.

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 28TH DAY OF MAY, 2024.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

Draft No. 1
May 15, 2024

INSTALLMENT FINANCING AGREEMENT

Dated as of June 11, 2024

between

CITY OF NEW BERN, NORTH CAROLINA

and

JPMORGAN CHASE BANK, N.A.

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INSTALLMENT FINANCING AGREEMENT

This INSTALLMENT FINANCING AGREEMENT, dated as of June __, 2024 (the "Agreement"), between 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 JPMORGAN CHASE 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 of the City has determined to finance the cost of acquiring, constructing, renovating and equipping an existing building for use by the City as the Electric Operations Building to provide administrative, office, operational and warehouse space for the City's electric utility;

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 lien on the Site (hereinafter defined), together with all buildings, improvements and fixtures located and to be located thereon;

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 the advance being made by the Lender to the City in the amount of \$ _____ pursuant to Section 3.1 of this Agreement to pay the costs of the Project and any related Closing Costs.

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

“Board” means the Board of Aldermen of the City or any successor board or governing body of 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 of North Carolina, 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, word processing costs, reproduction and binding costs, legal fees and charges and financing and other professional consultant fees.

“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 Installment Payments and the performance by the City of its 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.

“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 made by the City under this Agreement due to 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 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.

“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). 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 Lender to the City 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 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.

“Lender” means JPMorgan Chase Bank, N.A., and its successors and 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 substantially all of the buildings, improvements and fixtures 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) 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 created by the Deed of Trust and any lease of all or any portion of the Mortgaged Property permitted by Section 8.2; (f) this Agreement; (g) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions 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; (h) any mortgage or encumbrance on the Mortgaged Property consented to by the Lender pursuant to Section 9 of the Deed of Trust; and (i) any other encumbrances described in writing to the Lender at the time of delivery of the Deed of Trust.

“Project” means the acquisition, construction, renovation and equipping an existing building for use by the City as the Electric Operations Building to provide administrative, office, operational and warehouse space for the City’s electric utility (the “Project”).

“Site” means the real property comprising the fires station portion of the Project, as more particularly described in Exhibit A to the Deed of Trust.

“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

ARTICLE II

REPRESENTATIONS OF THE CITY AND 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 execute and deliver this Agreement and the Deed of Trust and to enter into the transactions contemplated by and to carry out its obligations under this Agreement and the Deed of Trust.

(c) The City has duly authorized and executed 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 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 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 and 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.

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 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) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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 \$_____ to the City at Closing (the "Advancement") to pay the costs of the Project and related Closing Costs. On the date of Closing, the proceeds of the Advancement, shall be deposited into an account at a depository bank or other financial institution selected by the City designated "City of New Bern Project Fund" (the "Project Fund") and shall be applied in accordance with the provisions of this Article.

SECTION 3.2. Acquisition, Construction and Equipping of Project. The City has entered into or shall enter into one or more contracts or purchase agreements 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. Money, and any interest thereon, held in the Project Fund shall be invested and reinvested in accordance with Section 159-30 of the General Statutes of North Carolina, as may be amended from time to time, or any substitute or successor statute. Investment earnings on the Project Fund shall be retained in the Project Fund pending disbursement to pay Closing Costs and costs of the Project 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 to pay, or 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 of the Project. Any moneys remaining in the Project Fund upon completion of the Project and not theretofore applied to pay Closing Costs or costs of the Project shall, at the direction of the City, be applied to the next succeeding Installment Payment. The City shall provide the Lender with an itemized list of the Closing Costs and costs of the Project paid or reimbursed from the proceeds of the Advancement and any investment earnings deposited in the Project Fund.

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.

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 the Lender. The City acknowledges and agrees that the Lender has not supplied any plans or specifications with respect to the Project 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) 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 CONSTRUCTING, EQUIPPING AND FURNISHING 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, with interest computed at the rate of 4.21% 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.

(b) All payments required to be made to the Lender hereunder shall be made 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 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, taking into account any interest expense deductions lost by the Lender as a direct or indirect result of the Determination of Taxability. 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 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) 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 which reflects the new interest rate which will replace the Installment Payment Schedule set forth in Exhibit A.

(d) The City hereby represents that it reasonably expects that the City, all entities issuing obligations on behalf of the City and all subordinate entities of the City will not issue in the aggregate more than \$10,000,000 of tax-exempt obligations (not counting private-activity bonds except for qualified 501(c)(3) bonds (as defined by the Code) and not counting certain current refunding obligations as provided in Section 265(b)(3)(C)(ii)(III) of the Code) during the calendar year 2024. The City hereby designates each of the installments due under this Agreement as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Code. In the event the City breaches any of these representations, the interest rate payable under this Agreement shall be adjusted to preserve the Lender's after-tax economic yield with respect to the interest component of the Installment Payments, taking into account any interest expense deductions lost by the Lender as a direct or indirect result of the City's actions. In addition, the City shall pay to the Lender 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 its loss of such interest expense deductions. In such event, 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.

(e) 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.

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 spread upon the minutes of the Board. Upon request, 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 Deed of Trust. 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 OBLVIATE 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.

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. 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.

(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 the Lender become aware of such an event, 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. Reserved.

SECTION 5.5. 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) 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.

(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 10.2, the City shall cause the Net Proceeds of any insurance policies 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 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 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 may apply the Net Proceeds of such insurance policies, together with any other available funds of the City, to the prepayment in whole of the principal component of the Installment Payments in accordance with Section 10.2. In the event the amount of such Net Proceeds exceeds the amount necessary to prepay the principal component of all remaining Installment Payments, plus any prepayment premium and 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 to the prepayment in whole of the Installment Payments under the provisions of Section 10.2. 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 in whole of the Installment Payments under the provisions of Section 10.2.

SECTION 6.3. Cooperation of the Lender. 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 5.1 and Section 5.3. 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 with respect to the Mortgaged 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 Local Government Commission. 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 Information. 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, the City will provide the Lender with a copy of its annual budget, as adopted, within 30 days of adoption. The City agrees to provide the Lender with any other information the Lender may reasonably request, in a form satisfactory to the Lender.

SECTION 7.8. Release of Mortgaged Property from Deed of Trust. At any time and from time to time, so long as no Event of Default has occurred and is continuing hereunder or under the Deed of Trust, the Deed of Trust Trustee and the Lender, as beneficiary under the Deed of Trust, shall consent to the release of all or a portion of the Mortgaged Property from the lien and security interest created by the Deed of Trust when and if the following requirements have been met:

(a) there is filed with the Lender a certified copy of a resolution of the Board or an Officer's Certificate stating that the City desires the release of such portion of the Mortgaged Property, giving an adequate description of the portion of the Mortgaged Property to be released, requesting such release and providing for the payment by the City of all expenses in connection with such release;

(b) either (i) the estimated value of the Mortgaged Property remaining after the proposed release (as such value is evidenced as hereinafter provided) is not less than the unpaid aggregate principal components of the Installment Payments or (ii) the City provides for substitution other property (the "Substitute Property") that will be made subject to the lien of the Deed of Trust that has an estimated value such that the combined estimated value of the remaining Mortgaged Property and the Substitute Property immediately before the proposed substitution or is not less than the unpaid aggregate principal components of the Installment Payments;

(c) there is filed with the Lender an opinion of bond counsel to the City to the effect that the substitution of such property is permitted by law and is permitted under the terms of this Agreement and the Deed of Trust and that such release and substitution will not adversely affect the exclusion of interest on Installment Payment from the gross income of the Lender for federal or state income tax purposes; and

(d) there is filed with the Lender an Officer's Certificate to the effect that such release shall not prohibit the City's ingress, egress and regress to and from the remainder of the Mortgaged Property not being released, or materially interfere with the use of the remainder of the Mortgaged Property not being released.

The estimated value of the Mortgaged Property or any Substitute Property required by (b) shall be evidenced by an Officer's Certificate as to such estimated value, and may be based on such assumptions as the Authorized Officer may deem reasonable, including, but not limited to, reliance on (i) an appraisal prepared by a qualified appraiser, (ii) the insured value of the property subject to the valuation, (iii) the assessed tax valuation of the remaining Mortgaged

Property and the Substitute Property, or (iv) a combination of the foregoing. If any improvements are then being installed on any portion of property that will be included in the Mortgaged Property, the estimated value of the Mortgaged Property may take into account the expected value of the Mortgaged Property following the completion of the improvements.

ARTICLE VIII

ASSIGNMENT AND LEASING

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 or to 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. Reassignment by any assignee may also only be to a bank, insurance company or similar financial institution or to any other entity approved by the LGC. In addition, the Lender or its assignees may assign or reassign all or any part of this Agreement, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Agreement, or making this Agreement part of a pool of obligations without the consent of the LGC, so long as such assignment or reassignment is to (i) a bank, insurance company or similar institution or any other entity approved by the LGC; or (ii) a trustee for the purpose of issuing certificates of participation or other forms of certificates evidencing an undivided interest in the Agreement, provided such certificates are sold only to a bank, insurance company or similar financial institution or other entity approved by the LGC. 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. 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.

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 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.

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) Prior to March 1, 2034, the Installment Payments are not subject to optional prepayment. 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 on or after March 1, 2034 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.

SECTION 10.2. Prepayment with Net Proceeds. If the City elects not to apply any Net Proceeds to the repair, restoration or replacement of the Mortgaged Property as set forth in Section 6.3, the City shall apply the Net Proceeds of such insurance policies, together with any other available funds of the City, to the prepayment in whole of the principal component of the Installment Payments as set forth herein. For any prepayment made under this Section 10.02 on or after March 1, 2034, the provisions of Section 10.1 related to optional prepayment shall control.

In the event the City makes such an election prior to March 1, 2034, the City shall pay the Lender on the date of such prepayment the amount of the Advancement that remains Outstanding, plus the interest component of all accrued and unpaid Installment Payments to the prepayment date, plus a prepayment premium ("Premium") equal to the sum of the present value of the interest components of Installment Payments for each year (or portion thereof) falling in the Remaining Period (including any partial billing months on a pro rata basis). The interest components shall be calculated by multiplying the amount of the reduction in the principal balance of the Installment Payments for each Interest Payment Period as a result of the prepayment by the difference between the Original Swap Rate minus the Current Swap Rate and then dividing by the number of Interest Payment Periods in each full calendar year. Present value shall be calculated by using the Current Swap Rate. No Premium shall be due if the difference between the Original Swap Rate minus the Current Swap Rate is zero or negative. The City acknowledges that the Lender might not at all times fund its fixed-rate loan portfolio or any prepayment thereof on a loan-by-loan basis, and agrees that the foregoing is a reasonable and appropriate method of calculating liquidated damages for any prepayment. To the extent any calculations and determinations by the Lender of the amounts payable pursuant to the preceding provisions require determination of an interpolated rate or require use of an alternate methodology when specific rates are not available, such calculations shall be conclusive absent manifest arithmetic error if made in accordance with the Lender's then standard procedures.

All calculations and determinations by the Lender of the Premium payable pursuant to the preceding provisions or of any element thereof, if made in accordance with its then standard procedures for so calculating or determining such amounts, shall be conclusive absent manifest arithmetic error. The redemption price, including the Premium, will be calculated by the Lender as necessary and promptly communicated in writing to the City.

As used in this subsection:

“Current Swap Rate” means the U.S. Dollar SOFR ICE Swap Rate for the Remaining Period as of the date of the prepayment (or, if no rate is available for a period equal to the Remaining Period, a rate interpolated between the U.S. Dollar SOFR ICE Swap Rates for terms that are immediately shorter and immediately longer than the Remaining Period).

“Interest Payment Period” means the period of time between any two consecutive scheduled Installment Payments during the Remaining Period (which Interest Payment Period shall be either one month, three months, six months, or one year).

“Last Reset Date” means the date of Closing.

“Original Period” means the period from and including the Last Reset Date to the Rate Expiration Date.

“Original Swap Rate” means the U.S. Dollar SOFR ICE Swap Rate as of the Last Reset Date for the Original Period (or, if no rate is available for a period equal to the Original Period, a rate interpolated between the U.S. Dollar SOFR ICE Swap Rates for terms that are immediately shorter and immediately longer than the Original Period).

“Rate Expiration Date” means the maturity date of this Agreement.

“Remaining Period” means the period from and including the last day of the month immediately preceding the date of the early prepayment to the Rate Expiration Date.

“U.S. Dollar SOFR ICE Swap Rate” for a specified date and maturity means the most recently available rate as of that date for a U.S. Dollar SOFR interest rate swap (annual payments of fixed rate versus compounded daily SOFR) of that maturity as listed in USD Rates SOFR 1100 Report as administered by ICE Benchmark Administration Limited (IBA) at or about 11:15 a.m., New York City, New York time, and published by Bloomberg Professional Services or other information vendors acceptable to the Lender. If the U.S. Dollar SOFR ICE Swap Rate is not available, or if the most recently available rate for the specified maturity was published more than two business days prior to the date of the prepayment, then the U.S. Dollar SOFR ICE Swap Rate shall be otherwise independently determined by the Lender from an alternate, substantially similar independent source available to the Lender or shall be calculated by the Lender by a substantially similar methodology.

SECTION 10.3. Partial Prepayment of Installment Payments. Any prepayment in part shall be applied to reduce the principal components of the Installment Payments either (i) in inverse order of maturity, (ii) pro rata among maturities to the extent practicable or (iii) otherwise as consented to by the Lender in writing. 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
New Bern, North Carolina 28563
Attention: Director of Finance

If to the Lender:

JPMorgan Chase Bank, N.A.
4350 Congress Street, 2nd Floor
Charlotte, North Carolina 28209-4865
Attention: Jeremy E. Fisher, Vice President

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 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.

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

JPMORGAN CHASE BANK, N.A.

By: _____
Vice President

[Signature page to the Installment Financing Agreement, dated as of June 11, 2024, between the City of New Bern, North Carolina and JPMorgan Chase 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.

Deputy Secretary, Local Government Commission
of North Carolina

EXHIBIT A

INSTALLMENT PAYMENT SCHEDULE

<u>Installment Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
September 1, 2024			
March 1, 2025			
September 1, 2025			
March 1, 2025			
September 1, 2025			
March 1, 2025			
September 1, 2025			
March 1, 2025			
September 1, 2025			
March 1, 2025			
September 1, 2025			
March 1, 2025			
September 1, 2025			
March 1, 2025			
September 1, 2025			
March 1, 2025			
September 1, 2025			
March 1, 2025			
September 1, 2025			
March 1, 2025			
September 1, 2025			
March 1, 2025			
September 1, 2025			
March 1, 2025			
September 1, 2025			
March 1, 2026			

AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider adopting a resolution authorizing the City Manager to execute on behalf of the City of New Bern all agreement documents related to the NCRR and NSR Supplemental Line Agreement related to the installation of a stormwater force main and drainage structures associated with the Duffyfield Community Stormwater Enhancement Project Phase I.

Date of Meeting: 5/28/2024	Ward # if applicable: 5
Department: Public Works	Person Submitting Item: George Chiles, Director of Public Works
Call for Public Hearing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date of Public Hearing: N/A

Explanation of Item:	The City of New Bern has been working to complete Phase I of the Duffyfield Community Stormwater Enhancements which includes the installation of a stormwater force main and drainage structures adjacent to East Rose St. The force main is located on the southern 200' right-of-way of NCRR. The construction of the stormwater enhancements within this NCRR right-of-way are covered under the attached agreement.
Actions Needed by Board:	Adopt Resolution
Backup Attached:	Memo, Resolution, NCRR and NSR Company, Pipeline Agreement, Plans, and grant confirmation of reimbursement.

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

Cost of Agenda Item: \$435,934.00
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: Annual fee payment of \$270,000. is grant reimbursable.



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

May 16, 2024

Memo to: Mayor and Board of Aldermen

From: George Chiles, Director of Public Works

Re: Consider adopting a resolution authorizing the City Manager to execute on behalf of the City of New Bern all contract documents related to the NCRR and NSR Supplemental Line Agreement related to the installation of a stormwater force main and drainage structures associated with the Duffyfield Community Stormwater Enhancements Project Phase I.

Background Information:

The City of New Bern has been working to complete drainage improvements within the Duffyfield Community Stormwater Enhancements Phase I-3. Phase I includes the installation of 2,322 LF of stormwater force main and related outlet structures, this force main occupies a portion of the North Carolina Railroad southern 200' right-of-way. The attached agreement and fee of \$435,934.00 covers the drainage improvements which occupy the North Carolina Railroad property. The City of New Bern shall pay a one-time Initial Fee of \$270,000.00 and thereafter pay an Annual Fee of \$5,000.00, option C. of the Agreement. The Initial Fee payment of \$270,000.00 is reimbursable from the grant funding agency, NC Department of Emergency Management. Any remaining grant funding available at the completion of Phases I-3, will be applied toward the remaining lump sum agreement balance.

Recommendation:

The Public Works Department recommends the Board consider adopting a Resolution authorizing the City Manager to execute on behalf of the City of New Bern all agreement documents related to the NCRR and NSR Supplemental Line Agreement related to the installation of a stormwater force main and drainage structures associated with the Duffyfield Community Stormwater Enhancements Project Phase I.

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

RESOLUTION

THAT WHEREAS, the City of New Bern has contracted to construct the Duffyfield Community Stormwater Enhancements Project Phase I which consists of a stormwater pond, pump station and force main; and

WHEREAS, the Director of Public Works recommends the Board authorize the City Manager to execute on behalf of the City of New Bern all contract documents related to the North Carolina Railroad and Norfolk Southern Railroad Supplemental Line Agreement associated with the Duffyfield Community Stormwater Enhancements Project Phase I.

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

That the City Manager is hereby authorized to execute on behalf of the City of New Bern all agreement documents related to the North Carolina Railroad and Norfolk Southern Railroad Supplemental Line Agreement related to the installation of stormwater force main and drainage structures associated with the Duffyfield Community Stormwater Enhancements Project Phase I.

ADOPTED THIS 28th DAY OF MAY 2024.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

Railroad Use Only
NS File No. 1319687

NCRR File No. o_e-057+4495
AC:

SUPPLEMENTAL PIPELINE AGREEMENT

THIS SUPPLEMENTAL AGREEMENT between CITY OF NEW BERN, a North Carolina government entity, hereinafter styled "Licensee"; and NORTH CAROLINA RAILROAD COMPANY, a North Carolina corporation, hereinafter styled "Company"; and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation, hereinafter styled "NSR";

WITNESSETH:

WHEREAS, Company, NSR, and Licensee entered into that certain Pipeline Agreement dated the 1st day of February, 2021 (the "2021 Agreement"), concerning certain real property of Company whereby Company permitted the installation of one (1) 8-inch ductile iron stormwater pipeline transitioning into one (1) 12-inch ductile iron stormwater pipeline transitioning into one (1) 12-inch ductile iron stormwater pipeline encased within one (1) 20-inch steel casing pipe transitioning back to one (1) 12-inch ductile iron stormwater pipeline, two (2) 24-inch RCP stormwater pipelines, one (1) stilling well, one (1) stormwater detention pond and one (1) pump station (hereinafter called "Facilities"), on, under, along and across the right of way or property and any tracks of Company, between Milepost EC-057 plus 4,431 feet, Valuation Station 2080 plus 57 feet and Milepost EC-057 plus 4,495 feet, Valuation Station 2079 plus 93 feet, at or near Biddle Street, in New Bern, Craven County, North Carolina; (the "Facilities");

WHEREAS, Licensee desires to modify and Company and NSR are willing to allow the Licensee to alter the facilities by removing the (1) 8-inch ductile iron stormwater pipeline transitioning into one (1) 12-inch ductile iron stormwater pipeline transitioning into one (1) 12-inch ductile iron stormwater pipeline encased within one (1) 20-inch steel casing pipe transitioning back to one (1) 12-inch ductile iron stormwater pipeline as shown on the exhibit in the 2021 Agreement, and replace with one (1) 12-inch ductile iron stormwater pipe under and across the right of way or property of Company, between Milepost EC-057 plus 1,995 feet, Valuation Station 2104 plus 93 feet and Milepost EC-057 plus 4,350 feet, Valuation Station 2081 plus 38 feet, at or near Rose Street in New Bern, Craven County, North Carolina; the same to be located in accordance with prints of the Drawings marked **Exhibits A1, A2, A3, A4, A5, A6, A7, A8, A9, A10, A11, A12, A13, A14, A15 & A16**, dated December 18, 2023, attached hereto and made a part hereof; (hereinafter called "New Facilities")

WHEREAS, Company, NSR and Licensee hereby enter into this Supplemental Pipeline Agreement to cover the New Facilities;

NOW, THEREFORE, in consideration for the promises contained herein, the Company hereby permits and grants to Licensee, insofar as Company has the right to do so, without warranty and subject to all encumbrances, covenants, and easements to which Company's title may be subject, the non-exclusive license to use and to occupy the Company's property for the Facilities, upon the following terms and conditions:

1. For and in consideration of the promises set forth, Licensee shall pay under the following terms:

- a. Pay to NSR a One-Time Fee of two-hundred and NO/100 Dollars (\$200.00) ("NSR Fee") due upon execution of this Agreement;
- b. Pay to Company, a Lump Sum Fee of FOUR HUNDRED THIRTY-FIVE THOUSAND NINE HUNDRED THIRTY-FOUR and NO/100 Dollars (\$435,934.00) due upon execution of this Agreement, however, in lieu of paying the Lump Sum Fee to Company, upon execution of this Agreement, Licensee may elect to pay Company an Annual Fee ("Annual Fee Election");
- c. If Licensee opts for the Annual Fee Election at the execution of this Agreement, the Licensee shall pay a one-time Initial Fee to Company of TWO-HUNDRED AND SEVENTY THOUSAND and NO/100 Dollars (\$270,00.00) upon execution of this Agreement, and thereafter the Licensee shall pay an Annual Fee of FIVE-THOUSAND and NO/100 Dollars (\$5,000.00) annually on the anniversary of this Agreement, and said Annual Fee shall increase by five percent (5%) each year on the anniversary of this Agreement;
- d. If Licensee opts for the Annual Fee Election at the execution of this Agreement, Licensee may at any time after payment of the NSR Fee and the Initial Annual Fee to Company, elect to pay out the Lump Sum Fee owed to Company under this Agreement ("Lump Sum Fee Payout") by providing written notice to Company, and upon receiving written notice from Licensee of the election of the Lump Sum Fee Payout option, Company shall provide Licensee the amount owed for the Lump Sum Fee Payout and Licensee shall be obligated to either pay the Lump Sum Fee Payout then currently due or may opt to continue the Annual Fee Election; and
- e. If Licensee fails to pay the Lump Sum Fee in full upon execution of this Agreement, the unpaid balance of the Lump Sum Fee shall accrue interest at a rate of five percent (5%) compounded annually on the anniversary of this Agreement, which shall be used to calculate the amount Licensee owes if Licensee later elects a Lump Sum Fee Payout.
- f. The amount of the Lump Sum Fee Payout shall be calculated by determining the unpaid balance of the Lump Sum Fee, plus any annually accrued interest on that balance, minus the total sum of the Initial Fee and any subsequently paid Annual Fee payments made by Licensee to Company.

THAT effective as of the latest date of either Company, Licensee or NSR shown below, the parties hereto do mutually agree that the 2021 Agreement concerning the Facilities at New Bern, Craven County, North Carolina, is modified to add the "New Facilities", as shown on prints of Drawings marked **Exhibit A1, A2, A3, A4, A5, A6, A7, A8, A9, A10, A11, A12, A13, A14, A15 & A16**, dated December 18, 2023, attached hereto and made a part hereof.

This Supplemental Agreement shall be supplemental to said Agreement and amends the same as herein provided, but not otherwise; and said Agreement, as herein amended, shall continue in effect until terminated as therein provided.

[The rest of this page left blank intentionally]

EXECUTED in triplicate, each part being an original, as of the latest date of either Licensee, Company or NSR shown below:

LICENSEE:
CITY OF NEW BERN

By: _____

Title: _____

Date: _____

COMPANY:
NORTH CAROLINA RAILROAD COMPANY

By: _____

Title: _____

Date: _____

NSR:
NORFOLK SOUTHERN RAILWAY COMPANY

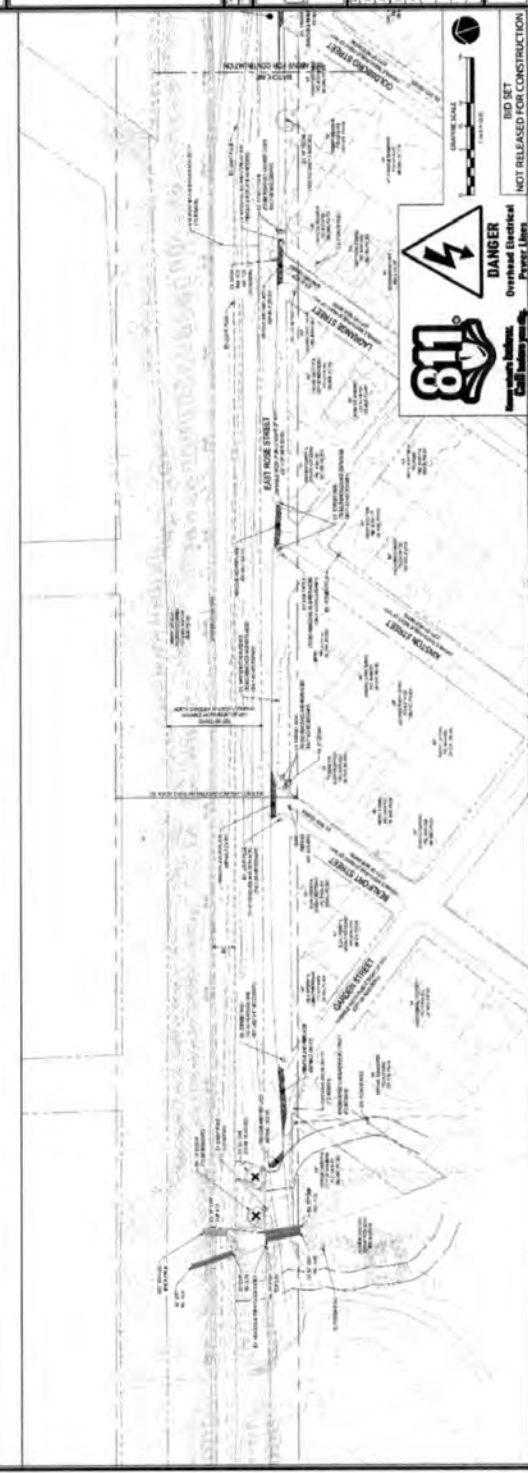
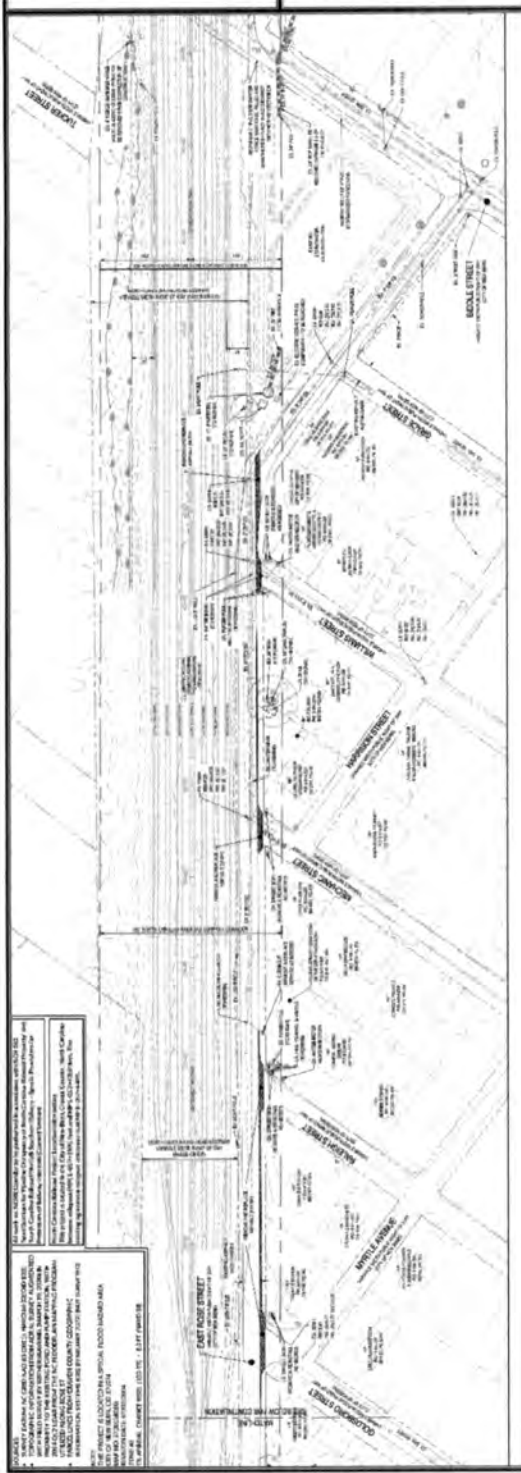
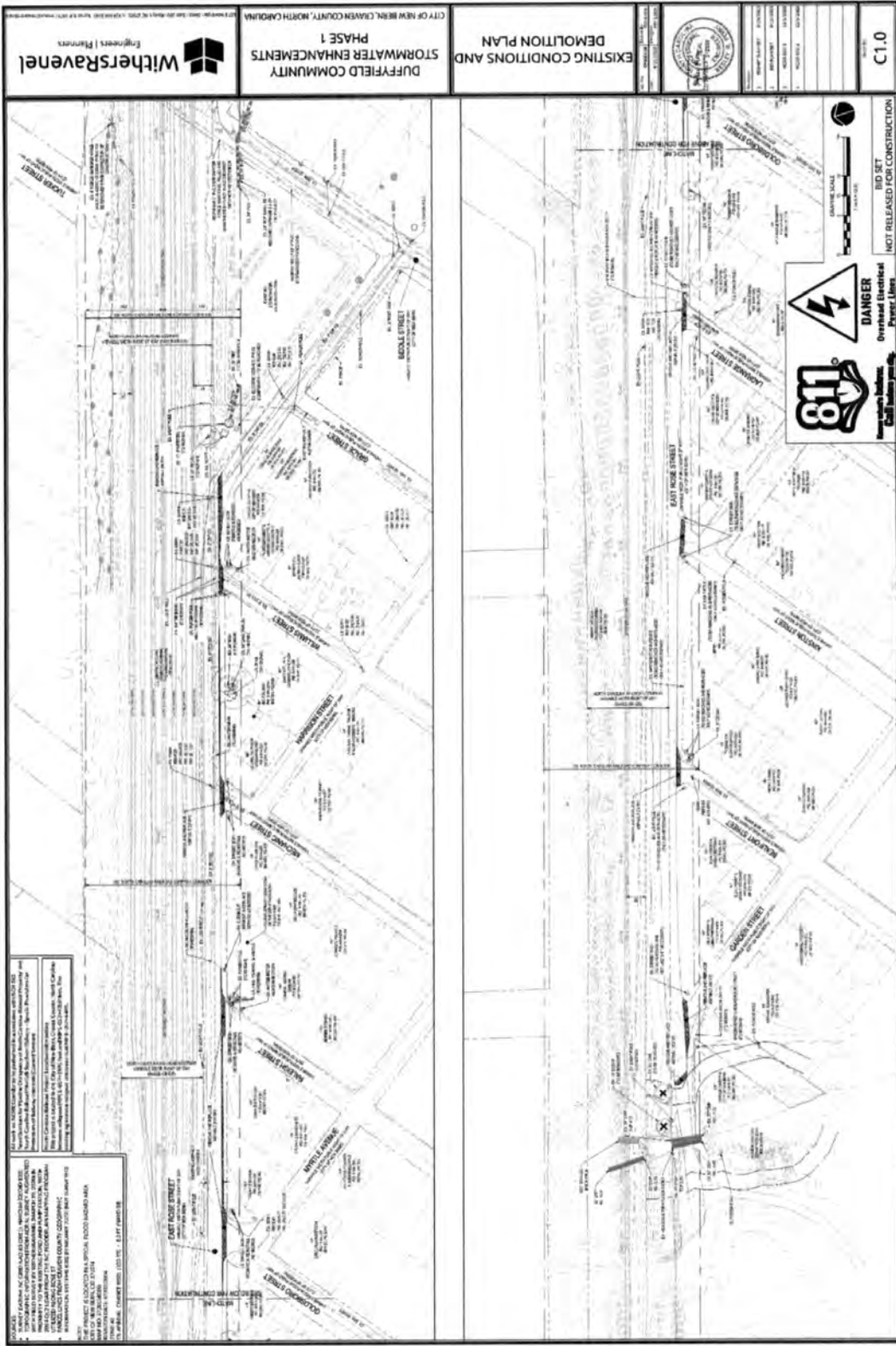
By: _____

Title: _____

Date: _____

Exhibit A1
Milepost EC-057+4495

December 18, 2023
Craven County, NC



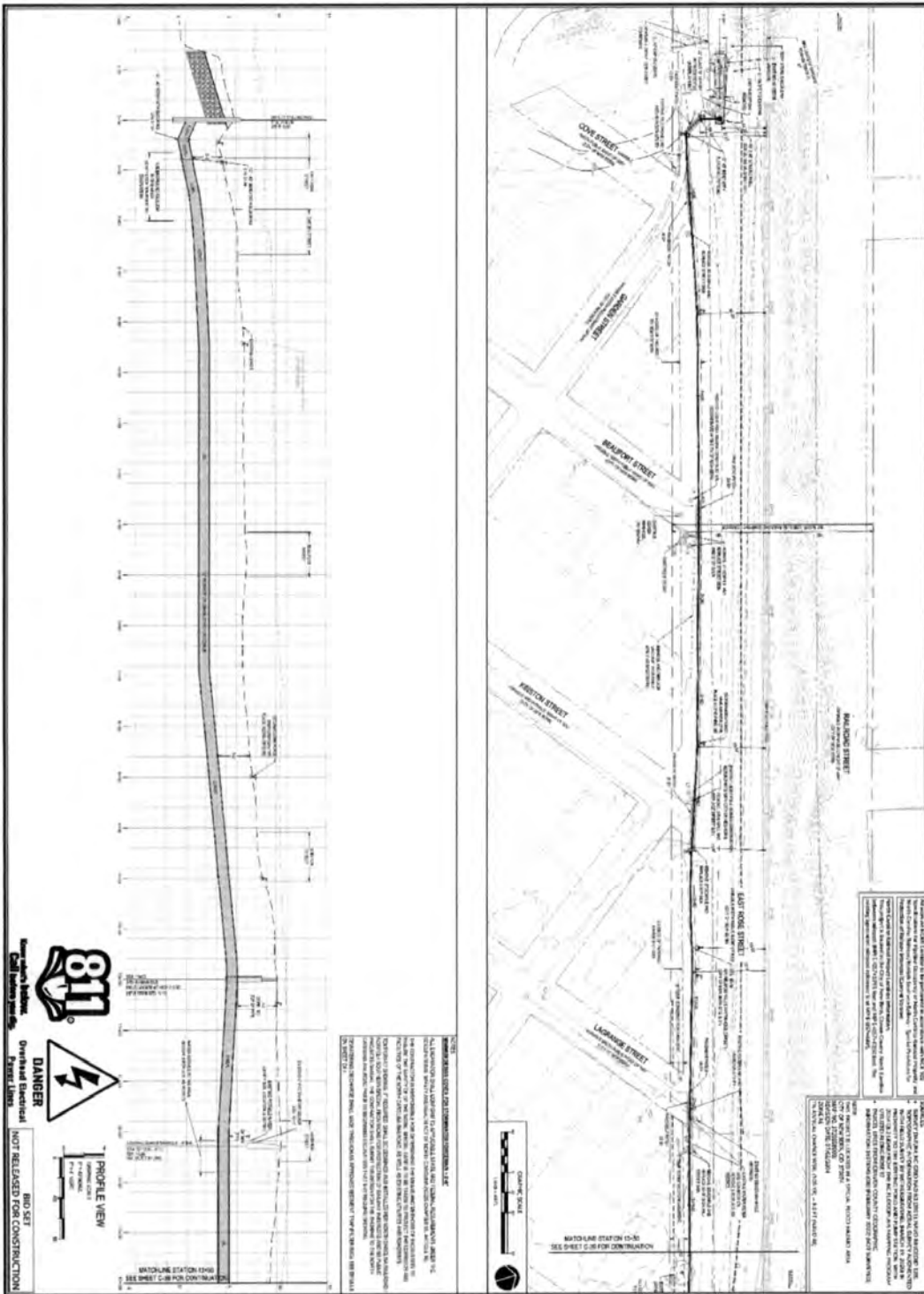
Parcel No. 17 of V-9/19a
 23058

Exhibit A2
Milepost EC-057+4495

December 18, 2023
Craven County, NC

Exhibit A3
Milepost EC-057+4495

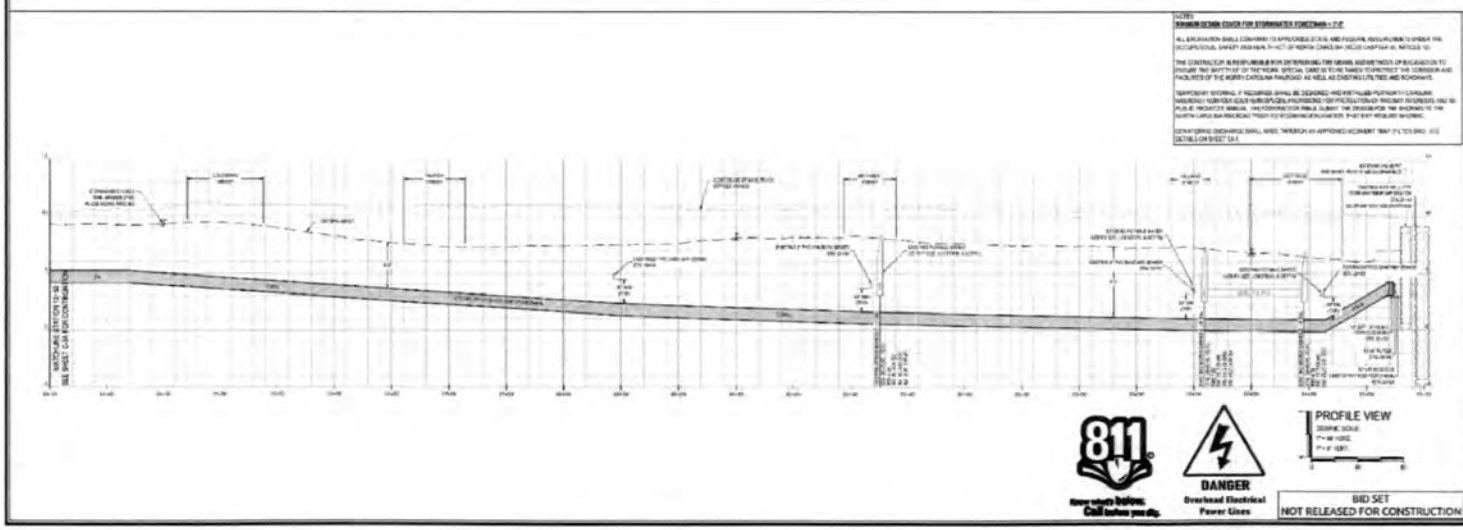
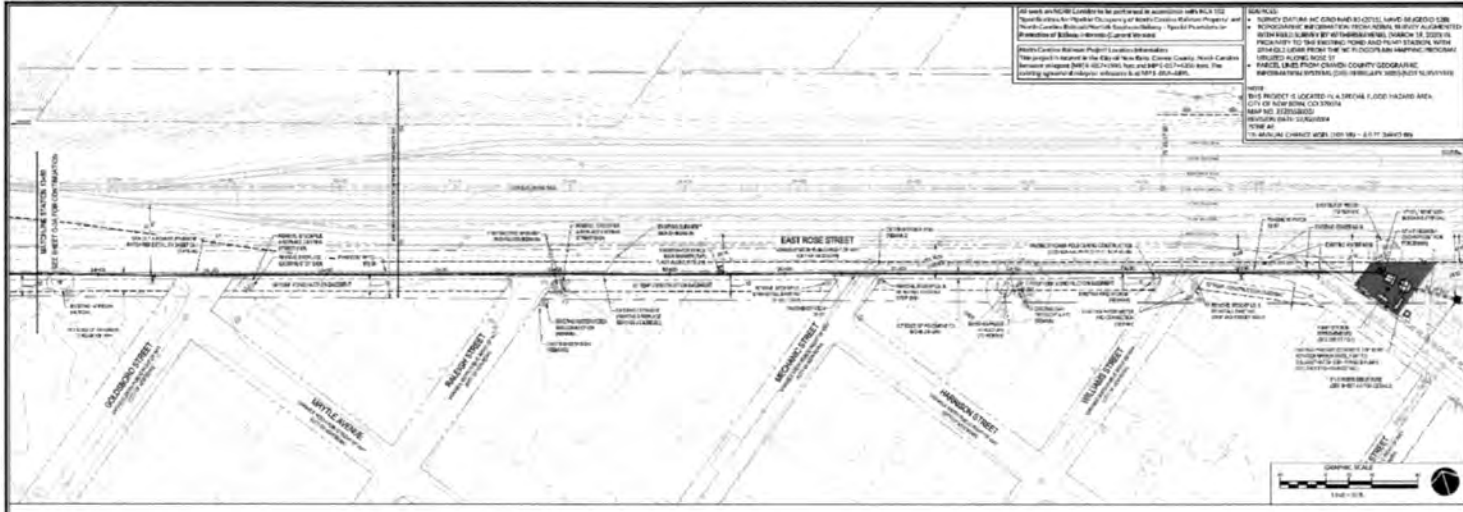
December 18, 2023
Craven County, NC



	<p>STORMWATER FORCE MAIN PLAN & PROFILE (1 OF 2)</p>	<p>DUFFYFIELD COMMUNITY STORMWATER ENHANCEMENTS PHASE 1</p>	<p>Engineers Planners</p>
	<p>C3.0</p>	<p>CITY OF NEW BERN, CRAVEN COUNTY, NORTH CAROLINA</p>	

Exhibit A4
Milepost EC-057+4495

December 18, 2023
Craven County, NC



PROFILE VIEW
GRAPHIC SCALE
1" = 10'-0"
1" = 10'-0"

BID SET
NOT RELEASED FOR CONSTRUCTION



DUFFYFIELD COMMUNITY
STORMWATER ENHANCEMENTS
PHASE 1
CITY OF NEW BERN, CURRUM COUNTY, NORTH CAROLINA

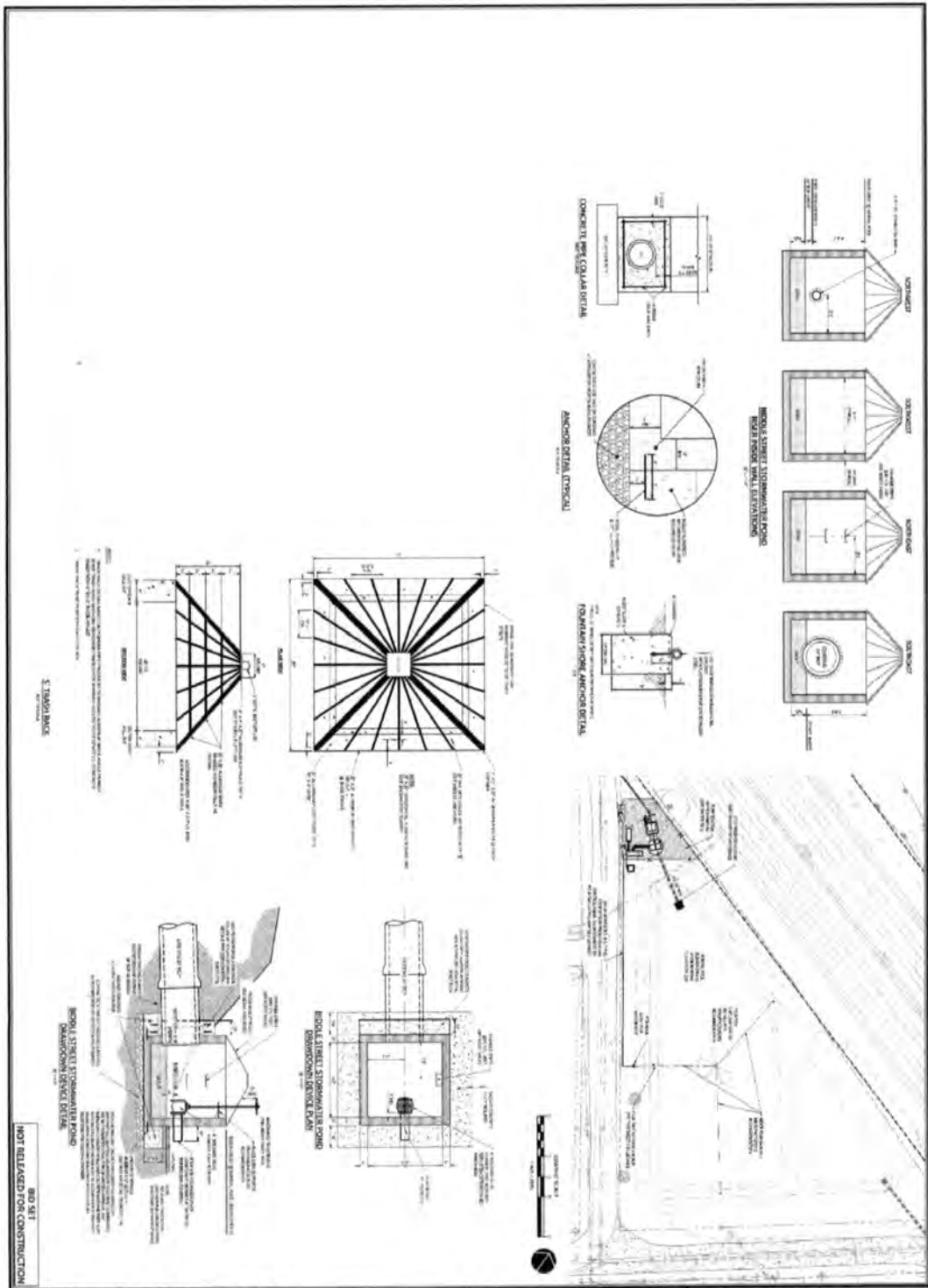
STORMWATER FORCE
MAIN PLAN & PROFILE
(2 OF 2)

NO. 1	DATE	DESCRIPTION
1	08/01/2024	ISSUED FOR BIDDING
2	08/01/2024	ISSUED FOR BIDDING
3	08/01/2024	ISSUED FOR BIDDING
4	08/01/2024	ISSUED FOR BIDDING
5	08/01/2024	ISSUED FOR BIDDING
6	08/01/2024	ISSUED FOR BIDDING
7	08/01/2024	ISSUED FOR BIDDING
8	08/01/2024	ISSUED FOR BIDDING
9	08/01/2024	ISSUED FOR BIDDING
10	08/01/2024	ISSUED FOR BIDDING

Sheet No. **C.3.1**

Exhibit A5
Milepost EC-057+4495

December 18, 2023
Craven County, NC



<p>NO SET NOT RELEASED FOR CONSTRUCTION</p>		<p>STORMWATER DETENTION POND IMPROVEMENT PLAN & DETAILS</p>	<p>DUFFYFIELD COMMUNITY STORMWATER ENHANCEMENTS PHASE 1</p>	<p>WithersRavenel Engineers Planners</p>	<p>CITY OF NEW BERN, CHAVEN COUNTY, NORTH CAROLINA</p>

Exhibit A6
Milepost EC-057+4495

December 18, 2023
Craven County, NC

NEW BERN
City of New Bern
1000 S. 1st Street
New Bern, NC 28562
Phone: 252.338.2200
Fax: 252.338.2201

SECOND FOR WATER MAINS AND SEWER FORCE MAINS
STANDARD DRAWING No. P-10

SETTLING WELL DETAIL
P-10

SECONDARY APRON
P-10

SECONDARY APRON
P-10

NON-POTABLE WATER WARNING SIGN
P-10

CAMLOCK "QUICK CONNECT" FOR EMERGENCY PUMP
P-10

AIR RELEASE VALVE
P-10

PRECAST CONCRETE STRUCTURE
MANHOLE, RISER AND CHAMBER
P-10

SEWER FORCE MAIN MARKER
P-10

Marker Number	Marker Diameter (inches)	Marker Depth (inches)
1	4.000	12.000
2	4.000	12.000
3	4.000	12.000
4	4.000	12.000
5	4.000	12.000
6	4.000	12.000
7	4.000	12.000
8	4.000	12.000
9	4.000	12.000
10	4.000	12.000
11	4.000	12.000
12	4.000	12.000

MANHOLE WALL SECTION
RISER WALL SECTION
CHAMBER WALL SECTION

PRECAST RISER PLAN
P-10

PRECAST CHAMBER PLAN
P-10

OPTIMAL JOINT DETAILS
P-10

NON-HDOT STREET PAVEMENT REPLACEMENT
P-10

GENERAL NOTES
1. THIS DRAWING IS TO BE USED FOR THE DESIGN OF SECONDARY APRONS, MANHOLES, RISERS, AND CHAMBERS FOR THE CITY OF NEW BERN. ALL DIMENSIONS ARE IN FEET AND INCHES UNLESS OTHERWISE NOTED.
2. ALL MATERIALS SHALL BE AS SPECIFIED IN THE CITY OF NEW BERN SPECIFICATIONS FOR WATER MAINS AND SEWER FORCE MAINS.
3. ALL STRUCTURES SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE CITY OF NEW BERN SPECIFICATIONS FOR WATER MAINS AND SEWER FORCE MAINS.
4. ALL STRUCTURES SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE CITY OF NEW BERN SPECIFICATIONS FOR WATER MAINS AND SEWER FORCE MAINS.
5. ALL STRUCTURES SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE CITY OF NEW BERN SPECIFICATIONS FOR WATER MAINS AND SEWER FORCE MAINS.
6. ALL STRUCTURES SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE CITY OF NEW BERN SPECIFICATIONS FOR WATER MAINS AND SEWER FORCE MAINS.
7. ALL STRUCTURES SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE CITY OF NEW BERN SPECIFICATIONS FOR WATER MAINS AND SEWER FORCE MAINS.
8. ALL STRUCTURES SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE CITY OF NEW BERN SPECIFICATIONS FOR WATER MAINS AND SEWER FORCE MAINS.
9. ALL STRUCTURES SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE CITY OF NEW BERN SPECIFICATIONS FOR WATER MAINS AND SEWER FORCE MAINS.
10. ALL STRUCTURES SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE CITY OF NEW BERN SPECIFICATIONS FOR WATER MAINS AND SEWER FORCE MAINS.

PRECAST CONCRETE STRUCTURE
MANHOLE, RISER AND CHAMBER
P-10

BID SET
NOT RELEASED FOR CONSTRUCTION

WITHERSRAVENEL
Engineers | Planners

DUFFYFIELD COMMUNITY
STORMWATER ENHANCEMENTS
PHASE 1

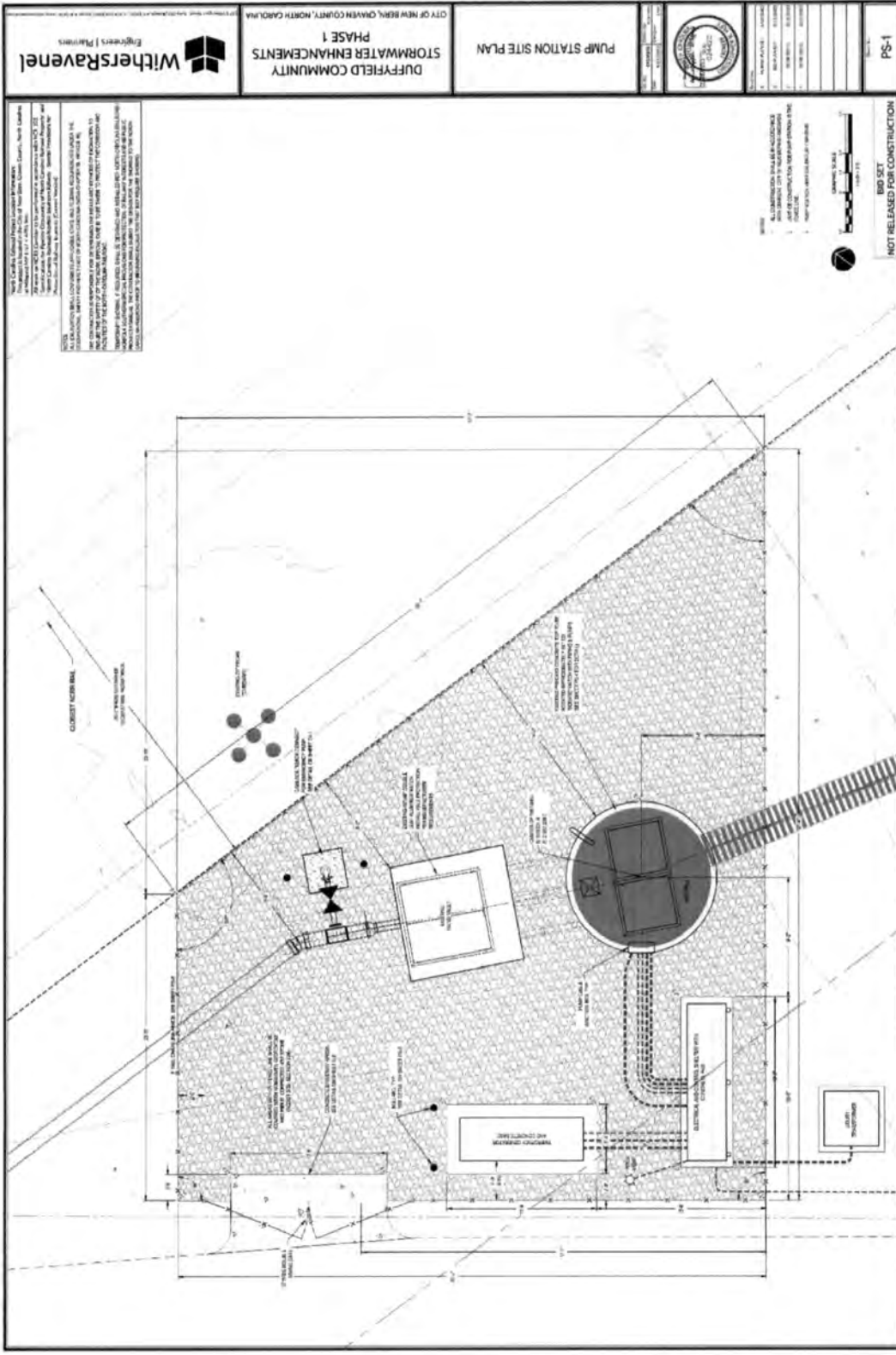
CITY OF NEW BERN, CURRUM COUNTY, NORTH CAROLINA

UTILITY DETAILS

C4.1

Exhibit A7
Milepost EC-057+4495

December 18, 2023
Craven County, NC



Parcel No. 17 of V-9/19a
23058

Exhibit A8
Milepost EC-057+4495

December 18, 2023
Craven County, NC

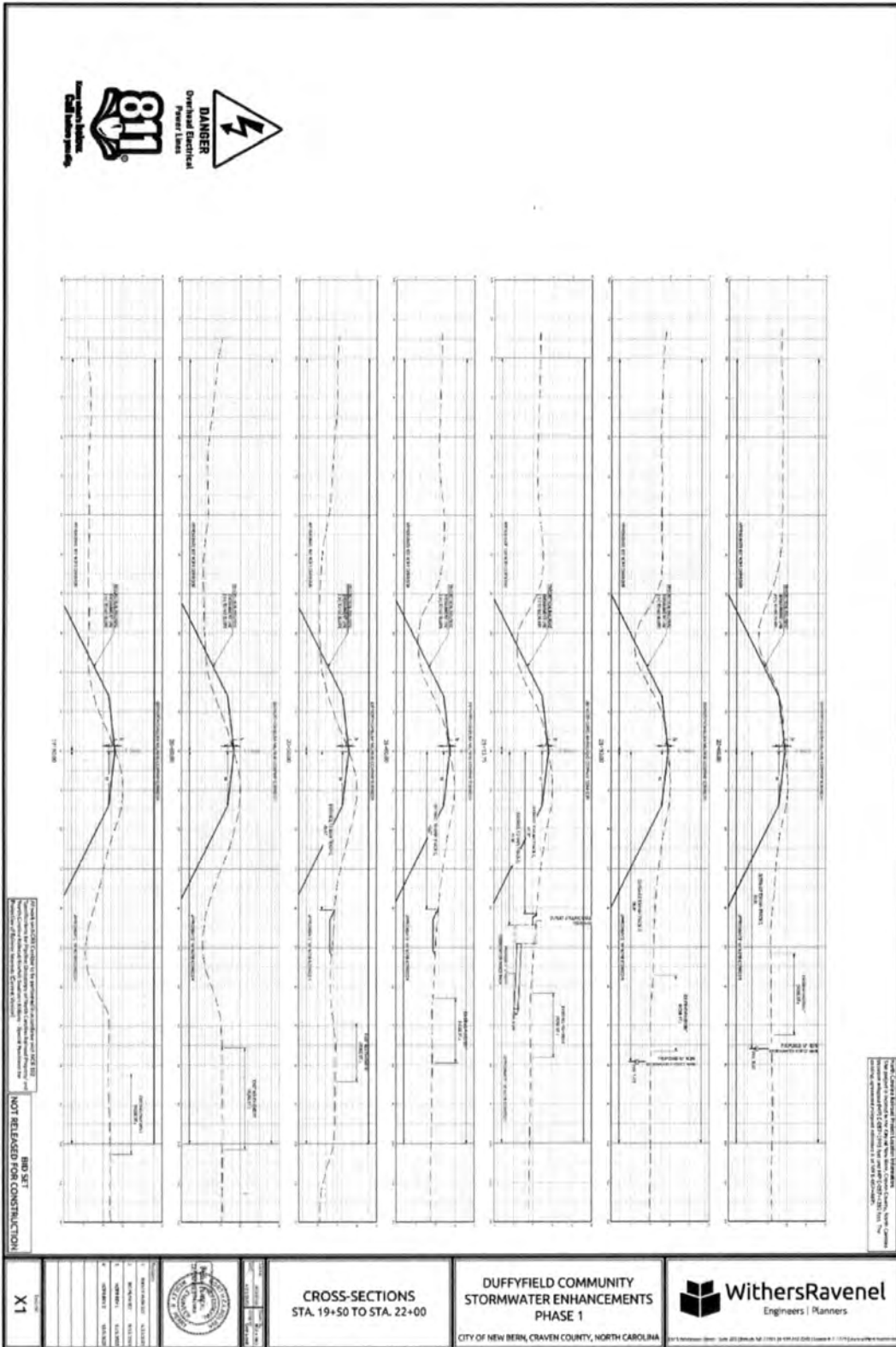
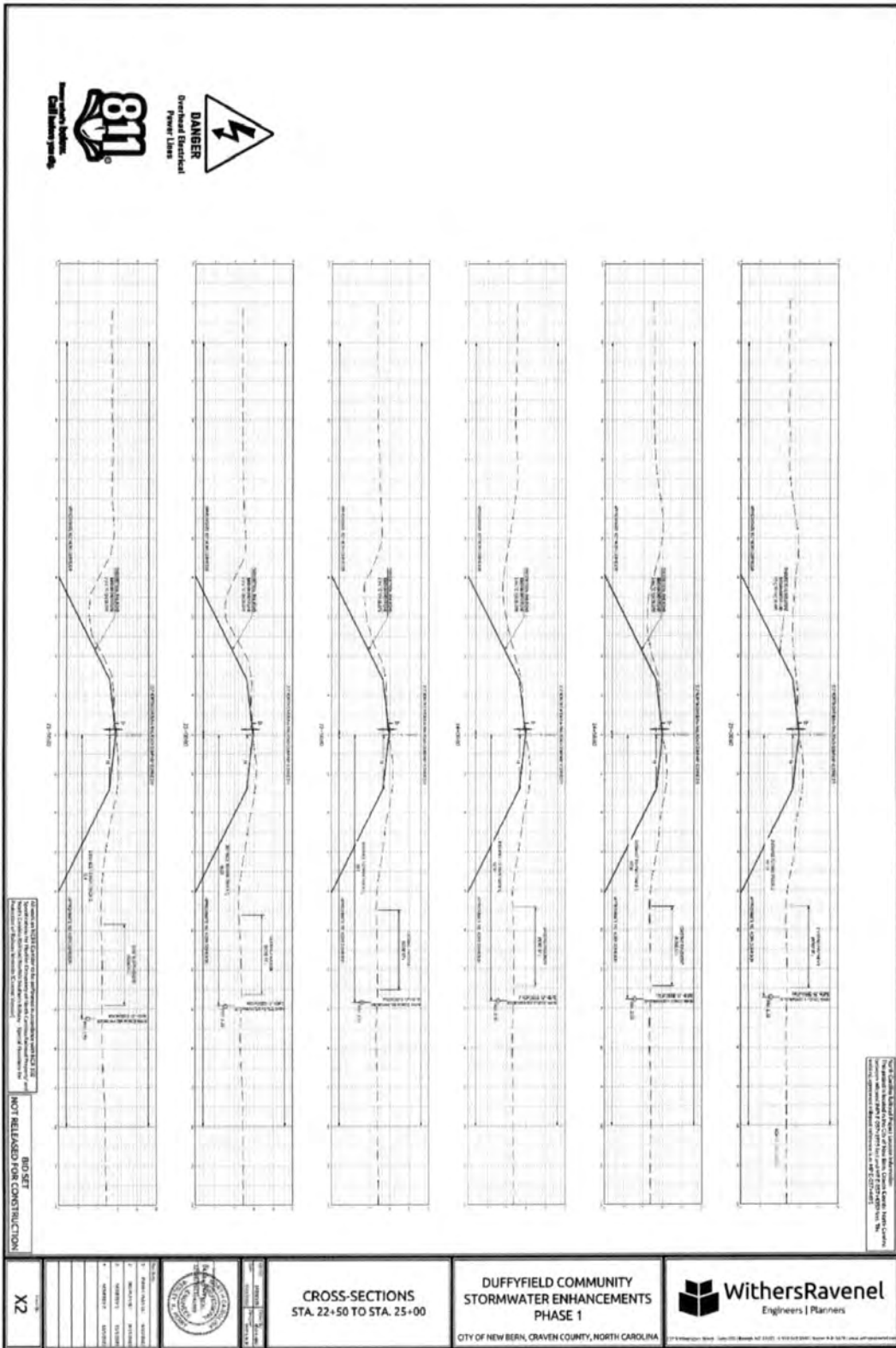


Exhibit A9
Milepost EC-057+4495

December 18, 2023
Craven County, NC



NOT RELEASED FOR CONSTRUCTION

NO. 1	DATE	BY	DESCRIPTION



CROSS-SECTIONS
STA. 22+50 TO STA. 25+00

DUFFYFIELD COMMUNITY
STORMWATER ENHANCEMENTS
PHASE 1

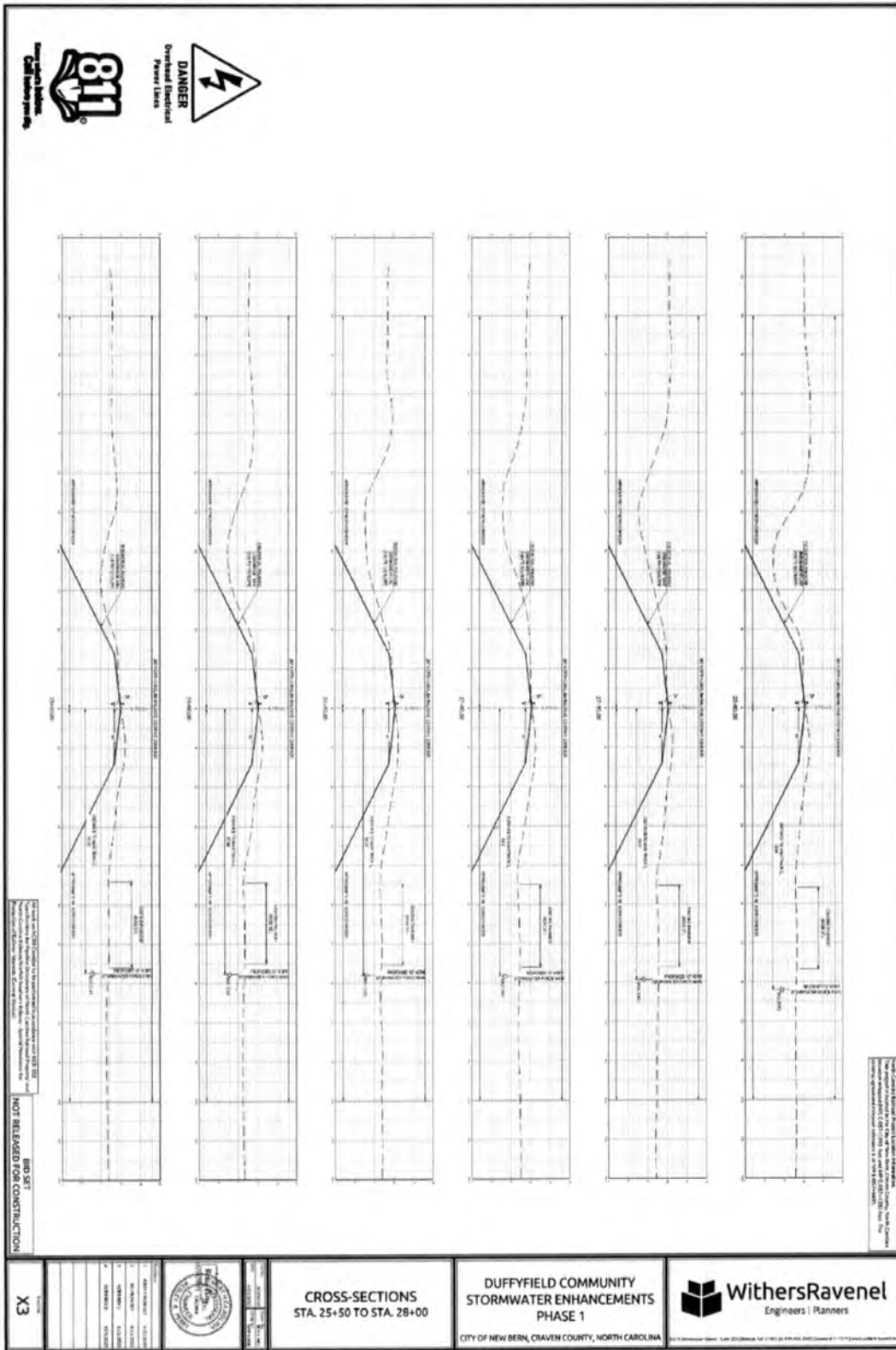
CITY OF NEW BERN, CRAVEN COUNTY, NORTH CAROLINA



NOT FOR CONSTRUCTION

Exhibit A10
Milepost EC-057+4495

December 18, 2023
Craven County, NC



811
Call before you dig

DANGER
Overhead Electrical
Power Lines

NOT RELEASED FOR CONSTRUCTION

X3



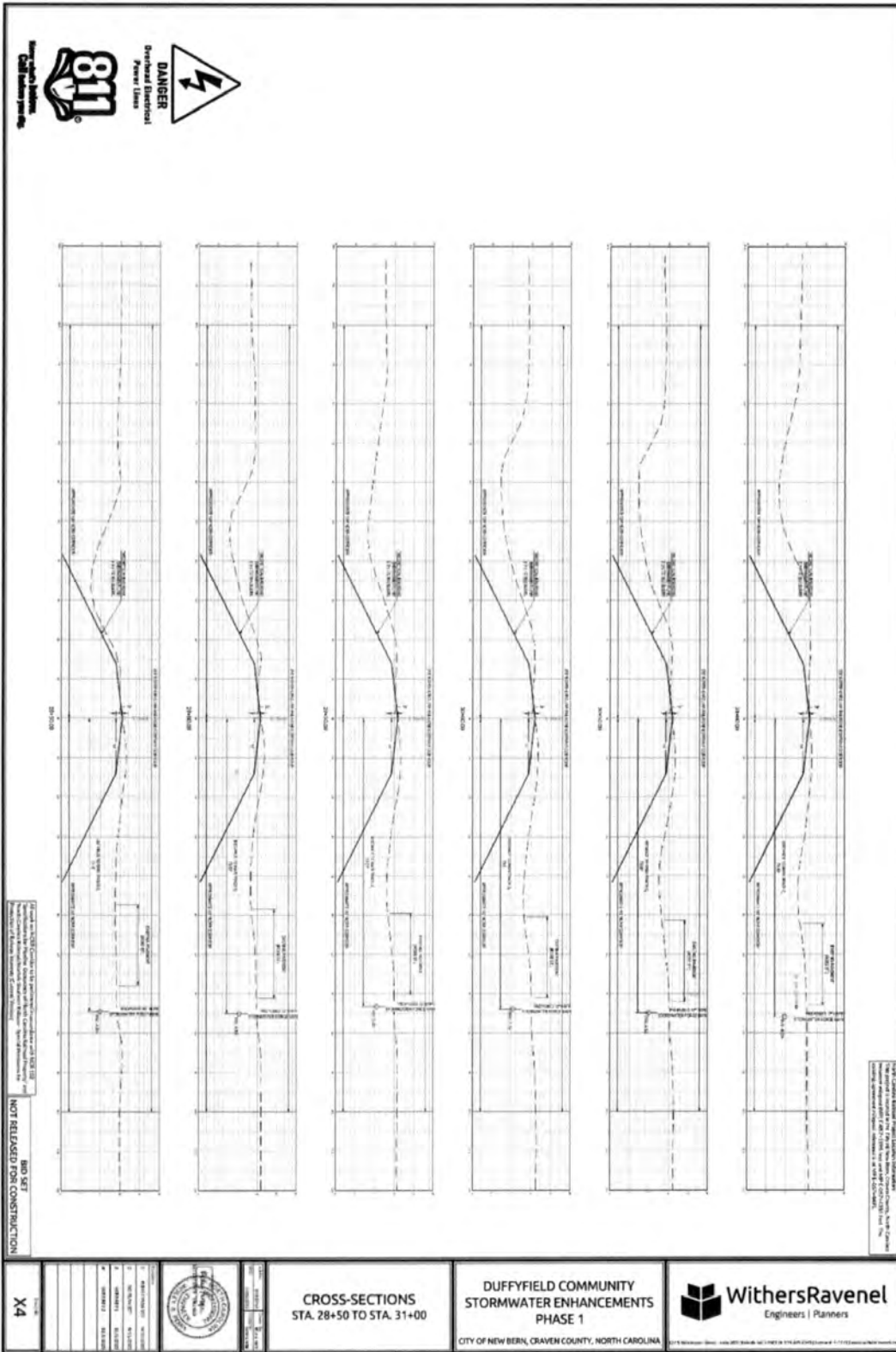
CROSS-SECTIONS
STA. 25+50 TO STA. 26+00

DUFFYFIELD COMMUNITY
STORMWATER ENHANCEMENTS
PHASE 1
CITY OF NEW BERN, CRAVEN COUNTY, NORTH CAROLINA

WithersRavenel
Engineers | Planners

Exhibit A11
Milepost EC-057+4495

December 18, 2023
Craven County, NC



NOT RELEASED FOR CONSTRUCTION

NO SET
NO RELEASED FOR CONSTRUCTION
X4



CROSS-SECTIONS
STA. 28+50 TO STA. 31+00

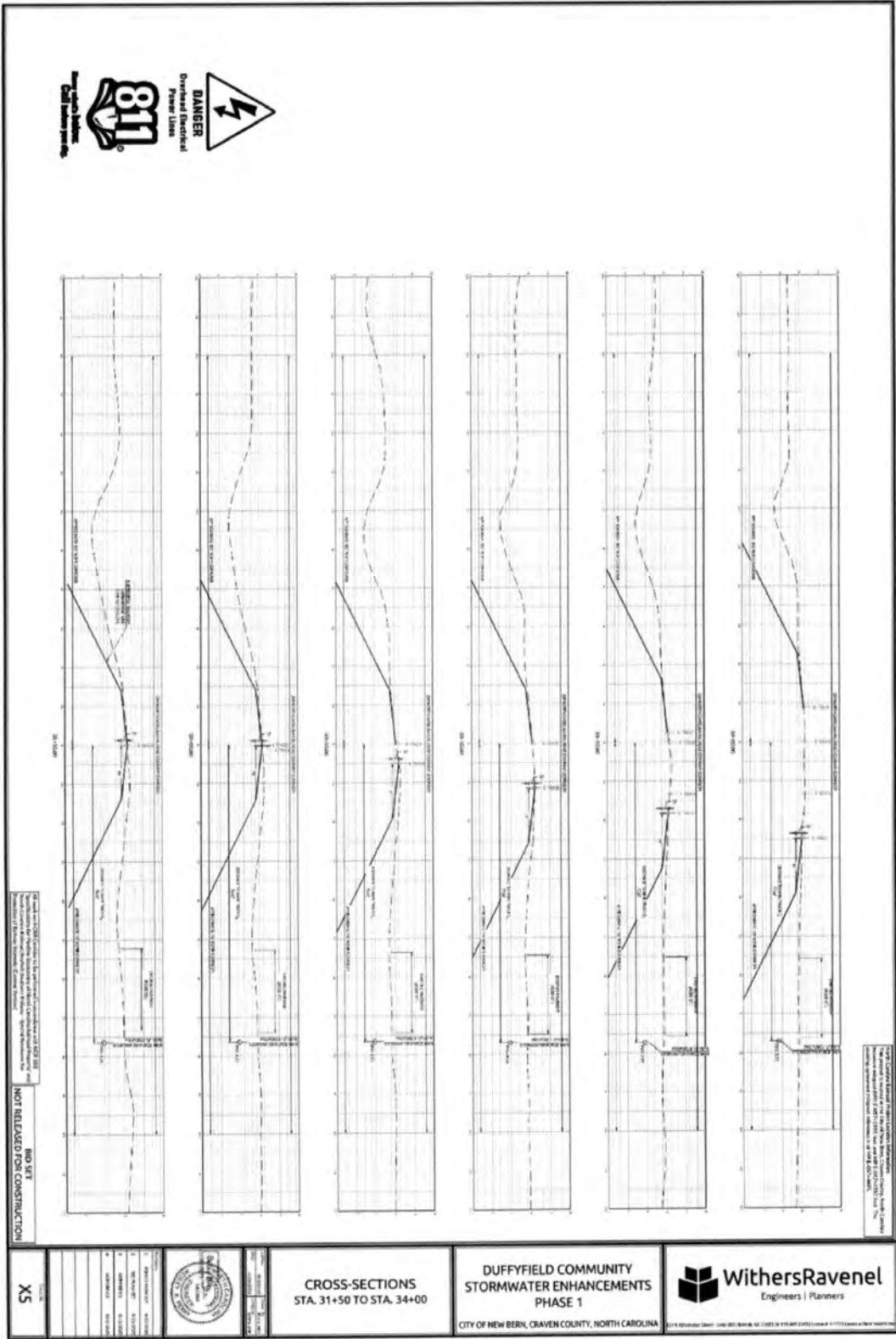
DUFFYFIELD COMMUNITY
STORMWATER ENHANCEMENTS
PHASE 1
CITY OF NEW BERN, CRAVEN COUNTY, NORTH CAROLINA



THIS DRAWING IS THE PROPERTY OF WITHERSRAVENEL ENGINEERS, PLLC. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF WITHERSRAVENEL ENGINEERS, PLLC.

Exhibit A12
Milepost EC-057+4495

December 18, 2023
Craven County, NC



NOT RELEASED FOR CONSTRUCTION

NO. 1	PROPOSED STORMWATER ENHANCEMENT
NO. 2	EXISTING GROUND
NO. 3	PROPOSED GROUND
NO. 4	PROPOSED STRUCTURE
NO. 5	PROPOSED CURB

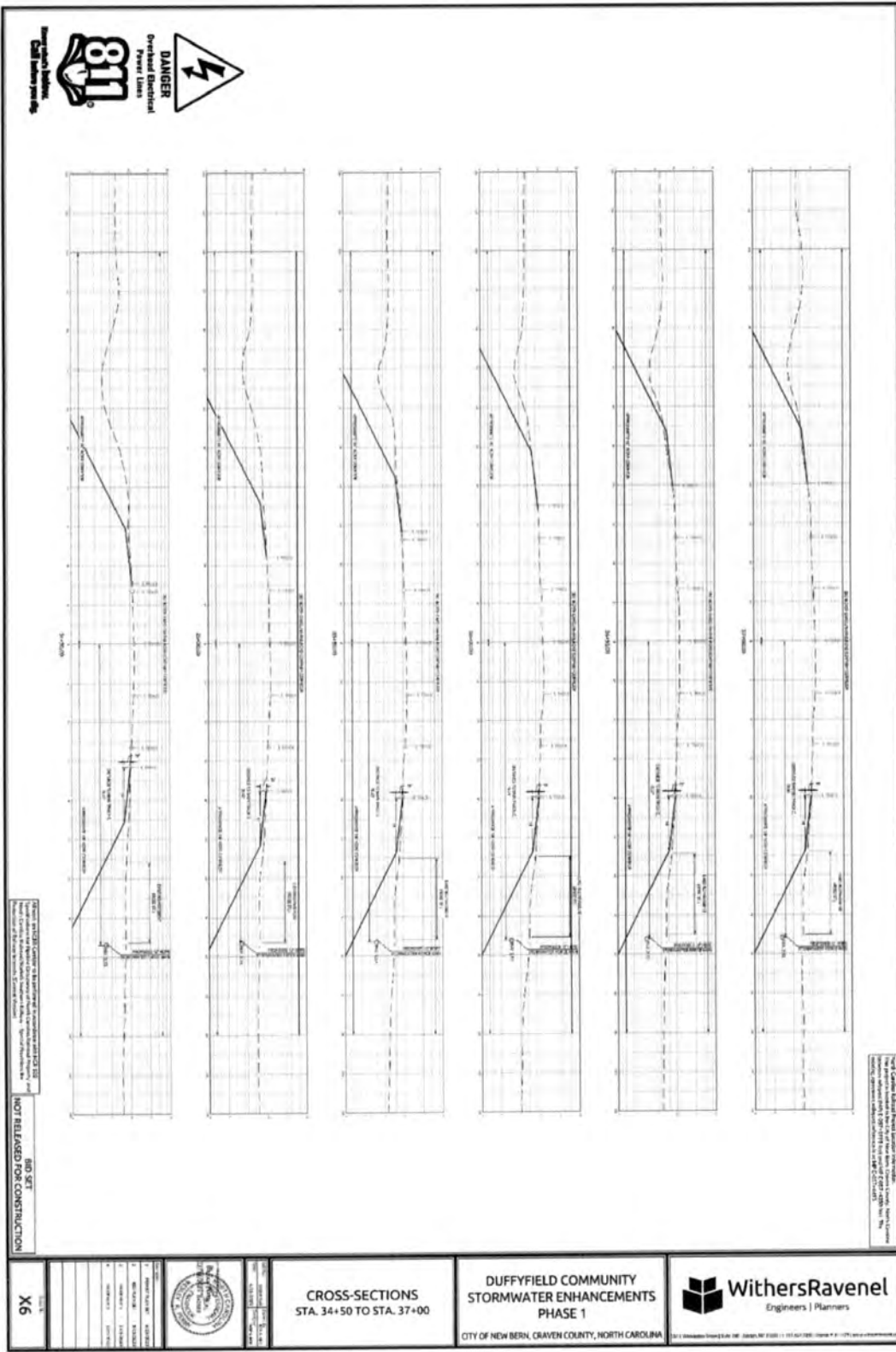
CROSS-SECTIONS
STA. 31+50 TO STA. 34+00

DUFFYFIELD COMMUNITY
STORMWATER ENHANCEMENTS
PHASE 1
CITY OF NEW BERN, CRAVEN COUNTY, NORTH CAROLINA

WithersRavenel
Engineers | Planners

Exhibit A13
Milepost EC-057+4495

December 18, 2023
Craven County, NC



NOT FOR CONSTRUCTION
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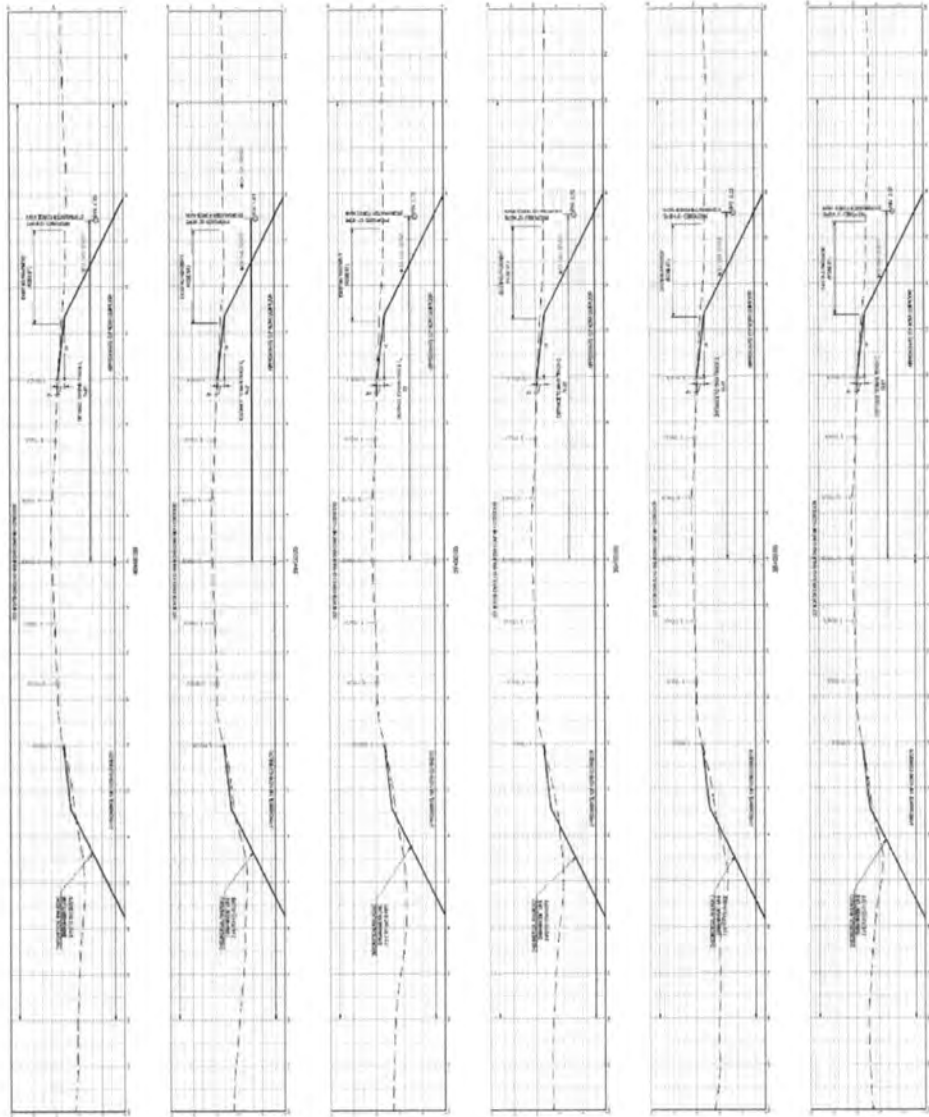
Exhibit A14
Milepost EC-057+4495

December 18, 2023
Craven County, NC



DATE	DESCRIPTION

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BID SET
NOT RELEASED FOR CONSTRUCTION



Exhibit A15
Milepost EC-057+4495

December 18, 2023
Craven County, NC

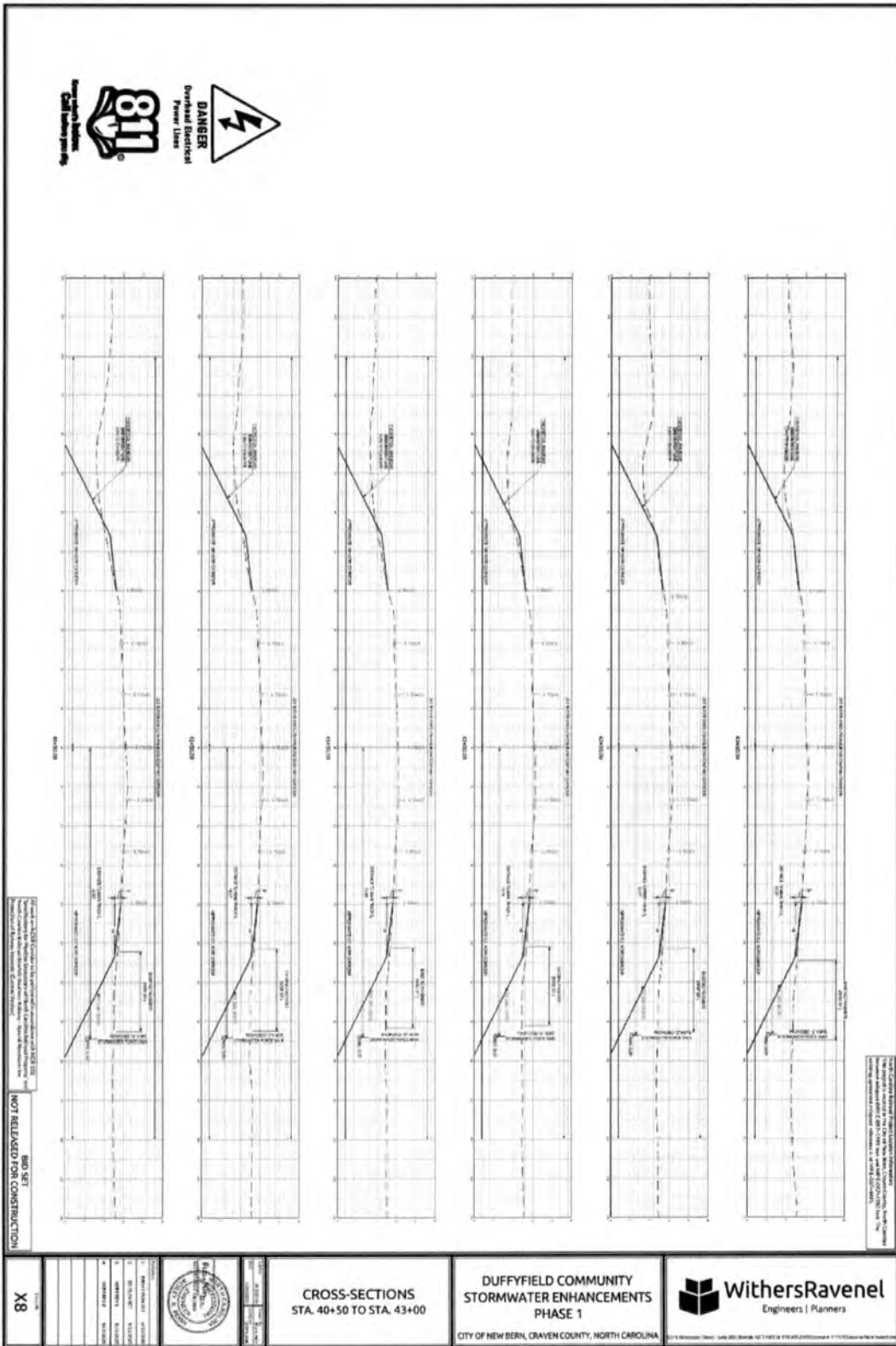


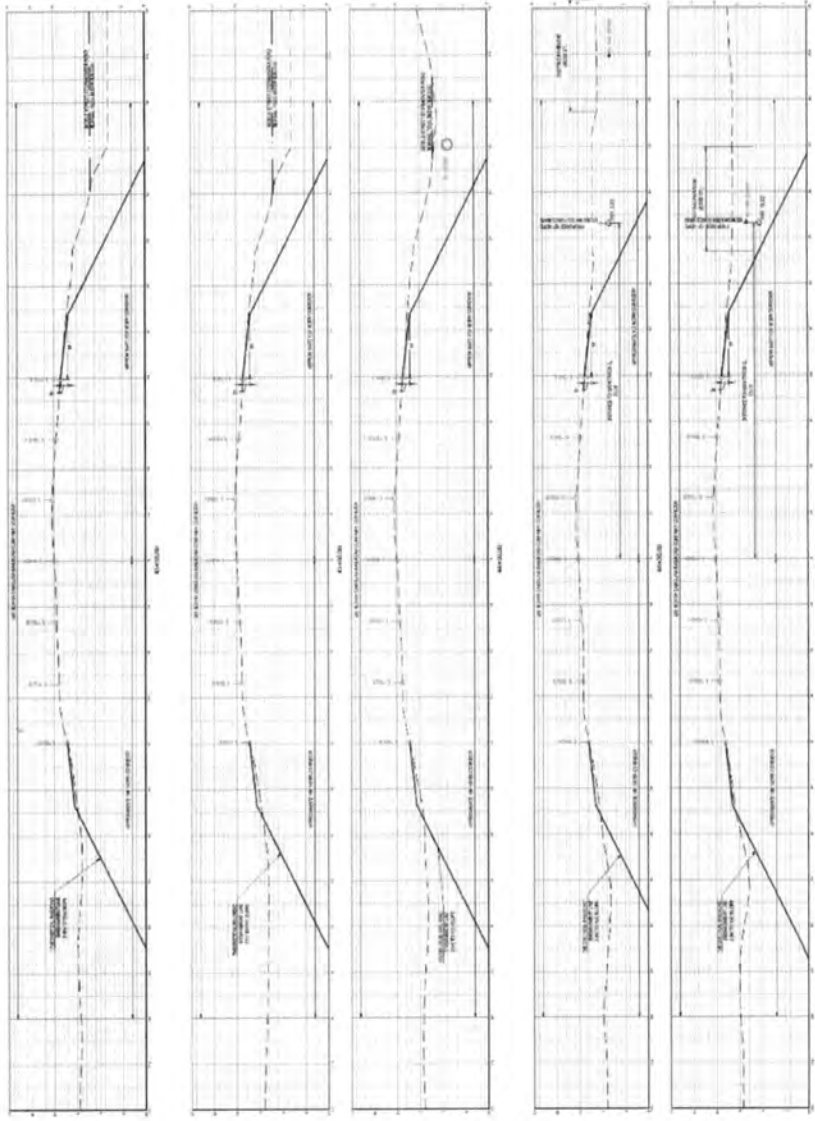
Exhibit A16
Milepost EC-057+4495

December 18, 2023
Craven County, NC



1	DATE	DESCRIPTION
2	DATE	DESCRIPTION
3	DATE	DESCRIPTION
4	DATE	DESCRIPTION

THE CITY OF NEW BERN, CHAYEN COUNTY, NORTH CAROLINA
 HAS ADOPTED THIS PLAN FOR THE PROJECT DESCRIBED HEREIN. THE CITY ENGINEER HAS REVIEWED THIS PLAN AND HAS FOUND IT TO BE IN ACCORDANCE WITH THE REQUIREMENTS OF THE NORTH CAROLINA CONSTRUCTION ACT. THE CITY ENGINEER'S REVIEW IS LIMITED TO THE TECHNICAL ASPECTS OF THE PLAN AND DOES NOT CONSTITUTE A GUARANTEE OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION PROVIDED HEREON. THE CITY ENGINEER'S REVIEW IS LIMITED TO THE TECHNICAL ASPECTS OF THE PLAN AND DOES NOT CONSTITUTE A GUARANTEE OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION PROVIDED HEREON.



BID SET
 NOT RELEASED FOR CONSTRUCTION



George Chiles

From: Welker, Jeffrey (NCEM) <jeffrey.welker@ncdps.gov>
Sent: Wednesday, May 1, 2024 12:24 PM
To: George Chiles
Subject: RE: [External] Duffyfield Community Stormwater Enhancement Project - NCRR Agreement

George,

The MOA already has right of way easements as part of the force main so I have no problem with you taking saving on one area to cover overruns in another as long as the SOW is completed and nothing new is added. You should be good to go.

Thanks,

Jeff

Jeff Welker
Grants Manager
NC Department of Public Safety
Division of Emergency Management, Long-Term Recovery
4105 Reedy Creek Road, Raleigh, NC 27607-6410 (Physical Address)
4238 MSC, Raleigh, NC 27699-4238 (Mailing Address)
Cell: 984-222-4159

E-mail correspondence sent to and from this address may be subject to the provisions of G.S. 132-1, the North Carolina Public Records Law, and may be subject to monitoring and disclosed to third parties, including law enforcement personnel, by an authorized state official.

From: George Chiles <ChilesG@newbernnnc.gov>
Sent: Wednesday, May 1, 2024 12:02 PM
To: Welker, Jeffrey (NCEM) <jeffrey.welker@ncdps.gov>
Subject: RE: [External] Duffyfield Community Stormwater Enhancement Project - NCRR Agreement

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Jeff,

Yes, that is correct, this is the same force main referenced in the MOA. The proposed stormwater force main parallels E. Rose St and is located within the public right-of-way. With the exception of the pump station (start) and stilling well outfall (end) the force main is located along the southern side of E Rose St such that the roadway is between the force main and the railroad tracks. This was purposefully done to place the majority of the force main as far from the tracks as possible without encroaching on private properties and existing residential structures. Even with the force main located along the southern side of E Rose St, it is still within NC Railroad's 200' wide corridor and thus the railroad is requiring the Supplemental License Agreement and associated fees.



George Chiles
Director of Public Works

City of New Bern • Public Works Dept.
Mailing Address: P.O. Box 1129, New Bern, NC 28563
Shipping Address: 1004 S. Glenburnie Road, New Bern, NC 28562
252-639-7500

From: Welker, Jeffrey (NCEM) <jeffrey.welker@ncdps.gov>
Sent: Wednesday, May 1, 2024 8:16 AM
To: George Chiles <ChilesG@newbernnc.gov>
Subject: RE: [External] Duffyfield Community Stormwater Enhancement Project - NCRR Agreement

George,

Good morning. A quick question, I took a quick look at the MOA, not the detailed cost opinion. Phase I seems to suggest a force main along rose street, is this the same main that requires the RR right of way? Is the force main between rose and the RR?

The following outlines the remaining scope of work necessary to complete Phase 1 of the project:

Install Concrete Riser Structure to establish water quality control.

Complete Pump Station Improvements (includes installation of pumps, controls, generator, piping, electrical connection, lighting, and gravel pad).

Install ± 2, 322 linear feet of HDPE Stormwater Force Main along Rose Street (includes easement acquisition, pavement repair, and water and sewer service meters)

Install Outlet Stilling Well and Riprap Apron

It is anticipated that the above scope of work to complete Phase 1 will cost\$ 1. 32 million, the entirety of which will be funded by a portion of the NCEM grant. A detailed cost opinion for the completion of the above work associated with Phase 1 is attached.

Thanks,

Jeff

Jeff Welker

Grants Manager

NC Department of Public Safety

Division of Emergency Management, Long-Term Recovery

4105 Reedy Creek Road, Raleigh, NC 27607-6410 (Physical Address)

4238 MSC, Raleigh, NC 27699-4238 (Mailing Address)

Cell: 984-222-4159

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From: George Chiles <ChilesG@newbernnc.gov>
Sent: Tuesday, April 30, 2024 2:27 PM
To: Welker, Jeffrey (NCEM) <jeffrey.welker@ncdps.gov>
Subject: [External] Duffyfield Community Stormwater Enhancement Project - NCRR Agreement

Jeff,

Following up on our conversation regarding the North Carolina Railroad Company (NCRR) *Supplemental Licensee Agreement* related to the construction of Duffyfield Community Stormwater Enhancements – Phase One. The installation of the stormwater force main requires running pipe parallel to the NCRR right of way. The encroachment of this pipeline into portions of the NCRR R/W comes with the need for a "Supplemental Pipeline Agreement." I have attached a draft of this agreement for your reference.

After several meetings with NCRR, they have agreed to the lump sum amount of \$435,934.00 with the ability for the City of New Bern to make annual payments. NCRR is agreeable to a larger initial payment which would lower the annual required payment. The initial engineer's cost opinion for the Duffyfield Community Stormwater Enhancement Project – Phase 2-3 submitted with the grant documents included a \$270,000.00 line item for Wetland Mitigation Fees.

Recent changes to the Waters of the US Rule (WOTUS) based on a Supreme Court ruling changed the jurisdictional ruling for the hydraulically disconnected wetland located within the project area to Federally Non-Jurisdictional. In addition, the 2023 NC Farm Act (Session Law 2023-63/15A NCAC 2B 0202) limits NCDEQ jurisdiction to only federally jurisdictional wetlands. In short, the onsite wetlands impacted by the proposed improvements are not considered jurisdictional to either USACOE or NCDEQ and thus mitigation fees are no longer applicable to this project.

We would like to utilize the \$270,000 originally set aside for wetland mitigation fees to pay down the \$435,934.00 lump sum pipeline agreement to NCRR. Would this expenditure follow the intent of the grant and be reimbursable to the City of New Bern.

Please let me know if you have any additional questions.

Best Regards,



George Chiles
Director of Public Works

City of New Bern • Public Works Dept.
Mailing Address: P.O. Box 1129, New Bern, NC 28563
Shipping Address: 1004 S. Glenburnie Road, New Bern, NC 28562
252-639-7500

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AGENDA ITEM COVER SHEET

Agenda Item Title:

Consider Adopting an Amendment to the FY 2023-24 Annual Adopted Budget

Date of Meeting: 5/28/2024	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:	Transfer \$227,220 from Electric Fund to Water Fund for overspent AMI/DSM Capital Project Fund costs
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:



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: May 17, 2024

RE: Amendment to the FY 2023-24 Operating Budget

Background

The AMI/DSM System Enterprise Capital Project Fund was established in 2011 as a joint project for the water and electric departments. Debt was obtained during the project and allocated to both departments within the project fund. During the lifetime of the AMI/DSM System Enterprise Capital Project Fund, the electric department overspent on equipment by \$245,237.38. This over expenditure was offset by the equipment line for the water department. The electric department owes the water department to account for equipment the water department was unable to purchase through the project fund as a result of the overage. The cost of the equipment purchased by the water department for the project totals \$227,220. This amendment transfers the \$227,220 from the Electric Fund to the Water Fund.

Requested Action

It is requested that the Board considers adopting the enclosed budget amendment at its meeting on May 28, 2024.

CITY OF NEW BERN, NORTH CAROLINA
REQUESTED AMENDMENT TO
Fiscal Year 2023-2024

FROM: Kim Ostrom, Director of Finance

Meeting Date: May 28, 2024

EXPLANATION:

The AMI/DSM System Enterprise Capital Project Fund was established in 2011 as a joint project for the water and electric departments. Debt was obtained during the project and allocated to both departments within the project fund. During the lifetime of the AMI/DSM System Enterprise Capital Project Fund, the electric department overspent on equipment by \$245,237.38. This over expenditure was offset by the equipment line for the water department. The electric department owes the water department to account for equipment the water department was unable to purchase through the project fund as a result of the overage. The cost of the equipment purchased by the water department for the project totals \$227,220. This amendment transfers the \$227,220 from the Electric Fund to the Water Fund.

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 C - WATER FUND

Increase: Water Distribution Maintenance \$ 227,220

Schedule E - ELECTRIC FUND

Increase: Transfer to Other Funds \$ 227,220

Section 2 - Estimated Revenues

Schedule C - WATER FUND

Increase: Transfer from Other Funds \$ 227,220

Schedule E - ELECTRIC FUND

Increase: Fund Balance Appropriated \$ 227,220

NATURE OF TRANSACTION:

ADDITIONAL REVENUE AVAILABLE FOR APPROPRIATION
 TRANSFER WITHIN ACCOUNTS OF SAME FUND
 OTHER: FUND BALANCE APPROPRIATED

APPROVED BY THE BOARD OF ALDERMEN AND
ENTERED ON MINUTES DATED MAY 28, 2024
AGENDA ITEM NUMBER _____

BRENDA E. BLANCO, CITY CLERK



NEW BERN

CITY OF NEW BERN

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

Aldermen

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Mayor

Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

Memorandum

TO: Alderman Johnnie Ray Kinsey

FROM: Brenda Blanco, City Clerk

DATE: May 8, 2024

SUBJECT: Appointment to Board of Adjustment

George "Eric" Jones has resigned from the Board of Adjustment due to scheduling conflicts. A new appointment is needed to fill the remainder of his term which expires on June 30, 2025.